Collection of Examples of Good Practice in EIA Procedures

Comparative Study

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a Udolni 33, 602 00, Brno, CZ
t/f 36 1 3228462 / 36 1 4130297
fb /justiceandenvironment
e info@justiceandenvironment.org
w www.justiceandenvironment.org
tw JustEnviNet
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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 comply 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 a Slovenia and they were prepared by partner organizations of the Justice and Environment.

II. Good practice in Slovakia: Determination of the scope of the assessment

(Imrich Vozár, VIA IURIS, Slovakia)

As an example of a good practice in the context of the Slovak Republic we would like to mention so-called determination of the scope of the assessment

The scope of the assessment refers to a phase of the EIA process, where (on the basis of the proposed project concept) a schema of the assessment of the impacts on the environment is defined; so there are defined those parts of the assessment which require special attention and focus. The scope of the assessment should take into account specificities of the proposed activity, specificity of the territory where the proposed activity is proposed to be carried out as other important facts which during the assessment of the activity cannot be ignored.
The scope of the assessment is not elaborated for the projects which “terminate” at the phase of the screening process. It only concerns projects which are subject to whole EIA process.

Here the essential thing is that all affected entities- affected state administration bodies, affected public and affected municipalities - may comment the scope of the assessment. Each affected entity thus may influence in advance what the assessment should focus on. Determination of the scope of the assessment is binding for the assessors who subsequently prepare the assessment report. Requirements stemming from the scope of the assessment have to be adequately reflected in the assessment report. In contrary case, the state body competent for the EIA process may send the assessment report back and require its modification.

It is to be underlined that in the scope of the assessment also the time schedule of the assessment and phasing of different stages can be defined. For instance in case of a project where proposed activity should be carried out in a territory belonging to network Natura 2000, it is possible to define in the scope of the assessment that at first so-called primary assessment in terms of the article 6 of the Habitats Directive has to be carried out and only after other stages of the assessment can be carried out. This option allows investor to think the realization of the project over if it turns out that project would not be permitted.

It is important to mention that the determination of the scope of the assessment is often preceded by an oral hearing where all concerned parties may come together and meet in person- investor, public, competent state administration body, affected state bodies or municipalities. This hearing offers a space to discuss and clarify attitudes of particular concerned groups and search for the common compromises. It often results into a better understanding of arguments raised by the opposite party and willingness to search solutions acceptable for all participants. In consequence it brings a higher quality of the assessment report and acceptance of its results.

Selection of the relevant provisions of the Act no. 24/2006 Coll. on the environmental impact assessment:

Section 30

(1)Scope of the assessment of the proposed activity or of its modification, and if necessary also its schedule is determined by the competent authority in cooperation with the departmental authority and the authorizing authority, and if it concerns a proposed activity or its modification which may affect as such or in combination with other activity or other strategic document the territory of the system of the protected areas, even with the agreement of the national authority of nature and landscape protection. The competent authority shall publish the scope of the proposed activity or of its modification on its website
and deliver it to the departmental authority, the authorizing authority affected authority, the
affected municipality and to the affected public.

(2) For the purpose of the determination of the scope of the assessment of the proposed
activity or its modification the annex no. 11 is to be used and received comments are to be
taken into account...

Especially following shall be determined
a) which variant of the solution of the proposed activity or of its modification is necessary to
elaborate in a more detailed manner and to assess,

b) which points of the annex no. 11 require special consideration in the assessment report,
c) which of the interconnected proposed activities...are to be assessed together,

(3) Schedule will define the phasing and if needed also the time limits for particular stages of
the assessment.

(4) The scope of the assessment of the proposed activity or of its modification determined
according to paragraph 1, has validity of three years since the moment of its determination,
if it is not stipulated otherwise in the schedule.

(5) Applicant in cooperation with the affected municipality informs without delay the public
on the determined scope of the assessment of the proposed activity or of its modification and
on its schedule, in a manner which is usual for the affected place.

(6) The public, the affected municipality, affected self-governing region, the affected
authority and other persons may submit comments on the scope of the proposed activity or
its modification within ten working days from its publication pursuant to paragraph 5, to the
competent authority who after evaluating them deliver them to the applicant.

