

## EIA and SEA related activities of J&E

### EIA News Edition Nr. 1

#### Introduction

Justice and Environment is a network of NGOs from Europe aiming to improve the environmental protection by enhancing the enforcement of EU legislation through the use of European law and exchange of information on the national, cross-border and wider European level.

This year one of J&E's main topics was EIA Directive 2011/92/EU codified version. The main issue was the review process that this year was finalized with the adoption by EC of a proposal for a revised directive.

Main concerns of J&E in this area in 2012 were:

- Compliance of EIA Directive with international treaties (Aarhus Convention and Espoo Convention)
- Participation in the review procedure
- Implementation of EIA Directive in member states and accession countries

The countries participating in this topic were: Austria, Czech Republic, Hungary, Romania, Croatia and Macedonia.

Main outputs so far for this topic are:

#### **Legal analysis regarding the conformity of EIA Directive with Aarhus Convention<sup>1</sup>**

Conclusions of the legal analysis were that several amendments to EIA Directive are needed in order to have full compliance with Aarhus Convention:

- narrow the margin of appreciation Member States have concerning decisions on whether to conduct EIA for certain projects;
- Introduce stricter rules governing the EIA procedure;
- Provide clear time-frames for public participation and review procedures;
- Broaden access to justice include screening decisions;

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<sup>1</sup> [http://justiceandenvironment.org/\\_files/file/2012/EIA%20analysis%202012\(2\).pdf](http://justiceandenvironment.org/_files/file/2012/EIA%20analysis%202012(2).pdf)

- Oblige Member States to introduce effective review procedures, including injunctive relief.

## **Position paper regarding the Conformity of EIA Directive with Aarhus Convention<sup>2</sup>**

The position paper is stating the issues that are not in compliance with the Aarhus Convention according to the previous mentioned legal analysis and invites EC to consider the decisions of Aarhus Convention Compliance Committee during the revision procedure of EIA Directive and avoid taking international responsibility for non-compliance with an international treaty.

The position paper also suggests that EIA Directive might better achieve its goals as a regulation and not as a directive and invites EDC to consider such possibility in the future.

## **EIA Convention in Member States, report and case studies<sup>3</sup>**

The report aimed to identify the good practices in transposition and implementation of EIA Directive in member states and also to identify the gaps and deficiencies in transposition and implementation. Several case studies were realized in each participating country. The conclusions of the report showed that hardly any good practices can be identified. The case studies showed mostly cases where environmental protection is very difficult to realize based on current EIA Directive and implementation measures in member states. The main difficulties identified were:

- Use of “salami slicing” procedure
- Poor assessment of cumulative effects and ancillary works
- No real protection for Natura 2000 sites face to the economic interests
- Low quality of EIA reports due to lack of objectiveness of the experts hired by the developer
- Lack of access to justice against EIA statement and also lack of injunctive relief in EIA procedure
- Poor assessment of the alternatives
- Not effective public participation in EIA process

## **Position paper regarding the proposal of EC for a revised EIA Directive<sup>4</sup>**

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<sup>2</sup> <http://justiceandenvironment.org/files/file/2012/EIA%20position%20paper%202012.pdf>

<sup>3</sup> [http://justiceandenvironment.org/files/file/2012/EIA%20comprehensive%20report%202012\\_1.pdf](http://justiceandenvironment.org/files/file/2012/EIA%20comprehensive%20report%202012_1.pdf)

The position paper analyzed the proposal for a revised directive and compared the proposal with the previous analysis done by J&E, and come to the following conclusion: improvement of several issues is welcomed and noticed but there are other very important remaining problems:

- No amendments to Annex I;
- No provisions regarding the obligation to choose the most environmental friendly alternative;
- No sanctions against the developer who is not respecting the EIA permit obligations;
- No clear legal regime defined of the EIA permit and development consent;
- No clear provisions ensuring objectivity and fairness of the EIA report
- No clear possibilities for the public in the neighboring countries to participate directly in EIA procedure;
- No clear obligation that the EIA process should take place before the project is executed and possible sanctions;
- No provisions preventing the “salami slicing” procedure;
- Several access to justice issues, like: possibility of the public to challenge screening and scoping decisions as well as the EIA permit including the ones issued through legislative process, effective judicial review including suspensive effect or/and injunctive relief.

## **EIA and SEA workshop<sup>5</sup>, organized together with EEB in Brussels, 21.11.2012<sup>6</sup>**

The workshop aimed to bring closely EC with NGOs working with EIA directive and discuss the proposal for a revised directive released in 26 October 2012. It was present a representative of EC, Stephanos Ampatzis and also one member of Aarhus Compliance Committee, Jerzy Jendroska, as well as representatives of over 20 European environmental NGOs. During the meeting the proposal for a revised directive was discussed. The most stressed issues were: lack of access to justice and of injunctive relief, public participation in screening and scoping procedures, and lack of objectiveness and independence of the experts realizing the EIA reports.

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<sup>4</sup> [http://justiceandenvironment.org/files/file/2012/EIA%20position%20paper%20new%20Directive%202012\\_1.pdf](http://justiceandenvironment.org/files/file/2012/EIA%20position%20paper%20new%20Directive%202012_1.pdf)

<sup>5</sup> <http://justiceandenvironment.org/publications/eia-sea-eld-meeting-in-brussels-2012>

<sup>6</sup> <http://justiceandenvironment.org/news/79>