

Regulation of EIA Procedures

Survey made in Member States on how the national laws comply with the requirements of the revised EIA Directive

National Summary – Slovenia

Justice and Environment 2016

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I. Introduction

Justice and Environment has been for long time working on the issues of EIA. Recently and currently the most important in this area has been the amendment of the EIA directive which was approved on 16 April 2014 through the Directive of the European Parliament and Council no. 2014/52/EU, which amends Directive of the European Parliament and Council no. 2011/92/EU, on the assessment of the effects of certain public and private projects on the environment. It represents an essential amendment to the EIA directive which modifies its wording in a quite considerable manner and introduces new obligations for Member States.

Given the fact that the obligation to implement the modifications stemming from the amended EIA directive is to be complies with before 16 May 2017, currently the legislative works relative to this obligation are in process in majority of the Member States. This represents an opportunity to amend also other provisions relative to EIA at the national level of the Member States.

At this occasion Justice and Environment has prepared a collection of so-called examples of good practices which will be published on its website www.justiceandenvironment.org and freely distributable. Our intention was to share these examples of good legislative practice from various Member States with other Member States and inspire them during their legislative works. The collection of good practices contains 4 examples from 4 Member States – Slovakia, Czech Republic, Austria and Slovenia and they were prepared by partner organizations of the Justice and Environment.

II. Good practice in Slovenia

National summary: Slovenia

Respondents: one represent from EIA Unit on Ministry of Environment
two representatives from EIA expert assessors,
two representatives from public concerned

Period: July – September 2016

For this questionnaire task the situation in Slovenia is specific. We are small country (2 mio residents, relatively small Ministry for environment and spatial planning and not many environmental NGOs – about 50 are more professional, but only few of them are active in administrative and court procedures). The questionnaire is extensive and takes at least 1 hour to answer the question. Our previous experiences shows that without paying this input, we cannot get answers. We just may ask some selected stakeholder for favor. To get answers we have therefore chosen the interview method of selected competent stakeholders that recognize our organization as follows:

Previous to the interviews we sent to all participants the questionnaire with our answer to first question (for experts) and then ask them also to comment our answer. Their comments are included in the first answers.

1. Protection of cultural Landscapes and natural habitats

The amended Directive 2011/92/EU puts from a substantive point of view bigger emphasis on the importance and preservation of cultural heritage, which includes the historical monuments in the towns and cities and cultural landscape, as an integral part of cultural diversity.

It is also noticeable much more emphasis on the protection of species and habitats protected under the Habitats Directive.

This is reflected in paragraphs 11 and 16 of the preamble of the Directive 2014/52/EU in conjunction with Art. 3 of the amended Directive 2011/92/EU.

Compared to the previous text of the Directive is particularly strengthen the protection of cultural landscape. While the text of the Directive before the amendment in Article. 3 generally only reflects the fact that in the process of EIA has to be identify, describe and assess the impact of the "cultural heritage", in the amended text of Directive it states, that the EIA should take into account also the protection of cultural landscape. Specifically, the reflection of the enhanced protection of the cultural landscape should be reflected, so that the impact assessment on the environment dealt also with the visual impact of the projects, in particular changes in appearance or views on natural landscape and urban areas.

Questions:

To experts:

According your experience, is the protection of cultural heritage and natural habitats and species protected under the Habitats Directive, provided by national EIA legislation adequate?

Answer: The regulation is suitable, by EIA also biodiversity, natural values, landscape and cultural heritage are included. First there is screening procedure and all competent authorities can issue their opinion. For protection of habitats and species is competent Institute of Republic of Slovenia of nature conservation (Zavod RS za varstvo narave) and for cultural heritage Institute of Republic of Slovenia for cultural heritage protection (Zavod RS za varstvo kulturne dediščine). NGOs in public interest and individuals living in the area of assessment can participate in administrative procedure for EIA; by screening procedure they have only the right to complain against negative screening decision (not individuals).

Beside EIA procedure for objects of cultural heritage there is also need to get cultural heritage approval for investor, which is condition for building permit. Protected is only the cultural landscape registered by authority in special register of cultural heritage.

To stakeholders:

Seeing the proceedings in your country, do you think, that the changes in the EIA directive were necessary? Will it be necessary, to incorporate these parts of the amended Directive 2011/92/EU into national legislation? If so, what would be the most appropriate way?

Answers:

Decision maker: Changes are not necessary but there is place for improvement in cases where building permit is needed. The conditions from EIA should be properly included in building permit. We need to have one enter point for EIA.

EIA assessor: There is no need for changes. From 1990 the landscape is taken into consideration (at least architectural landscape) by EIA. Landscape architecture has significantly evolved since.