III. Good practice in Slovenia: Two-steps procedure of preparation of
environmental report
(Senka Šifkovič Vrbica, Legal Information Center, Slovenia)

The presented good practice is a description of regime which was established with new
Environmental protection Act in 2004 in the time of Slovenia joining EU. It was valid till 2008.
The Ministry of environment and spatial planning doesn’t have any evaluation reports about
the quality of environmental reports and EIA procedures under presented regime and
regime after it, therefore we don’t have any documented arguments, just our observations.

Environmental protection Act¹ in 2004 established two-steps procedure of preparation of
environmental report: environmental report and revision of environmental report by
environmental expert.

¹ Official Gazette of RS 41/04, 20/06, 49/06 – ZMetD, 66/06 – odl. US, 33/07 – ZPNačrt, 57/08 – ZFO-1A, 70/08, 108/09,
108/09 – ZPNačrt-A, 48/12, 57/12, 92/13, 56/13, 102/15, 30/16; the versin from 2004 is available on
Environmental report: The investor prepares environmental impact report\(^2\). He can get previous information about the scope and content of environmental impact report from the Ministry of environment and spatial planning (optional for investor based on concept of the project\(^3\)). There are no requirements for experts that prepare the report. Investor pays the report.

Revision of environmental report: Revision of environmental report\(^4\) is the independent expert control of the quality and suitability of environmental impact report. Only the environmental expert entered in the register of environmental experts and having a public authority may do a revision of the environmental impact report. Investor pays the work of revisors and is obliged to deliver his report to the Ministry for environment and spatial planning together with environmental report. The regulation of environmental experts\(^5\): once a year the Ministry for environment and spatial planning publishes a public tender for environmental experts. Someone can submit the tender if he/she fulfils certain criteria (university degree, 6 years of working experiences in preparing environmental impact reports and has evidences of participation in professional training courses, seminars... and is not functionary or official of the State or municipal authority). The minister gives public mandate by administrative decision without time limitation. After decision the expert is entered into register of environmental experts. The Ministry for environment and spatial planning shall discharge the expert who requests a discharge, does not meet the prescribed condition or breaches the rule of incompatibility (the expert doing revision of environmental impact expert must not be in business, financial or family relationship with the entity responsible for the planned activity, subject of report (in detail described in paragraph 9).

In 2008 changes of Environmental Protection Act were adopted\(^6\) that abolished the revision and established detailed system of accreditation of expert preparing the environmental impact reports with suitable education. There were several executive regulations needed which were all finally adopted in 2013 so the new system could start “living”. But in that moment new changes of Environmental Protection Act\(^7\) that deleted all articles of new 2008 regulation.

\(^2\) Article 54
\(^3\) Article 52
\(^4\) Article 55
\(^5\) Article 56
\(^6\) Official Gazzette of RS 70/08
\(^7\) Official Gazzette of RS 92/13
IV. Good practice in Czech Republic: Quality and objectiveness of EIA reports from the Czech perspective

(Donika Zůbková, Frank Bold Society, Czech Republic)

On 16 April 2014 Directive 2014/52/EU of the European Parliament and of the Council was adopted, amending Directive 2011/92/EU on the assessment of the impacts of certain public and private projects on the environment. Directive 2014/52/EU highlights the factor of quality of the outcomes within the EIA process which shall be enhanced by involvement of qualified and competent assessors:

Experts involved in the preparation of environmental impact assessment reports should be qualified and competent. Sufficient expertise, in the relevant field of the project concerned, is required for the purpose of its examination by the competent authorities in order to ensure that the information provided by the developer is complete and of a high level of quality. (paragraph 33 of the preamble of the Directive 2014/52/EU)

The quality requirement is further reflected in Art. 5 paragraph 3 of the Directive 2014/52/EU (hereinafter also referred to as „amended Directive“): In order to ensure the completeness and quality of the environmental impact assessment report: (a) the developer shall ensure that the environmental impact assessment report is prepared by competent experts; (b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report; and (c) where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment.

According to the amended Directive, all the stakeholders can contribute to the higher quality of EIA process: experts delivering reports, authorities leading the procedure and developers (notifiers) submitting sufficient information.

