

# **New Directive, Better EIAs?**

Survey on the Impact of Transposition of the  
Directive 2014/92/EU in Selected EU Member  
States

Summary Report

*Justice and Environment 2017*

## **I Introduction**

The following summary is based on information from a questionnaire filled by members of working group for environmental impact assessment (WG EIA) of Justice & Environment. The purpose of the questionnaire was to provide a first assessment on whether the national regulation after transposing the Directive 2014/92/EU (amended EIA directive) will allow and ensure better practice of EIAs in selected countries. After preparing Key Points of the New EU directive on Environmental Impact Assessment in 2015<sup>1</sup>, Collection of Examples of Good Practice in EIA Procedure in 2016<sup>2</sup>, the J&E network wanted to gather and present information on whether the national regulation (after transposition) enables better quality of EIA process and reports and if that has changed due to the transposition of amendments to the Directive. The questionnaire focuses on selected areas that were also covered by the survey made in 2016<sup>3</sup>.

The questionnaire was completed by NGO representatives, with peer review provided by other independent experts in the EIA (September-November 2017). The answers in questionnaire were first graded and then explained.

The grading and color-coding system used below is based on the following criteria:

<b>Colour</b>	<b>Explanatory note</b>
Red	New provisions are worse compared to previous, i.e. the statutory guarantees for EIA process / report quality have been downgraded
Yellow	No significant change
Green	New provisions are more progressive than previous, i.e. better statutory guarantees for EIA process / report quality have been provided

<b>Grade</b>	<b>Explanatory note</b>
0	No provisions or provisions, which likely will hamper the procedural / substantive quality
1	Provisions provide a weaker guarantee for good procedural / substantive quality, e.g. by providing a very large degree of discretion for authorities
2	Provisions provide a moderately strong guarantee for good procedural / substantive quality
3	Provisions are exemplary, should be considered good practice

The questionnaire was focused on four areas and each includes two questions. Following countries were included: Estonia, Croatia, Czech Republic, Hungary, Slovakia and Slovenia.

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<sup>1</sup>[http://www.justiceandenvironment.org/fileadmin/user\\_upload/Publications/2015/Key\\_Points\\_of\\_the\\_New\\_EIA\\_Directive.pdf](http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2015/Key_Points_of_the_New_EIA_Directive.pdf)

<sup>2</sup>[http://www.justiceandenvironment.org/fileadmin/user\\_upload/Publications/2016/EIA\\_good\\_practices\\_collection.pdf](http://www.justiceandenvironment.org/fileadmin/user_upload/Publications/2016/EIA_good_practices_collection.pdf)

<sup>3</sup> Regulation of EIA Procedures, Survey made in member States on how the national laws comply with the requirements of revised EIA Directive, published on <http://www.justiceandenvironment.org/publications/> (page 6 and 7)

## **II Main conclusions**

1. After transposition of amended EIA directive the new provisions are more advanced than the previous ones in the area of ensuring higher quality of EIA screening procedures and there are positive changes.
2. 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 derogations which are too widely applicable.
3. There has been no significant change in the area of 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).
4. Criticism as regards (lack of) independence of EIA experts is still widespread. This weakness should be eliminated, i.e. changes to the rules due to which experts depend on investors are still needed. Additionally, in some cases the political pressures should be removed from EIA processes, only scientific expert knowledge should shape the assessment.
5. There are still weak guarantees to ensure that spatial extent of environmental impacts is duly taken into account.
6. There have been no significant changes to rules ensuring EIA documentation is "up to date".
7. Regarding public participation there were no significant changes, but existing 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.
8. There are no significant changes in rules aimed at avoiding 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.

### **III Detailed summary**

#### **1. Scope and Screening**

##### Question 1: How well do the rules enable high quality screening procedure?

Answers: Green 1, Yellow 1, Red 1, Green 2, Green 1, Yellow 2  
(Estonia, Croatia, Czech Republic, Hungary, Slovakia and Slovenia)

The majority of respondents replied that although the new provisions after the transposition of the amended directive were more advanced than the previous ones, the provisions nevertheless provide a weak guarantee of good procedural / substantive quality. Other respondents indicated that there were no significant changes after the transposition in this field; one of them even replied that the new provisions in this area are worse than the previous ones.

Respondents answered that there are some positive changes in some aspects in this area:

- some improvements regarding legal remedies (who and when is allowed to complain);
- the new requirements of the directive have extended the scope of the data to be collected and submitted by the applicant in the review report (data on environmental conditions, impacts on climate change, waters, natural areas, habitats, etc.);
- the competent authority must also take into account the information that is already available to the body, not only the information provided by the applicant;
- procedures are of a higher substantive quality due to the requirement to consult other public authorities;
- the deadline for submitting comments related to the project application submitted by the applicant has been extended (eg from 20 to 30 days), the same for the public participation and other competent authorities.

Croatia has not yet transposed Directive 2014/52/EU, the environmental protection act was already in the process of public consultation in June 2017, but all objections by experts and the interested public have been rejected.

