REQUIREMENTS of EU LEGISLATION - EIA and SEA DIRECTIVES

Katarina Hobzova

EC DG Environment
Cohesion Policy and Environmental Impact Assessments unit

1st International Conference SEA/EIA 2010
Donovaly, Slovakia, 25 - 26 May 2010

EUROPEAN COMMISSION

environment

Presentation outline

- Key principles
- SEA/EIA processes
- Review of the Directives

Environmental Assessment

EUROPEAN COMMISSION

environment

Environmental Impact Assessment (EIA)

Directive 85/337/EEC of 27 June 1985. Notification to MSs: 03 July 1985; entry into application: 03 July 1988. As amended by:

- Directive 97/11/EC of 3 March 1997
  - ✓alignment to Espoo Convention
  - ✓selection criteria for screening
- Directive 2003/35/EC of 26 May 2003
  - ✓alignment to Aarhus Convention (public participation)
- Directive 2009/31/EC of 23 April 2009
  - ✓amends the annexes to include projects of storage and transfer of CO_2

Strategic Environmental Assessment (SEA)

Directive 2001/42/EC of 27 June 2001. OJ L197 of 21 July 2001; entry into force: 21 July 2004

Similar Objectives of the Directives

SEA Directive

- ✓ To provide for a high level of protection of the environment.
- ✓ To contribute to the integration of environmental considerations into the preparation of plans and programmes with a view to promoting sustainable development.

EIA Directive

- ✓ To protect the environment and the quality of life.
- ✓ Ensure approximation of national laws with regard to the assessment of the environmental effects of public and private projects.

Guiding principle for both EIA/SEA: plans, programmes and projects which are likely to have significant effects on the environment are subject to an assessment.

Scope of applicability: SEA

Which plans or programmes?

- ✓ prepared and/or adopted by an authority at national, regional or local level 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;
- ✓ required by legislative, regulatory or administrative provisions
- ✓ which have been determined to require an assessment under Articles 6 or 7 of the Habitats Directive.
- ✓ P/Ps co-financed by the EC (e.g. OPs).
- ✓ Modifications of P/Ps

Exemptions:

- ➔ Plans & programmes the sole purpose of which is to serve national defence or civil emergency;
- ➔ financial or budget plans/programmes.

Plans and programmes that must be screened:

- ✓ P/Ps using small areas at local level.
- ✓ minor modifications to P/Ps.
- ✓ P/Ps setting the framework for future future “non-EIA projects” and “non-sector” P/Ps.

EUROPEAN COMMISSION

environment

Scope of applicability: EIA

The EIA Directive applies to **projects likely to have significant effects on the environment** (by virtue, *inter alia*, of their nature, size and location)
It demands a **requirement for development consent** (determines whether the EIA is applicable) AND an **assessment of their effects before consent** is given

Annex I projects → **Mandatory EIA**

Annex II projects → **Screening**

by Competent authorities to decide if an EIA is needed or not

When the application for authorisation for a project was formally lodged before **the expiry of the time-limit for transposition of a directive OR the date of accession the EIA is not applicable**. **BUT**, for EC co-funded projects, the Commission requires compliance with the EIA provisions.

EUROPEAN COMMISSION

environment

European Court of Justice – Case law

- The interpretation of the EIA Directive is not static, but it is subject to interpretation by the ECJ.
- Infringements procedure initiated by the Commission (Art.258 of TFEU (ex 226 EC Treaty) or actions (Art.260 of TFEU (ex 228 EC Treaty).
- Considerable body of case law, but need to apply judgments carefully.
- ECJ rulings mainly concern the EIA but are also relevant for the SEA:
  - **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.**

EUROPEAN COMMISSION

environment

Some examples of EIA 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)
- Airports with a basic runway length >2100 metres
- **Inland waterways & ports**
- Changes or extensions **of Annex I projects meeting Annex I thresholds (if any).**
- Waste water **treatment plants (above 150.000 p.e.) ...**

ANNEX II

- **Construction of** railways **and** roads **not included in Annex I**
- Urban development projects
- Tramways, underground railways
- Canalization and flood relief works
- Waste **disposal installations and** waste water **treatment plants not included in Annex I**
- **Inland waterways, flood-relief works and canalization**
- Changes or extensions **of Annex I and II projects (not included in Annex I) that may have adverse environmental effects …**

EUROPEAN COMMISSION

environment

The Environmental Assessment Procedures

Screening – Principles

- Only for Annex II projects (EIA) or small/minor P/Ps and P/Ps not listed (SEA)
- Answers the question: is an EIA/SEA required?
- Guiding principle: is the plan/project likely to have significant environmental effects?

  If yes ⇨ SEA/EIA needed

  If no ⇨ no SEA/EIA needed
- How do we determination the effects (margin of discretion for MS):
  - ✓ Case by case examination and/or
  - ✓ Specify P/Ps (SEA) - thresholds or criteria (EIA)
- Screening criteria must <u>always</u> be taken into account.
- Screening decisions (including the reasons for not requiring an EIA/SEA) are made available to the public.

EUROPEAN COMMISSION

environment

Screening – Annex criteria

- *Characteristics of the P/Ps or projects*
  - 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...

