Netherlands Commission for Environmental Assessment

European Union

EIA profile

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Country contact

The Environment Directorate-General of the European Commission is the responsible authority for EIA in the European Union. It can be contacted via the contact form on its website, or via its postal address:

European Commission

Environment DG

B - 1049 Brussels

Belgium

History of ESIA

The First Action Programme on the Environment (1973) of the European Community (OJ C 112, 20.12.73) indicated prevention as one of the essential principles of the Community's environmental policy. It states that

'Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes.'

An EIA Directive was proposed for the first time in the Second Action Programme on the Environment (1977) of the European Community (OJ C 139, 13.6.77):

'In order to determine whether and to what extent the regulations of the Member States need to be harmonized, and whether this is necessary at Community level, the Commission will undertake the necessary studies. It will examine how procedures for assessing impact on the environment might be applied in the Community- and in the Member States, while taking due account of the administrative situations peculiar to the various Member States.'

The suggestion however evoked strong opposition. After eight years of debate, Council Directive 85/377/EEC was the first EU EIA Directive.

It has been amended several times, in Directive 97/11/EC, Directive 2003/35/EC, and Directive 2009/31/EC. These amendments were codified in Directive 2011/92/EU, which is the EU's active EIA Directive. It was amended again in April 2014 in Directive 2014/52/EU, which is to be applied by the 16th of May 2017.

Legal framework

National detailed regulation for ESIA

- EU EIA Directive: Directive 2011/92/EU ;
- April 2014 amendments to the EIA Directive: Directive 2014/52/EU;

Guidelines

In 2001, the European Commission issued guidelines for EIA concerning screening, scoping and review (see below in the relevant sections under 'EIA procedure'). These guidance documents are not binding. Their aim is:

'... to provide practical help to those involved in these stages in the EIA process, drawing upon experience from around Europe and worldwide.'

Ultimately, the European Court of Justice decides on the interpretation of EIA directives.

Under the following link further EIA-related guidance documents of the European Commission can be accessed.

Sector specific procedures or regulations on EIA

There are no sector specific procedures or regulations on EIA at the EU level.

Exemptions from ESIA application

Article 2(4) of the EIA directive states that in exceptional cases, EU member states may decide to exempt projects from the provisions in the Directive. In such cases, member states have to justify this decision to the European Commission and to consider whether another form of assessment is appropriate.The European Commission provides for clarification regarding the interpretation of this Article in a non-binding guidance document (2006).

Further, Article 1(4) of the Directive determines that member states may decide on a case-by-case basis to exempt 'projects serving national defence purposes', if the national law provides for this possibility.

Scope of ESIA application

The Directive does not specify EIA obligation for projects from specific initiators (public or private, national or foreign).

Institutional setting

Central ESIA authority

EU member states may decide on the specific configuration of EIA in their country, including the establishment of a national EIA authority.

Other key (governmental) parties involved in ESIA, and their roles

Which key parties are involved in EIA differs per member state.

(De)centralisation of ESIA mandates

The European Commission issues Directives that provide for standards that need to be followed across the European Union. Decision-making on EIA, however, takes place at the national level (or, if member states decide so, at the regional/local level).

Payment system

EU regulations do not specify a payment system for EIA.

ESIA procedure

Overview ESIA procedure

The EIA procedure according to the EU EIA Directive is visualized in this image.

The steps marked in orange must be followed in all Member States under Directives 85/337 EC, 97/11/EC, 2011/92/EU and 2014/52/EU, as of the 16th of May 2017.

The steps highlighted in yellow have only recently been introduced as a formal step of the EIA procedure, namely through the Directive 2014/52/EU.

The steps which are not highlighted form part of good practice in EIA and have been formalised in some member states but not in all. Consultations with environmental authorities and other interested parties may be required during some of these additional steps in some member states.

Scoping is not mandatory but member states must establish a voluntary procedure by which developers can request a scoping opinion from the competent authority if they wish.

Screening

Screening process

A formal screening decision is required according to the EU EIA Directive, but details are to be decided by member states. The April 2014 amendments (applied by 16th of May 2017) include greater detail on screening prerequisites than previous Directives.

According to the EU EIA Directive, EIA is obligatory for types of projects listed in Annex I of the Directive. These are projects considered to have significant environmental effects, such as large-scale infrastructure projects, waste disposal installations and waste water treatment plants.

For other types of projects, listed in Annex II of the Directive (e.g. urban development projects and small-scale infrastructure developments), EU member countries are free to determine their own screening process to decide whether or not such projects should be subject to EIA. Member states can choose to decide this either on a case-by-case examination, or through their own criteria (but taking into account the selection criteria mentioned in Annex III of the Directive).

The screening decision should be made available to the public, providing reasons for the decision with reference to the criteria listed in Annex III of the Directive. If no EIA is required, project features to

avoid/prevent adverse environmental effects can be included.

The European Commission published several documents that provide member states with guidance on screening. They can be used on a voluntary basis.