NGO: landscape as natural value is very important perspective of environmental protection, which is not sufficiently taken into consideration in Slovenia. We should more respect the European Landscape Convention. After its ratification in 2003 Slovenia has established some mechanisms and bodies for implementation (also engaged landscape architectures to identify exceptional landscapes) but the first enthusiasm has not continued. This is now problematic by renewable energy object (wind power plant) because landscape is not protected enough. It is more taken into consideration only by biggest infrastructure objects.

2. Exceptional circumstances, when the provisions of the EIA Directive will not apply

The amended Directive 2011/92/EU also regulates the possibility of exceptions, which make it possible, to not apply some provisions of the EIA Directive or also to completely omit the obligation to do an EIA process for certain projects, in exceptional circumstances. It may be a complete absence of an EIA process on exceptional grounds (see paragraph 20 of the

preamble of Directive 2014/52/EU in conjunction with Art. 1 paragraph 3 and Art. 2 paragraph 4 of the Directive 2011/92/EU), or even the omission of one of its significant parts (see Art. 2 paragraph 5 of Directive 2011/92/EU).

Compared to the previous legal situation it extends the possibility not to apply the Directive, if it is a project, whose sole purpose is only a reaction to the extraordinary incidents.

Questions:

To experts:

Has there ever been, on the basis of your experience, a necessity, or a case where it would have been advisable to omit the EIA process due to exceptional circumstances? Is it essential that national legislation would establish such an exception?

Answer: We do not know for case that would when it would be justifiable to completely omit EIA. In the beginning of 2016 the state has put the fence made of metal wire along the Slovenian-Croatian border without any measures of EIA. After damage on animals was made the state made some getaways through for animals. And putting the fence was not even proclaimed as matter of state defence, just a tool for better border control (because of mass of refugees). According to Decree on the categories of activities for which an environmental impact assessment is mandatory the Ministry of defence can propose to the government to decide to omit EIA if it would harm the state security. On this ground there was the expansion of military training site Poček (by Postojna) planned. Exception should be establish but clearly defined (at exceptional circumstances and state security) but should include some measures of EIA (also can be done post festum if it improves the project in environmental protection perspective).

To stakeholders:

If so, in which situations would it be appropriate and how could it be ensured, that the purpose of the EIA Directive is not undermined in such cases? How could the risk of possible misuses of exceptions be prevented? Do you see an increased risk of political influence and/or pressure for EIA omissions in case of controversial projects?

Answers:

Decision maker: In reality we didn't meet the project when it would be justifiable to omit EIA completely. Therefore we did not ask EU for exception.

EIA assessor: When there is need for instant decision because of extraordinary circumstances (natural disaster) such exception should be regulated. But still the Ministry for environment and spatial planning should have kind of "competent team on duty" that could

“assess” the impact and could propose possible “green” measures to “compensate” the damage. The minister can propose these measures to government by deciding. We recognize increased political pressure to shape rules (some exceptions) in favor of some interested groups.

NGO: Yes the exceptions should be possible (we have now exception in the case of extraordinary circumstances) but such regulation should have very clear rules. Because we have now situation that this regulation is misused – because of some floods in previous years the state begun to implement some “antiflood” measures and omit EIA “in the name of extraordinary circumstances”.

3. Conflict of Interests

The amended Directive 2011/92/EU also regulates obligations of Member States, relating to measures which have to eliminate possible conflicts of interests of staff of the competent authorities involved in the EIA process (see paragraph 25 of the preamble of Directive 2014/52/EU in conjunction with the new Art. 9a of the amended Directive 2011/92/EU).

Compared to the previous legal situation this is a new question which Directive prior to the amendment did not regulate.

Questions:

To experts:

Based on your experience, are there legitimate concerns about possible conflicts of interest of staff of the competent authorities in the area of EIA?

Answer: Yes, this area is exposed to corruption which is hard to prove – and this is the case when the state is investor or there is private investor. It is very good that directive exposed this problem, but it is poor in direction of solutions.

To stakeholders:

How should these obligations transposed into national legislation?

Answers:

Decision maker: According to our experiences we established special independent team for EIA inside the Agency of Republic Slovenia for environment (decision body for EIA) which is separated from other state bodies which are investors. This solution is organisational and is not regulated.

EIA assessor: the situation when the state is investor – for example Agency RS for environment is the same time EIA assessor and investor in water areas – could have the solution that NGO could be involved in water permit.

