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Observations on the transposition of amended EIA Directive

Dear Mr. Aurel Ciobanu Dordea,

Environmental impact assessment (EIA) is one of the major horizontal EU instruments for the protection of the environment and health. Justice & Environment (J&E) has for a long time worked on the EIA rules and their transposition and implementation on national level in selected member states. In last two years we focused on best possible transposition of the Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. Therefore we put our efforts in improving quality of the EIA procedures by meaningful transposition and enforcement of the revised EIA directive.

Since the transposition should have been completed before 16 May 2017, in 2016 most activities of J&E were related to contributing to the national transposition process, with the aim of ensuring that future EIA procedures are in compliance with the revised EIA Directive.

In more detail, in 2016 we first carried out a survey in five member states (Austria, Estonia, Slovenia, Slovakia and Czech Republic). The objective of the survey was to collect opinions from different national stakeholders concerned (representatives of competent state bodies, EIA consultants who elaborate EIA documentation, and representatives of the public concerned – NGOs) in respect to the way the amended EIA could and should be implemented. The survey focused on seven areas related to new or improved rules found in the Directive 2014/52/EU. The core conclusions were¹:

¹ The summary of survey is available on

http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2016/EIA_Directive_general_summary.pdf

- requirement of the amended EIA directive, to take into account protection of landscape character and cultural landscape is mainly an issue of application practice;
- derogations from application of EIA directive should be formulated clearly and unequivocally and ideally in a way to only include natural catastrophes;
- obligation to regulate the conflict of interests in the national legislation is perceived as a positive step forward;
- identification of a good practices may have a real positive impact on reaching the aims of the EIA directive;
- in respect to the question of potential overlaps with the assessments carried out according to other directives, there was a clear consensus that EIA should become an umbrella process, bearing in mind specificities of particular processes including the temporal aspects;
- sanctions should have an impact on the quality of and expertise used for the outputs of the EIA process (EIA reports). Sanction should affect those entities which consciously decrease the quality of the assessment or do not respect it;
- close attention should be paid to the rules on the screening process given the fact that in majority of the cases, the EIA process is terminated/ends in this phase.

For the purpose of best possible transposition of amended EIA Directive, best practices were also collected in 2016. Our intention was to share good legislative practices from various Member states with other Member States and inspire them during their transposition work. Four good practices were identified²:

- in Slovakia: determination of the scope of the assessment;
- in Slovenia: two-steps procedure for preparation of EIA report;
- in Czech Republic: quality and objectiveness of EIA reports from the Czech perspective;
- in Austria: challenging decision from screening procedure by public.

Through dissemination of survey results and good practices we encouraged the member states to reach for the best possible transposition that would fulfill the purpose of (amended) EIA directive. This work was happening mostly in 2017. J&E carefully observed the process in selected Member states (Estonia, Hungary, Slovakia, Czech Republic, Croatia and Slovenia). After transposition of the Directive 2014/52/EU³ a questionnaire was prepared to gather information on whether the new national rules enable better quality of EIA process and reports. The questionnaire focuses on selected areas that were also covered by the survey made in 2016 and was completed by NGO

² Full document is available on

http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2016/EIA_good_practices_collection.pdf

³ The transposition was done in all mentioned states except in Croatia, where the proposed changes of Environmental Protection Act were not adopted yet.

representatives with peer review provided by other independent EIA experts. Main conclusions of the survey are:

- **Scope and screening:** After transposition of amended EIA directive, the provisions in this area are more advanced than the previous ones, which should ensure higher quality of EIA procedures. As regards derogations (circumstances when the EIA rules are not applied), there were mostly no material changes and provisions provide solid solutions, although there are some provisions that could be widely interpreted.
- **EIA experts' competence:** There has been no significant change in the area of rules ensuring qualification and competence of EIA experts. Some legislative arrangements ensure that environmental impact assessors are well trained, and others still have space for improvements. As a good practice, regulative solutions that provide for the obligation of having the EIA experts licenced could be brought out. Such a system is, for example, in place in Estonia (certain requirements including professional experience should be met and licence is valid for 5 years). Criticism as regards (lack of) independence of EIA experts is still widespread.
- **Quality of reports:** There are still weak legislative guarantees to ensure that the spatial extent of environmental impacts is duly taken into account in the assessment and there have been no significant changes regarding the requirement to ensure that the EIA documentation is really "up to date".
- **Quality of process:** Regarding public participation there were no significant changes, but provisions provide a fairly good and solid guarantee in procedural and substantive matters in this field. However, the application practice itself is weak – mostly it takes the form of formally fulfilling legislative requirements, no matter how well these facilitate public participation. There are no significant changes to avoid duplication of assessments for a particular project - there are in many cases no specific provisions on merging all assessments into one process, and even in cases the assessments are carried out together in practice, this does not eliminate a number of difficulties in implementing these procedures.

Based on two years of observation of transposition of the Directive 2014/52/EU we can make a conclusion that directive has had a significant contribution to improving EIA procedures. On national level, the issue was brought to light, evaluated, discussed and some new legislative solutions were found. Still there is much space for improvements, not only through changes to environmental laws but also through application of best practices by competent authorities in areas such as enabling meaningful public participation, ensuring documentation is "up to date", avoiding duplication of assessments, ensuring high qualification of EIA consultants, etc. J&E and its members still see the financial dependence of consultants on investors as a crucial weak point in the system.

It is my hope that the above-mentioned surveys, studies and best practices are of interest to you in your work. In the coming years, we will continue our work on identifying and sharing best practices of EIA procedures both in the Member States where our network members are present as well as within the network. We hope that in doing so we will also identify specific actions that would enable us to cooperate with the European Commission and we will continue to support each other in our efforts for improving the EIA as a key tool for environmental protection in EU.

Best regards,

Siim Vahtrus

Chairman of Justice&Environment



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