

How NGO suggestions were included in the new draft EIA Directive

Rădulescu Cătălina
21 November 2012



- Directive 2011/92/EC on the assessment of the effects of certain public and private projects on the environment – codified version
- New draft of EIA Directive released on 26 October 2012

NGOs work

- Position paper in 2010 with comments of the EIA Directive and suggestions for modification
- Legal analysis and case studies
- What was considered in the new proposal and what was not

Widened scope of the Directive

- Demolition works included
- National defence and civil emergencies projects exempted only if they serve the same purpose
- Projects adopted through national legislation exempted only if the legislative process achieves the EIA goals – **judicial review have to be also ensured to comply with Aarhus Convention**

Annex III criteria to be considered in screening process

- Screening decisions must include specific information and reasons for the EIA was considered necessary or not
- If EIA is not required the decision must include description of the measures envisaged to avoid, reduce and prevent significant effects on the environment

Annex III criteria to be considered in screening process

- Annex III criteria are more specific, they include hydromorphological changes, disaster risk, climate change, cumulative aspects
- The developer must provide relevant information – Annex II A
- There are no provisions ensuring that the EIA process- at least screening is done before the project is executed
- Public participation opportunities in screening and scoping must be provided

Assessment of all impacts of the project

➤ Art. 3 of EIA – new definition of the aims of EIA Directive

➤ includes now population and human health, species and habitats, etc

Art 3 provides that direct and indirect “significant effects” are to be assessed – there is no definition and no provisions regarding who and when decides which effects are significant and which are not and how AC principles are respected.

Coordination with other EU legislation

- Specific issues for other Directives like Birds Directive, Habitats Directive and Marine Strategy framework Directive are included into the factors that must be taken into account in EIA procedure
- Coordinated (coordinated assessments) or joint procedure (one EIA issues by one authority for all assessments) with other legislation that demands assessments
- It was not considered our warning that joint procedure might diminish the quality of the assessments

Coordination to SEA Directive

When a plan or program is a compulsory basis for a project and it is subject to SEA then the proposal should provide that EIA can't be done before SEA

Coordination to Aarhus Convention

- EU is a party to AC
- The directive should provide that all decisions in EIA procedure (screening scoping, final decision) should be done and transposed by MS with the respect of AC and ACCC findings
- Transposing without respect of AC principles should be reason to infringement

Quality of EIA Report

EIA report will have to include more and detailed information:

- Alternatives including baseline scenario
- Climate change
- Greenhouse gases
- Hydromorphological changes
- Scientific uncertainties and their impacts
- Disaster risk

The authorities must ensure that the information provided is up to date

Quality of EIA report

- Accreditation system is not ensuring the objectivity, the experts are still developer's clients paid to prove that the project as developer wants it is not harmful
- If authority's experts are from the same list of accredited experts, they still are potential clients of the developers
- If the developer is the state – the one who gives accreditation the experts still can't be objective

Alternatives

- Must be included into the EIA report: “ *the identification of the least environmentally impacting one, and an indication of the main reasons for the choice made, taking into account the environmental effects*” including the baseline scenario
- There is no clear obligation to pick the most environmental friendly alternative – how much compensation measures can be accepted and how the execution of such measures are ensured by the directive

Time frames

- Minimum and maximum inserted:
 - For screening procedure 3 to 6 month
 - For environmental report from 30 to 60 days
 - For issuing the decision 3 to 6 month after all relevant information is gathered

However would these terms days be sufficient in very complex cases so that AC principles would be respected?

Annex 1 and 2

- No improvement
- Projects with potential impact like shale gas and offshore drilling must be included
- Thresholds should be lowered

Preventing salami slicing

- No concrete measures to avoid the salami slicing, where provided

EIA and the development consent

- In countries like Romania EIA permit is an administrative act and development consent different administrative act issued by different authorities with no env competences. The latter must respect EIA permit and can't be issued without it.
 - Issues mentioned in art 1 letter g: EIA process means EIA report, consultation and assessment by the competent authority taking into account the EIA report and the results of the consultation in the development consent procedure are meaningless

- Art 8 letters a, b, c and paragraph 2 provides that the development consent should contain information and issues that are specific for EIA permit that can't be assessed by the authorities issuing the development consent since they have no environmental competences.
- Provisions of art 2 para 3 to have the same authority issuing env permit and development consent will create chaos in such countries.

Judicial review

In all cases the public should have review procedure available against:

- environmental permit/statement without having to wait until development consent is issued
- Screening and scoping decisions
- Injunctive relief/suspension effects must be provided
- Time frames for injunctive relief should be introduced

Monitoring

Monitoring measures must be included in the development consent

However there are no measures against the developer who is not respecting the monitoring plan. If sanctions should be applied can't be left at disposal of MS but maybe how strict the sanctions would be.

Public participation in transboundary projects

- To comply with AC the public from the neighboring countries must be able to participate into EIA process regardless of the decision of the authorities from the neighboring countries

Thank you for your attention!

Cătălina Rădulescu

catalina.radulescu@gmail.com

Bankwatch Association Romania

J&E is funded by the European Commission, DG Environment.
The sole responsibility of this material lies with the author
(J&E).