Efforts to create proper conditions for competent and expertised assessors can be already observed in Czech legislation. Act No. 100/2001 Coll. on Environmental Impact Assessment (hereinafter also referred to as „Act“) endeavours to provide the experts with one of the key prerequisites for developing valuable outcome, with respect to the all relevant impact to the environment. Within the Act, authors of the report opposing developer’s EIA documentation shall be chosen by the competent authority. In order to get the final EIA statement (positive or negative), the developer (notifier) is obliged to cover the experts’ costs via the competent authority:
The person preparing the expert report shall receive remuneration for preparing the report as laid down pursuant to the Commercial Code which shall be paid by the relevant authority on the basis of an agreement concluded pursuant to § 9 par. 1. The relevant authority shall invoice a sum that shall be equal the amount of the remuneration paid to the person preparing the expert report within 15 days after expiration of the deadline for submitting viewpoints on the expert report for payment by the notifier. The notifier shall be obliged to pay the invoiced amount to the relevant authority within 10 days of the day of obtaining the invoice as part of the costs of assessment set forth in paragraph 1. If the notifier does not pay the invoiced amount within the set period of time, the relevant authority shall not issue a statement pursuant to § 9 letter a); in this case, the relevant authority may issue a statement only after the invoiced amount is paid .... (Art. 18 par. 3 of the Act)

The provision aims at assuring independence of expert’s opinion, enabling critical review of environmental impact assessment in EIA documentation delivered by notifier. The competent authority plays a mediatory role in the process: it chooses the expert from the list of authorized persons and manages the payment by the notifier.

Since the experts are not directly dependent on the notifier, they are more likely to deliver a high-quality and unbiased report. In practice, however, this is not always the case. Although the expert is hired by the authority, his/her work is in the end rewarded by the developer. Moreover, the impact is questionable in case that EIA process is notified by a region (self-government) and subsequently led by a regional authority within the same region. Last but not least, the environmental impacts of a project are first described in EIA documentation which precedes the expert report. It requires therefore high analytical performance to bring an impartial critical review instead of just accepting the facts deriving from the EIA documentation.

The above mentioned limits could challenge the legislative work on an Act amendment, with respect to requirements of Directive 2014/52/EU. According to the draft amendment, the competent authority would be allowed to decide to reduce the remuneration for expert opinion in case of breach of an agreement between the authority and an expert. Violation of deadline or lack of material assessment can be concrete examples of the agreement breach.

If implemented, the draft measure would perhaps enable competent authority to lay down terms (e.g. quality requirements) under which the expert opinion should be compiled. In order to enhance the independence of experts, some of stakeholders suggest to separate licence for authors of EIA documentation and authors of expert opinion. However, recent draft amendment does not contain this proposal.
V. Good practice in Austria: Challenging decisions from Screening procedure by public

(Gregor Schamschula, ÖKOBÜRO, Austria)

Article 3/3-6 of the revised EIA directive concerns screening procedures.

Screen Procedures according to § 3/7 UVP-G (Austria EIA act) do play a big role in Austria. For every full EIA, there are currently about 4 screenings, about 100 per year. Screening procedures are usually started by the authorities, if they believe a project which is not entered as an EIA might fall under the scope of the EIA act. They can however also be called for by the project solicitor herself/himself, if they want to clear up this question, and by the environmental law office ("Umweltanwaltschaft"; a mostly independent official authority, financed entirely by the state with the duty to uphold environmental protection in proceedings). The proceeding includes only the relevant authority, if called for by them then the environmental law office, the municipality of the planned project and the project solicitor. The decision is published online and can be challenged by the parties and by neighbours, as well as environmental NGOs. NGOs and neighbours cannot however call for such a proceeding, thus if there is no decision, they cannot directly challenge the project.

The regular use of screening procedures helps the aim of the EIA directive to assure large projects really do undergo an EIA. Especially in the cases, where it is unclear, whether the required threshold is met. The right for the environmental law office to call for a screening is very helpful, as they act on behalf of environmental protection. Even better of course would be the same right for environmental NGOs.

Contact information:
name: Imrich Vozár
organization: J&E
address: Komenského 21, 974 01 Banská Bystrica, Slovakia
tel/fax: 0948 158 393
e-mail: info@justiceandenvironment.org
web: www.justiceandenvironment.org

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