NGO: I think the main problem is in the area of EIA assessors. They are interested to get work (now and in future), therefore they write more “soft” for investors. Investor chooses and pays the assessor. The solution could be found in analogy with court experts: the investor pays, but not chooses exclusively – in court procedure both parties can propose the expert and the court decide). To omit conflict of interest when investor and assessor is the same body (Agency RS for environment) the assessor should be body independent of Ministry for environment.

4. Expertise and quality of the EIA documentation

The underlying factor of quality, outcomes and achieving the purpose of EIA process is the expertise of assessors, which carried out the EIA and quality of their outcomes, which are reflected in the EIA documentation. This fact is reflected in the amended Directive 2011/92/EU, where it is clearly stated that the experts involved in drafting the report on the assessment of environmental impacts should be qualified and competent and sufficient expertise must be carried out in a high quality (paragraphs 32 and 33 of the preamble of the Directive 2014/52/EU in conjunction with Art. 5 paragraph. 3 of the text of the amended Directive 2011/92/EU).

Compared to the previous legal situation this is a new question which Directive prior to the amendment did not regulate in detail.

Questions

To experts:

Based on your experience, what do you think about quality and expertise of outcomes from the EIA process (assessment reports, expert opinion) in your current legal situation?

Answer: As legal expert I'm not competent to value the environmental reports. But we are monitoring the system of EIA assessors for years. From joining EU in 2004 (then we got new Environmental protection Act) we had three systems of EIA assessors and environmental reports. First it has two stages. EIA assessor prepared the report and independent expert made the revision of it. Then in 2008 the regulation changed: the assessors should be of certain profiles, educated and have kind of accreditation (register of EIA assessors). The previous regulation was immediately abandoned, but new system was not implemented till 2013. In spring 2013 there was regulatory frame for new system finally established (some executive regulation had to be adopted), but the system didn't go into praxis, because in autumn the Environmental Protection Act was changed and whole system was abandoned.

Now it is only rule the rule of free market. The Ministry for environment doesn't monitor and makes some reports about quality of environmental reports generally.

So I know for case when one assessor the impact of project on nature valued with D and investor ordered new report from other assessor which the same impact valued with C.

To stakeholders:

How should these obligations be reflected in national legislation, so they will meet with the objective pursued by the EIA Directive? Is it possible to achieve a better quality of the EIA process, without rupturing (especially financial) ties of assessors to investors?

Answers:

Decision maker: Investors should be more responsible and the assessors should be more competent. Investors don't respect requirements that should be fulfilled regarding environment. Their mentality "this is what we want and we will put this through by force" prevails. They hardly accept alternatives and better technical solutions. The legal frame should clearly determine the assessors and investors responsibility. Investor should engage team of competent experts for preparing environmental report (by education and experiences). At the ministry (Agency RS for environment) kind of collective assessing the report already exist. The Agency send the report to all competent bodies to deliver their opinions. By implementing new directive the regulation should determine the competences that assessors should have (education...).

EIA assessor: In the beginning (in 2004) the assessor should first 5 times cooperate as "assistant" by environmental report, before he can prepare one by himself. The second regulation which was abandoned – I think there is not competent institution that can provide suitable education and certificate assessors in Slovenia. The solution would be in established back the first two stages system – the revision of report should be done by team of experienced suitable educated experts. Also there is problem on the side of assessors at Agency RS for environment – they should circle – to eliminate the subjective factors for decision. System such is now is "free market" with dumping prices and often low quality. There should be clear rules what kind of education is required for assessing different areas of assessment.

NGO: beside the above mentioned measure (choosing the assessors similar to choosing experts in court procedure) the environment report should be revised by expert team independent of decision makers.

5. Mandatory assessment pursuant to other Directives

The amended Directive 2011/92/EU (paragraph 37 of the preamble of the Directive 2014/52/EU in conjunction with Art. 2 paragraph 3 and Art 4 paragraph 4 of the amended Directive 2011/92/EU) reflects the fact, that the process of EIA is not the only process of its kind; the obligation to carry out an impact assessment also concludes from other Directives (e.g. the Habitats Directive, the Water Framework Directive). For a proposed project that means, that it may be required to carry out multiple assessing of its impact from different perspectives and as the obligations according various Acts, which can be regarded as wasteful, uneconomic and bureaucratic.

Compared to the previous legal situation this is a new question which Directive prior to the amendment did not regulate in detail.

Questions:

To experts:

What are your experiences with the fact, that there are a number of separate "assessments" which can overlap and there are also obligations, which require the investors to carry out various overlapping assessments?

Answer: we perceive responses from different stakeholders (mostly investors) that separate »assessments« are not rational and is too bureaucratic. Yes we support one assessment procedure.

To stakeholders:

Do you think, there is a better solution, to cover all kinds of assessment and evaluation of environmental impact under one roof (EIA), or is it better to leave them as separate processes? Please also indicate the reasons.

