Environmental Impact Assessment ("EIA") & Strategic Environmental Assessment ("SEA")

Laura Tabellini
DG ENV – Unit D3
Cohesion Policy and Environmental Impact Assessments
Environmental Assessment

Policies

Plans & Programmes
covered by **SEA Directive** (2001/42/EC)

Projects
covered by **EIA Directive**
(85/337/EEC, 97/11/EC, 2003/35/EC)
Environmental Impact Assessment of public and private projects

Relevant Directives


  alignment to ESPOO Convention

  alignment to Aarhus Convention
General objective

What does the EIA Directive apply to?
• projects likely to have significant effects on the environment (by virtue, *inter alia*, of their nature, size and location)

What are these projects subject to?
• a requirement for development consent
• an assessment of their effects

When?
• before consent is given
What assessment? (Art. 3)

EIA must identify, describe, **assess likely direct** and **indirect** environmental effects of activities on

- human beings,
- fauna, flora, soil, water, air, climate, landscape,
- material assets, cultural heritage
- the interaction between those factors
What projects?

- Annex I projects
- Annex II projects

Mandatory EIA

Screening by Competent authorities to decide if EIA needed or not

(Art. 4)
Some examples of projects

**ANNEX I**

- Long-distance *railway* lines
- **Motorways**, express roads, *roads* of four lanes or more (of at least 10Km)
- **Waste** disposal installations
  - for hazardous waste
  - for non hazardous waste (above 100 tonnes/day)
- **Waste water** treatment plants (above 150000 p.e.)
- **Changes or extensions** of Annex I projects, meeting Annex I thresholds
- ....

**ANNEX II**

- Construction of *railways* and *roads* not included in Annex I
- **Waste** disposal installations and *waste water* treatment plants not included in Annex I
- **Urban development projects**
- **Changes or extensions** of Annex I and II projects that may have adverse environmental effects (not included in Annex I)
- ....
EIA procedure

1. Screening
   - Only for Annex II projects

2. Scoping
   - Upon request of the developer

3. Environmental information
   - The “Report”

4. Consultation on environmental information
   - Public, Env. Authorities...

5. Decision
   - Takes account of env.inf and consultations
Screening

- Answers the question: **is EIA required?** (Annex II projects)
- The guiding principle: **are significant environmental effects likely?**
  - If **yes** ⇒ EIA needed
  - If **no** ⇒ no EIA needed
- Determination through:
  - case by case examination and / or
  - thresholds or criteria
- **Annex III criteria** must always be taken into account
- Screening determination made **available to the public**
Annex III criteria (Art. 4)

- **Project characteristics**
  - size, **cumulation** with other projects, natural resources use, waste production, pollution, risk of accidents …

- **Project location** - environmental sensitivity of area likely to be affected
  - land use, natural resources, **Natura 2000** sites, exceeded environmental standards…

- **Potential impact**
  - extent, **transboundary nature**, probability, magnitude, duration, frequency, reversibility…
Scoping (Art. 5.2)

- Answers the question “what should be covered by the environmental information?”
- Opinion by the competent authority (who may subsequently ask for further information)
- By request of developer
- Before development consent application is submitted
- Early interaction between competent authority, developer, environmental authorities
Environmental information “the report” (Annex IV)

- Project description
- Use of resources, emissions and residues
- Description of the environment likely to be significantly affected
- Likely significant environmental effects including: short term, temporary and cumulative effects
- Forecasting methods & difficulties
- Mitigation measures
- Main alternatives and reasons for choice taking account of environmental effects
- Non-technical summary
Informing and consulting

1. Environmental authorities (Art. 5, 6, 9)
   - consulted during scoping
   - can express opinion on env. information
   - informed of final decision

2. Public concerned (Art. 4, 6, 9)

3. Other Member States (Art. 7, 9)
Informing and consulting the public concerned

• **Screening determination** to be made available

• Public can express an opinion:
  – on *environmental information*
  – on the development consent request

• When **final decision** is taken, public must be informed of:
  – its contents and reasons,
  – attached conditions and mitigation measures
  – information about public participation process
Transboundary consultations

• For projects likely to have **significant effects on the environment** of other Member States

• **Can be requested by** the **MS** likely to be significantly **affected**

• Provision of **information on development consent request** and **environmental information** (« report »)

• Environmental authorities and public concerned in the affected MS can express opinions

• Reasonable time-frame

• **Information on the final decision**
Main provisions introduced by Directive 2003/35/EC

• Definition of public and public concerned:
  “public affected, or likely to be affected by, or having an interest in, the decision making procedure”, including NGOs. Art. 1(2)

• National defence projects not automatically excluded from EIA Art. 1(4)

• Strengthened public consultation provisions: early in the decision-making procedure, detailed list of information to be provided, reasonable time-frames Art. 6
Main provisions introduced by Directive 2003/35/EC

- New provisions on public access to a review procedure
  Art. 10(a)
- Information provided to the public on the final decision needs to include information on the public participation process
  Art. 9(1)
- New Annex I(22) project category: changes or extensions of Annex I projects, where the change or extension in itself meets Annex I thresholds, if any
  ⇒ in Annex I (22)
EIA Guidance

• EIA / SEA Homepage:
  http://europa.eu.int/comm/environment/eia/home.htm

• Commission’s guidance documents and checklists:
  - Screening
  - Scoping
  - Review
  - Indirect and Cumulative Impacts
  - Clarification of application of Art. 2(3)