- Guidance on screening
- Screening checklist
- Interpretation of definition of certain project categories of Annex I and Annex II of the EIA Directive

Sensitive areas

Annex III of the EIA Directive determines that the environmental sensitivity of geographical areas, which are likely to be affected by project, must be considered for case-by-case screening and the definition of screening thresholds/criteria. It provides for a list of criteria that need to be considered with this respect.

Contents of the starting document

In Annex IIA, the April 2014 amendments to the Directive (to be applied by the 16th of May 2017) mention the following topics as requirements for the starting document:

- Project description including physical and location characteristics;
- Description of aspects of the environment that are likely to be significantly affected by the project;
- Description of any likely significant effects of the project on the environment resulting from:•Expected residues, emissions and waste production;
- Use of natural resources.

Timeline Screening

The April 2014 amendments to the EIA Directive (to be applied by the 16th of May 2017) prescribe a period of 90 days for screening, from the date on which the developer has submitted the required information. In exceptional cases (e.g. relating to the nature, complexity, location or size of the project), the competent authority may extend this deadline and in that case should inform the developer on the reasons for this decision.

Scoping

Scoping process

Scoping is not mandatory under the Directive but member states must establish a voluntary procedure by which developers can request a scoping opinion from the competent authority if they wish. Member states are free to make scoping mandatory and design appropriate regulations.

The European Commission has however published two documents to provide member states with guidance on scoping. These can be used voluntarily.

- Guidance on scoping
- Scoping checklist

Contents of the scoping document

There are no legally binding requirements concerning the contents of the scoping document.

Timeline scoping

No legally binding timeline for the scoping procedure exists at the EU level.

Assessment

Assessment process

The Directive (including amendments from April 2014) prescribes that an EIA should assess direct and indirect project effects on the following factors:

- population and human health;
- biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;
- land, soil, water, air, and climate;
- material assets, cultural heritage and the landscape;
- the interaction between any of these factors.

The April 2014 amendments obligate the developer to ensure that the experts which undertake the EIA are competent and qualified. These obligations, however, are not further specified.

Contents of the EIA report

The EIA Directive, amended in April 2014, indicates the following as essential elements of an EIA report:

- A project description including information on its site, design, and size;
- A description of likely significant effects of the project on the environment;
- A description of project features/measures to avoid, prevent, reduce or offset adverse environmental effects;
- A description of studied alternatives and reasons for selecting the chosen alternative, including environmental considerations;
- A non-technical summary of the above;
- Any additional information as referred to in Annex IV of the Directive (including amendments), if relevant.

Annex IV contains additional aspects and details that can be taken into account, for instance descriptions of required demolition works, of energy and resources used during operation, and of expected residues, emissions and wastes generated by the project.

Accreditation of consultants

There is no accreditation system for consultants at the European Union level. The EIA Directive states that the EIA report shall be prepared by competent experts but does not specify how member states

shall implement this requirement.

Review

Review process

The 2014/52/EU Directive (to be applied by 16th of May 2017) firstly requires the EIA review as a formal step of the EIA procedure. According to Article 1(g)(iii), the competent is responsible for the examination of the EIA report and supplementary information, if available.

In 2001, the European commission has published a guideline on EIA review. At that time, EIA review was still voluntary.

- Guidance on review

Review expertise

According to Article 5.3b of Directive 2014/52/EU as of 16th of May 2017, the competent authority has to ensure that it has, or has access to, sufficient expertise to conduct the review.

Timeline Review

There is no legally binding timeline for reviews at the EU level.

Decision making

Integration of ESIA into decision-making

The Directive states that the EIA, including results from consultations, public participation and transboundary interactions (where appropriate) needs to be taken into consideration in the decision-making procedure on the requested development consent.

The Directive does not determine which institutions shall be the competent authority for decision-making. However, the 2014 Amendments of the Directive promulgate that if the competent authority is also the developer, the member states shall ensure an appropriate separation at administrative level between the conflicting functions (Article 9a).

Article 8a of the 2014 Amendments of the Directive provide for the following requirements on the content of decision documents:

- the reasoned conclusion by the competent authority on the significant effects of the project on the environment. It takes into account the results of the EIA review process.
- environmental conditions attached to the decision
- In case of refusal to grant the permit, the reasons for this decision should be stated

Decision justification

Article 9 of the EIA Directive determines that the reasons and considerations on which the decision was based need to be made available to the public.

The following information should be provided:

- The content of the decision and any conditions attached to that decision;
- Reasons for this decision, including information on the public participation process and how concerns and opinions of the public were addressed;
- Where necessary, a description of measures to avoid, reduce or offset major adverse effects.

The competent authority is also responsible for informing any other member state that has been consulted because it has a recognized stake in the decision (due to transboundary effects; see Article 7 of the Directive) on the decision that has been taken.

In both cases, member states need to ensure that the information is made available in a manner that is appropriate for the targeted public.

Timeline decision-making

There is no legally binding time-line for decision-making. The Directive as amended in April 2014 (to be applied by the 16th of May 2017) states that member states should ensure that the competent authority takes a decision in a 'reasonable period of time'.