In addition to some positive changes, negative changes are also reported, for example, in accordance with Art. 4 of the amended Directive, Member States may set thresholds or criteria for determining when a project does not need to even undergo the scoping phase. In Czech Republic, the conditions regarding the obligation of applicants to inform the responsible authorities of such projects were laid down - the serious weakness is that the applicant should notify authorities only in cases where these projects are located in or around environmental protected areas (a 95% "overlap" threshold is used, which in practice can lead to hampering of objectives of Directive 2014/52/EU). Also, the question remains as to how these legislative changes will be applied in practice.

##### Question 2: How restrictive is the approach to exceptional circumstances when the EIA are not applied?

Answers: Red 2, Yellow 0, Red 1, Yellow 2, Green 2, Yellow 2  
(Estonia, Croatia, Czech Republic, Hungary, Slovakia and Slovenia)

Respondents mostly responded that there was no material change under the amended directive, and that the provisions provide a moderate solid procedural / substantive quality guarantee. While some

claimed very limited regulation on derogations, others argued that the approach was very non-restrictive.

Some examples of exceptional circumstances when EIA are not applied:

- The Ministry of Defence may propose to the government to omit the EIA, if it would harm national security;
- EIA is excluded for maintenance work, which is regulated in various sectoral laws;
- the Environmental Protection Act stipulates that no process of verification or EIA is carried out in certain cases (certain flood protection facilities);
- if the sole purpose of the proposed activity is to provide national security or response in emergency situation, however this does not apply when the activity can significantly and negatively affect the of Natura 2000 site's conservation objectives;
- in case of an "extraordinary event" - its definition is adopted with reference to Civil Protection Act (natural disaster, accident, disaster, public health threat or terrorist attack).

All of these examples have been added or modified by the transposition of the amended directive. Some argue that, from their point of view, they are the best legislative solutions that reduce the possibility of abuse; others argue that the regulation is less restrictive than it could be to be in full compliance with the directive, but it is more restrictive than before.

## **2. EIA Experts**

Question 3: How well do the rules ensure that the EIA experts are competent?

Answers: Yellow 3, Yellow 1, Yellow 2, Yellow 2, Yellow 1, Green 2  
(*Estonia, Croatia, Czech Republic, Hungary, Slovakia and Slovenia*)

Respondents replied that there were no material changes after the transposition of the amended directive, but that the provisions provide a moderately strong guarantee for good quality EIAs in this area. One of the respondents (Estonian) assessed their provisions as exemplary and that they should be treated as good practice - the experts for EIA should have an EIA licence. The licence is issued if the person meets certain requirements including professional experience and conducting thematic trainings. The validation of license is 5 years and could be revoked.

Some responses about qualification of EIA experts:

- the applicant must ensure that a report on the environmental impact assessment is prepared by a qualified expert; experts are deemed to be qualified if the first stage of higher education is completed and they have work experience in the field of environmental impact assessment; the lead expert must also have references in the field of environmental impact assessment and is also responsible for the involvement of competent experts;
- the documentation to be submitted in EIA process shall be prepared by an expert who is trained in accordance with a special regulation on environmental professionals;
- when assessing environmental impacts, only authorized environmental impact assessors can participate, and these experts must have a master's degree in science and technology and at least two years of experience following a special qualification exam.

Some critical issues were also exposed such as:

- the rules do not provide enough requirements for experts to be sufficiently competent (qualified). Despite the fact that legislation requires that EIA studies should be made by experts for the specific field impacted by the project, in practice this is not followed, and EIA studies are accepted by the competent authorities, although they were not prepared with the participation of experts from the specific field of studies.
- a change in the Environmental Impact Assessment Act introduced a penalty for experts if they submit a EIA review too late. This could jeopardize the quality of the EIA.

Question 4: How well do the rules ensure that the EIA experts are independent?

Answers: Yellow 1, Yellow 1, Red 1, Yellow 0, Red 0, Yellow 0  
(Estonia, Croatia, Czech Republic, Hungary, Slovakia and Slovenia)

Respondents gave a critical assessment, since, according to their view there are no or only insignificant changes in this field, or new provisions are even worse than the previous ones.

Critics mainly address following problems:

- EIA experts are still financially dependent on investors and latter are only interested in "positive" EIA reports that allow investment. Compared to the good practices collected by Justice and Environment, there are no improvements or changes in legislation, nor is there any provision on independence;
- the members of the EIA Board should be independent, but most of the members of the committee are appointed by the competent ministries. Employees in ministries, municipalities or regions are not independent experts and are obliged to represent the political views of the authorities, not their own expert opinion. Members of the committee are thus subjected to political pressure and to a majority in the committee;
- the law stipulates that leading experts and members of the expert group must be impartial and independent by assessing the impact of the proposed activity on the environment. However, the fact that experts are selected and hired by investors is undermining their independence;
- EIA experts and those who prepare project documentations, as well as those who prepare monitoring reports are the same persons who are registered as EIA expert. Therefore their independence is questionable.

In this area, regulation is very poor, if not already critical. Contractual dependence on developers can affect the work of EIA experts and thus affect the results of the EIA studies. Experts are under pressure because if they present an unfavourable EIA, they will soon be out of job. The problem is also that in some cases political influences are represented in the process, which should be a strictly scientific exercise.