Answer:

Decision maker: Yes. We already have "one stop shop", also we cumulate some different assessments together. But methodology is not clear to optimize common assessment (on common denominator).

EIA assessor: Yes, one procedure. When the EIA is necessary all assessments should be done inside environmental approval, otherwise they can be separate.

NGO: It is better if assessments are united inside one EIA procedure suitably adjusted to all requirements. Such procedure also encourages cooperation and exchanging experiences between different experts that contribute to the overall quality of reports.

6. Sanctions

A brand new feature is the obligation for Member states to establish sanctions in the EIA process, which should be "effective, proportionate and dissuasive" (paragraph 38 of the introductory part of the Directive 2014/52/EU in conjunction with the new Art. 10a, text of the amended Directive 2011/92/EU).

Compared to the previous legal situation this is a new question which Directive prior to the amendment did not regulate.

Questions

To experts:

What is your vision of introducing sanctions in national legislation? What do you think, will the introduction of sanctions in EIA Act contribute to meeting the objectives and purpose of the EIA Directive?

Answer: Environmental protection Act already have some provisions about offenses for investors (omitting Environmental approval). Regarding public servants we have Criminal law and Civil Servants Act that already have sanctions for misuses of servants' position, corruption. I think more than sanctions would be suitable to establish system of circulation of servants at least in some or inside some areas; system of sanctions could be established if it would follow a good system of ensuring higher quality of environmental reports.

To stakeholders:

Which breach of the EIA procedure should be punishable? Which entities should be subject to sanctions? What kind or form of penalties would you propose?

Answers:

Decision maker: Slovenia supported such solution in directive because we believe that this can support implementing the goals of directive. We didn't yet have some solutions for establishing sanctions. There should be clear responsibility of investor if they engage not competent assessors, established. Civil Servants Act has already tightened the rules of proper behavior that the servants doesn't have courage to decide. The circling is not suitable unless it would enrich the knowledge and therefore the quality of decisions. Right now on the Ministry we established the educational program till 2019 which includes also foreign praxis.

EIA assessor: If building permit is needed the competent authority should have clear input if EIA is obligatory or not. In previous regulation years ago the building permit issued without EIA (environmental approval) if needed, was void. Investors were aware of it.

NGO: Most important is that environmental report is made fair and objective. It sometimes shows out that in report are consciously presented not objective. Therefore the expert that doesn't work professionally or consciously in favor of one stakeholder, should be punished and in extreme case to shod lose the license for EIA. Investor should also be punished if he doesn't give all important data.

7. The screening procedure

The amended Directive 2011/92/EU significantly clarifies and regulates the part of the EIA process so called as a "screening procedure" (paragraphs 26-29 of the preamble of the Directive 2014/52/EU in conjunction with art. 4 paragraph 3 – 6 of the amended Directive 2011/92/EU). So far, in screening procedures, the EIA Directive has received little attention, but this, on the basis of the amended Directive 2011/92/EU, should be modified. It is in no doubt that the decision from screening procedure is an important milestone in the EIA process and is necessary to devote adequate attention on it.

Compared to the previous legal situation this is a new question which Directive prior to the amendment did not regulate in detail.

Questions.

To experts:

What is the importance of screening in the actual national legislation in relation to the purpose and objectives of the EIA process?

Answer: Environmental protection act has introduced a preliminary assessment precise enough, except regarding legal remedies. NGO can complaint about negative EIA decision, but not individuals concerned (case C-570/13, Gruber). Also there is no access to justice in the case of omitting EIA in situations when building permit is not required. Among NGOs there is not yet enough awareness of importance of screening procedure.

To stakeholders:

Will it be necessary, to make fundamental changes in the actual rules of screening procedures to fulfil the requirements of the amended Directive 2011/92/EU?

Answers:

Decision maker: Screening procedure is very important and implemented. It could be improved in direction of better determination/implementation of its content.

EIA assessor: for ensuring stakeholders in procedure there should be establish simple and quick emissions of confirmations that EIA is not needed. On the side of the Ministry for environment and Agency RS for environment there is lack of multidisciplinary team that can manage all areas (as it is necessary on the side of assessors).

NGO: our current regulation still allows that some plans which implementation has direct impact on nature (for example forest plans – that include the extension of cutting down the trees) are not subject of EIA. It should be ensured that procedure of screening is transparent, accessible to public and without possibilities for manipulations. The good screening procedure is good for investor, because it can be cleared out about possibility of investment in early stage (that project cannot be implemented). This is important also because there is a moment on the side of assessors – because they count on future business they rarely say that EIA is completely negative.

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