Follow up

Compliance monitoring

At 2014 Amendments of the EIA Directive (to be applied by the 16th of May 2017) introduces provisions regarding compliance monitoring. Its Articele 8a(4) promulgates that member states are responsible for ensuring that the conditions of the licence are implemented by the developer. The member states shall determine the procedures for this monitoring process. The Article further determines that the parameters that are to be monitored and the duration of the monitoring process shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment.

Non-compliance penalties

The April 2014 amendments to the EIA Directive stipulate that member states are responsible for laying down rules on appropriate penalties to violations of the Directive.

Stakeholder engagement

Public participation requirements for ESIA process stages

Public participation requirements apply to various EIA process stages. At a minimum, the screening decision must be published, information used in scoping (if relevant) should be made available, the public should be given opportunities to comment early in the decision-making stage, and the decision should be published. See below under 'Access to information' for details.

The Directive stipulates that the public shall be given effective opportunities for participation in the decision-making procedure, and shall therefore be entitled to express comments and opinions. Member states are free to determine detailed arrangements for public consultation, for example via written submissions or a public inquiry.

The Directive prescribes that information gathered via public participation shall be taken into consideration in the development consent procedure.

The Guidance on screening and Guidance on scoping briefly elaborate on public participation (Screening sections B3.4.3 and B3.5, Scoping sections A3.3 and B5).

Timeline for public comments

The Directive as amended in April 2014 prescribes that public consultation on the EIA report should have a timeframe of at least 30 days. The Directive also prescribes that the public should be given 'early and effective opportunities to participate', and that for that purpose the public needs to be entitled to express comments and opinions

'when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.'

Access to information

The Directive stipulates that the public shall have access to the following information:

- the request for development consent;
- the fact that the project is subject to EIA and, where relevant, that Article 7 (on transboundary issues) applies;
- details of the competent authority for decision-making, of where information can be obtained, where comments and questions can be submitted, and of the time schedule for submitting comments/questions;
- the nature of possible decisions or, if available, of the draft decision;
- an indication of the availability of a scoping report;
- an indication of times, places and means whereby relevant information will be available;
- details of public participation arrangements.

Furthermore, member states are responsible for ensuring that the public concerned has access to any information gathered as part of the scoping procedure and to the main reports and advice issued to the competent authority. Moreover, any information that results from the dissemination of the above mentioned documents to the public and that is relevant for the decision-making process, should be made publicly available.

The Directive, including the April 2014 amendments, prescribe that the public needs to be informed electronically and by public notices or by any other appropriate means. Electronic dissemination is mandatory, via a central portal or easily accessible access points at the appropriate administrative level.

No binding time frame is provided for public information dissemination, but the Directive stipulates that information should be available

'early in the environmental decision-making procedures [...] and, at the latest, as soon as information can reasonably be provided'.

Appeal

Possibilities for appeal

Member states have the responsibility to ensure that there are opportunities for appeal, in accordance with the applicable national legal system. A review procedure before a court of law or another independent, impartial and legally established body should be available to challenge decisions.

If necessary, national legal authorities can refer to the Court of Justice of the European Union for interpretation of sections of the EIA Directive. This ensures that the Directive is uniformly understood and applied by all member states.

The substantive or procedural legality of any decision, act or omission that is subject to the Directive's public participation provisions may be challenged.

Member states determine at what stage it is possible to challenge such decisions, acts and omissions.

The Directive prescribes that members of the public concerned have access to a legal procedure for appeal, if one of the following conditions applies:

The party has a sufficient interest in the decision;

The party maintains that a right is being impaired through the decision.

In either case, member states can decide what counts as a 'sufficient interest' or 'impairment of a right'. The member state should however take into account the objective of 'giving the public concerned wide access to justice'.

The Directive specifically refers to non-governmental organizations (NGOs) in this respect. Any NGO that promotes environmental protection and meets any requirement under national law should be counted as a party with 'sufficient interest', having rights that may be impaired.

ESIA practice

Annual no. of ESIAs

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A study for the European Union Directorate General Environment, conducted in 2010, concluded that the total annual number of EIAs undertaken in the 28 EU member states is circa 16,000. The annual number of screenings is estimated around 34,000, with high variation between member states in the percentage of screenings resulting in an EIA (5-50%).

Central ESIA database

The European Union has no central EIA database in which all EIA processes or reports are recorded. UNECE however has an informal EU EIA database, including an extensive list of transboundary EIAs (July 2011).

Professional bodies

There is no professional EIA body at the EU level. Member states establish national professional bodies. There is a list of EIA/SEA centres in EU member states.

Relevant links

- EU guidance on screening, scoping and review;
- An official report from the European Commission (2009) on the application and effectiveness of the (previous) EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC and 2003/35/EC);
- A study for the European Union Directorate General Environment (2010), containing data on EIA practice in member states;
- A study by Justice and Environment (2013), containing case law examples from the practice of European EIA legislation.