### **3. Quality of reports**

Question 5: How well do the rules ensure fair / correct spatial extent of impacts being considered in reports (to avoid limiting the assessment of impacts with only facility's territory)?

Answers: Yellow 1, Yellow 1, Yellow 1, Yellow 2, Yellow 0, Yellow 0  
(Estonia, Croatia, Czech Republic, Hungary, Slovakia and Slovenia)

According to the respondents, there are no changes in the regulation of spatial extent of impacts and the provisions of the legislation provide a weak guarantee for good quality in this area.

Respondents answer, for example:

- the regulation does not contain any provisions on the manner of preparation and the content of the report on the effects of the planned activities that have an impact on the environment;
- there is a widespread belief that EIA studies have been carried out to justify the project;
- the EIA report must contain information on potential sources of impact, extent of impact zone and the affected environmental elements.

One of the respondents (Hungary) stated that they have fairly good regulation in this field - the impact area should be determined. It is defined as the area or part of the area in which the environmental impact has occurred or can occur and is included into EIA decision. The purpose of the concept of the impact zone is to ensure that the likely impacts of the activities are fully taken into account and that the public concerned is informed and/or involved in the decision-making process.

Question 6: How well do the rules ensure that EIA documentation is up to date when granting development consent?

Answers: Green 1, Yellow 1, Red 1, Yellow 2, Yellow 1, Yellow 2  
(Estonia, Croatia, Czech Republic, Hungary, Slovakia and Slovenia)

Most respondents say that the amended directive did not lead to significant changes in this area. Regarding the rules that ensure the updating of the environmental impact assessment documentation when issuing an environmental consent, they say:

- the final administrative decision in the EIA procedure - environmental consent is valid for another 5 years if the investor did not start building the facility immediately;
- it is considered that the EIA documentation needs to be updated 5 years, but in practice this has never been done (location permit can be submitted 4 years after the EIA procedure and there is also another year for issuing building permit after location permit has been issued);
- after the amended directive the provision regarding validity of EIA decision was extended from 5 to 7 years with the possibility of extension;
- the law allows a broad discretion to decide when the EIA report is no longer relevant. Despite the fact that the legal provisions are unclear, this legal regulation is new, since earlier this topic was not covered by the law at all.

One of the respondents states that there is no explicit requirement for EIA documentation to be up to date in the national legislation. By using the rules of administrative procedure (determination of fair facts) the EIA documentation should be updated.

#### **4. Quality of process**

Question 7: How well do the rules ensure good quality of public participation?

Answers: Yellow 2, Yellow 1, Red 1, Yellow 2, Yellow 3, Yellow 2  
(Estonia, Croatia, Czech Republic, Hungary, Slovakia and Slovenia)

The respondents considered that there were no significant changes in their legislation, but provisions provide a fairly good and solid guarantee in procedural and substantive matters in this field.

They exposed following problems:

- the rules on environmental protection and spatial planning enable public participation and these rules could provide a good basis for quality public participation, but in practice, the processes are only formal (the documentation is published on the website, public comments are ignored, no substantive arguments for rejecting comments are presented, etc.);
- while the law contains detailed rules on informing the public, the availability of documentation and consultation, it nevertheless leaves a wide discretion to the authorities with regard to some essential details of public participation (e.g., how understandable the material must be, the time and place of presentations are , etc.);
- the law contains a certain minimum to ensure public participation, and the public has the right to write objections, however, objections are generally rejected even if their content is undisputed;
- effective and high-quality public participation is also affected by the fact that the formal requirements to be fulfilled by non-governmental organizations without 3 years of experience have been tightened. In addition, the public concerned is no longer entitled to comment on the EIA. The rules also do not regulate public participation in extending the validity of an EIA decision;
- the timing of the public hearings depends on the authority's discretion, in practice, public hearings are held during working days and it is not unusual that they take place in the middle of the day when most people from public concerned are not able to attend. The public to be informed is determined based on the data provided by the project promoter. If the assessment regarding the impact area is not appropriate, the participatory rights of public concerned can be affected.

Question 8: How well do the rules ensure better coordination / avoiding duplication when assessment for a certain project is compulsory under different EU Directives?

Answers: Yellow 2, Yellow 1, Yellow 0, Yellow 2, Green 0/1, Yellow 2  
(Estonia, Croatia, Czech Republic, Hungary, Slovakia and Slovenia)

Respondents state that there were no significant changes in this area and that:

- there are no specific arrangements for linking all the assessments into one procedure;
- the regulation in one procedure combines three procedures (SEA, EIA and AA), which means a combination of all three directives;
- there is possibility for single environmental permit (EIA and IPPC);
- if an air quality permit is required and at the same time carrying out an EIA is necessary then the EIA procedure includes both - the air quality permit is part of the environmental permit;
- relevant assessments under Habitats Directive are always carried out in the form of EIA, so we assume the assessments are well coordinated;
- the EIA process does not combine all the necessary assessments into one process, but the possibility to use published information for the purposes of the EIA is regulated.