• ESPOO Convention homepage:
  http://www.unece.org/env/eia/
SELECTED ECJ CASE-LAW on EIA

http://curia.eu.int/en/content/juris/index.htm
http://europa.eu.int/comm/environment/law/cases_judgements.htm
The Court’s approach

• The EIA Directive has “a wide scope and a broad purpose” (Kraaijeveld C-72/95)
• Member States’ discretion is limited
• Consistent emphasis on the fundamental purpose of the Directive: projects likely to have significant environmental effects must undergo an EIA
• Exemptions to be interpreted narrowly (WWF & others C-435/97; Linster C-287/98)
Key rulings on screening

• Ireland C-392/96
  – Small-scale projects can have significant effects on the environment
  – Cumulative effects must be taken into account

• Lotto zero C-87/02
  – A “negative” screening decision must contain or be accompanied by the information that makes it possible to check that it was based on adequate screening

• Spain C-332/04
  – National screening systems must take full account of nature, size and location of Annex II projects, with reference to Annex III criteria
Strategic Environmental Assessment

(“SEA” Directive 2001/42/EC)
Objective

- High level of protection of the environment
- Integration of environmental considerations into the preparation of plans and programmes
- Promotion of sustainable development by an environmental assessment of certain plans and programmes likely to have significant effects on the environment
SEA Directive (Art. 4) and the planning process

• The environmental assessment must be carried out:
  – during preparation of the plan or programme
  – before adoption of the plan or programme
• SEA can be incorporated into existing (planning) procedures, or in new ones
The SEA process

<table>
<thead>
<tr>
<th>Definition of plans and programmes</th>
<th>Consultation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory SEA</td>
<td>Env Authorities</td>
</tr>
<tr>
<td>Screening</td>
<td>X</td>
</tr>
<tr>
<td>Scoping</td>
<td>X</td>
</tr>
<tr>
<td>Environmental Report</td>
<td>X</td>
</tr>
<tr>
<td>Decision making</td>
<td>X</td>
</tr>
</tbody>
</table>

- **Mandatory SEA**
- **Screening**
- **Scoping**
- **Environmental Report**
- **Decision making**
- **Information on final decision**

<table>
<thead>
<tr>
<th>Env Authorities</th>
<th>Public</th>
<th>Trans-boundary</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>To be informed</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
What is a “plan or programme”?

To be covered by the SEA Directive, a plan or a programme must:

– be prepared and/or adopted by an authority at national, regional or local level AND
– be required by legislative, regulatory or administrative provisions.

The definition includes:
– modifications of plans and programmes
– those co-financed by the EC
When is SEA mandatory? Art. 3

For plans and programmes:

a) prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/water management, telecommunications, tourism, town & country planning or land use

    AND

    which set the framework for future development consent of projects listed in the EIA Directive

    OR

b) that require an assessment under Article 6 or 7 of the Habitats Directive
When is “screening” required?

Who “screens”, and for what purpose?
- Member States, to decide if SEA is needed

Which plans and programmes (p/ps) to screen?
- p/ps setting the framework for future “non-EIA projects” and “non-sector” p/ps
- certain p/ps at local level and minor modifications to p/ps

How to screen?
- case by case, by specifying types of p/ps, or by a combination of the two approaches
- always using Annex II criteria
  (criteria include characteristics of plans, of their effects, and of affected areas)
1. Characteristics of plans and programmes
   - Influence on other plans/programmes
   - Relevance for sustainable development
   - Relevance for implementation of Community law …

2. Characteristics of effects and areas likely to be affected
   - Probability, duration, frequency, reversibility, magnitude, spatial extent, cumulative, transboundary nature of effects …
   - Value and vulnerability (e.g. exceeded environmental limit values), National, Community or international protection status of areas …
Exemptions

- National defence, civil emergency, financial or budget plans/programmes
- Plans and programmes co-financed under the current programming periods (2000-2006/7) for Structural Funds Regulations (1260/1999) and European Agricultural Guidance and Guarantee Fund (1257/1999)
Environmental Report (1)  

Must identify, describe and evaluate:

- the likely significant **environmental effects of implementing the plan / programme**, including
  - effects on biodiversity, soil, water, air, climatic factors
  - effects on population, human health, architectural and archaeological heritage, landscape

- reasonable **alternatives** taking into account the objectives and the geographical scope of the plan / programme
  - alternatives must include the « zero » alternative
Environmental Report (2)

- Outline of the plan/programme and relationship with other p/ps
- Current state of the environment and evolution without the plan/programme
- Environmental characteristics of the area
- Environmental protection objectives, how they were taken into account
- Mitigation measures
- Monitoring measures
- Non-technical summary
Monitoring

- Member States have to monitor the significant environmental effects of the implementation of the plan/programme in order to:
  - identify at an early stage unforeseen adverse effects
  - be able to undertake remedial action
- Existing monitoring arrangements may be used
- Monitoring measures must be covered in the SEA Report
Consultations

– **Environmental authorities**
  - in screening
  - in scoping
  - on the draft plan/programme and the env. report

– **The public**
  - on the draft plan/programme and the env. report

– **Transboundary consultations**
  - on the draft plan/programme and the env. report
Guidance on SEA

"Implementation of Directive 2001/42/EC on the assessment of certain plans and programmes on the environment“

European Commission, 2003

(http://europa.eu.int/comm/environment/eia/sea-support.htm)
Thank you for your attention!