EUROPEAN COMMISSION

environment

Scoping

- Answers the question "what should be covered by the environmental information?"
- Obligatory under the SEA; optional under the EIA, but…
- Opinion by the competent authority. Competent authority may subsequently require further information.
- Improves the quality of the EIA process.

EUROPEAN

environment

Environmental Report

Must identify, describe and evaluate, e.g.:

- The environmental characteristics of aspects/areas likely to be significantly affected.
- The likely significant environmental effects of the plan/programme/project (including indirect and cumulative effects).
- Alternatives (reasonable+zero/SEA or outline main alternatives studied by the developer/EIA) and reasons for the choice.
- Mitigation measures
- Monitoring measures
- Non-technical summary

EUROPEAN

environment

Consultations

1. Environmental authorities (SEA and EIA)

- in several stages (screening, scoping, report)
- on the draft plan/programme or request for development consent
- the environmental "report"

2. SEA: The public (incl. NGOs) and the public affected

- on the draft plan/programme and the env. report

3. EIA: The public must be informed on

- on the development consent request and related info

The public concerned (incl. NGOs) must be made available of

- the env. report and other main reports, advices and „after" inf

4. Transboundary consultations (Espoo)

- on the draft plan/programme and the env. report

Modalities:

- early and effective opportunities to participate
- when all options are open
- reasonable time-frames

Public concerned must have **access to a review procedure** (EIA, Art 10a).

EUROPEAN COMMISSION

environment

Decision and information

1. Competent authorities must take account of:
   - ✓ **Environmental report**
   - ✓ **Opinions expressed**
   - ✓ **Results of transboundary consultations**

2. Information about final decision has to be provided to the public, environmental authorities, other countries (if consulted):
   - ✓ **Content of the plan/programme/decision on project**
   - ✓ **Main reasons on which the decision is based (statement in SEA)**
   - ✓ **Mitigation measures (EIA)**
   - ✓ **Monitoring measures (SEA)**

EUROPEAN

environment

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**

EIA: Public concerned must have access to a review procedure.

environment

EIA/SEA Guidance

Please visit the EIA / SEA Homepage:

http://ec.europa.eu/environment/eia/home.htm

- Guidance on the implementation of the SEA Directive
- Guidance and checklists on the EIA Directive
  - **Screening**
  - **Scoping**
  - **Project categories**
  - **Indirect, Cumulative Impacts & Interactions**
- Studies and reports on the implementation of the EIA/SEA
- ESPOO Convention and SEA Protocol

EUROPEAN COMMISSION

environment

Review of the Directives: State of play

- **Commission's Reports on the application and effectiveness of the EIA and SEA Directives.**
  - ➔ Objectives achieved
  - ➔ Areas where improvements are needed.
- **4th EIA Report (July 2009) : announces the review of the Directive**
  - ➔ Areas where improvements are needed ("screening" procedure, quality of the EIA process, public participation, transboundary EIAs, better coordination with assessments from other directives/policies).
  - ➔ All simplification methods to be considered (extended impact assessment).
- **1st SEA Report (September 2009): Directive is still in its infancy**
  - ➔ Opportunities for improvement identified, but too early to propose amendments (further experience needed).
  - ➔ Reluctance of the MSs

Policy objectives for the review

- **Global objective of the review is to improve the functioning of the Directive(s), by ensuring a more consistent and effective application of the principles of environmental assessment.**
- **Specific objectives of the review of the EIA Directive:**
  - improve environmental protection at national level;
  - increase the degree of harmonisation of national laws (harmonised environmental standards (including screening);
  - simplify existing procedures (i.e. screening);
  - update the project categories;
  - clarify certain legal and technical issues: Minimum timeframes for information, consultation and decision. Quality of the EIA information (alternatives, cumulative effects…) and process (validity of the EIA decision). Monitoring of the effects;
  - improve synergy between the EIA Directive and legislation and policy in other sectors (SEA, biodiversity, climate change, IPPC…);
  - ensure the consistency with the international obligations deriving from the Espoo (+ SEA Protocol) and Aarhus Conventions.

Wide range of policy options for the review

Codify

Similar to a “do-nothing” option. 4 separate EIA Directives (85/337, 97/11, 2003/35, 2009/31) in one single text. New/update guidance documents (e.g. climate change).

Codify+

Soft recasting option. It involves the codification of the 4 EIA Directives **and** the introduction of a comitology procedure (for updating the Annexes I, II, III and IV).

Recasting

Simultaneous amendment and codification of a legal act. The existing structure would be retained, but amendments would be introduced to its annexes and its main provisions.

Merge

Merging EIA and SEA Directives. The 2 Directives have similar elements, but wide disparity between high level strategic plans in SEA and small-scale projects in EIA.

Assessment directive

Replace existing assessment requirements of EU Directives (EIA, SEA, Nature, IPPC, WFD) by a new Directive/Regulation on environmental assessments.

Combined approach

2 stages: Codification of the EIA Directive + White Paper on improving / simplifying the existing assessment instruments with a view to presenting a broader reform.

Implementation

- **When the EC ´touches the ground´**
  - Compliance verification of major project applications
  - Complaints
  - Experts working groups (ENEA)

Thank you for your attention

EUROPEAN COMMISSION

environment