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35 years of
EU Environmental Impact Assessment

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Introduction

The Environmental Impact Assessment (EIA) Directive is one of the oldest pieces of EU environmental legislation and over the years has proven to be one of the most important ones. It ensures that environmental considerations are properly taken into account when project decisions are made. Since its initial adoption 35 years ago, it has systematically provided a high level of protection of the environment and contributed to the integration of environmental considerations into the preparation of projects. All this with a view to reducing their environmental impact and making the projects more sustainable, thus contributing to sustainable development.

There is an increasing awareness of the need to protect and restore the natural wealth of the planet. The adoption of strong strategic initiatives like the European Green Deal at the highest political level makes cross cutting instruments which allow the integration of environmental concerns into wider political and economic contexts even more relevant. Stronger environmental integration allows not only better environmental and economic balance, but also wider societal choices for healthy wellbeing and a sustainable future for the next generations.

The importance of the principle of environmental integration is a corner stone of the European Green Deal and its investment pillar – the Sustainable Europe Investment Plan. Moreover, the co-legislators agreed that the EU co-financed actions under the various programmes and funds (e.g. the Cohesion policy, Invest EU, the Recovery and Resilience Fund) must respect the climate, environmental, social and digital priorities of the Union and comply with the ‘do no significant harm’ principle. The EIA Directive will continue to play an important role in this respect and will be essential for establishing criteria to determine whether future economic activities avoid significant harm to any of the environmental priorities, while maximising environmental and health benefits.

Legal background

The Treaty on the Functioning of the European Union (TFEU) includes the foundations of the EU's environment policy. Its Article 11 requires that environmental protection must be integrated into the Union's policies and activities, in particular with a view to promoting sustainable development (the principle of environmental integration). Article 191 implements the basic legal principles which guide EU environmental policy and action: precaution, prevention, rectifying pollution at source and the 'polluter pays' principles.

The first EIA Directive was adopted in 1985 with the purpose of ensuring that an assessment was made of the effects of certain public and private projects on the environment. It was amended three times (in 1997, 2003 and 2009) to reflect international commitments taken by the EU under the Espoo and the Aarhus Conventions and developments in other environmental legal areas. In 2011, the original EIA Directive and its three subsequent amendments were codified in one legal act – Directive 2011/92/EU.

In 2012, the Commission tabled a proposal to amend the codified Directive. The proposal aimed to address certain shortcomings in implementation, reduce unnecessary administrative burden, simplify the assessment procedure and reinforce the level of environmental protection, taking into account emerging challenges such as biodiversity, climate change, disaster and risk prevention and resource efficiency. The amending Directive 2014/52/EU was adopted in 2014 and entered into force in 2017.





Policy context

The integration of environmental concerns into other EU policy areas has become a key concept in European policymaking. In recent years, environmental policy integration has made significant progress, for instance in the field of energy policy, as reflected in the EU's climate and energy package with combined energy and climate targets, or in the integration of environmental concerns into the European Structural and Investment Funds and the Common Agricultural and Fisheries Policies. The central importance of the principle of environmental integration was also confirmed by the European Green Deal aimed at ensuring that all EU actions and policies work together to help the EU achieve a successful and just transition towards a sustainable future.

The main tool for ensuring the proper integration of environmental concerns into the decision-making process of projects is the environmental impact assessment procedure. It ensures that projects likely to have significant effects on the environment are subject to an environmental assessment prior to their approval or authorisation. Public participation is a key feature of environmental assessment procedures. The aim of the assessment is to provide a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation of projects with a view to reducing their environmental impact.



Scope and objective of the EIA Directive

The Directive has a broad scope and wide purpose and applies to public and private projects, which are likely to have significant effects on the environment, with more than 200 project categories falling under its scope. Some of these projects are automatically considered as being likely to have significant effects on the environment and must be subject to an EIA in all cases. These project categories (listed in Annex I of the EIA Directive) include for example nuclear power stations, long distance railways, motorways, express roads, waste disposal installations for hazardous waste, dams and waste water treatment plants of certain capacity, etc. Other project categories (listed in Annex II of the Directive) are considered likely to have significant effects depending on their nature, size and location. These include urban development projects, inland waterways, canalization and flood-relief works, etc. For these projects, Member States can decide to subject them to an environmental impact assessment on a case-by-case basis or according to thresholds or criteria (for example size, location (sensitive ecological areas in particular) and potential impact (surface affected, duration).

Under the EIA Directive, before their authorisation, projects likely to have significant effects on the environment because of their nature, size and location are made subject to a requirement for development consent and an assessment of their effects.

The environmental impact assessment must identify, describe and assess the direct and indirect effects of a project on a number of environmental factors (population and human health, biodiversity, land, soil, water, air, climate, landscape, material assets and cultural heritage), as well as the interaction between these various elements. The developer of a project must provide to the authority responsible for approving it a report that must include at least a minimum level of information prescribed by the Directive. This includes a description of the project such as location, design and size as well as features of the project and/or measures to avoid, prevent, reduce or offset significant adverse effects. The developer

must also describe the likely significant effects of the project on the environment and the reasonable alternatives relevant to the project which were considered, as well as the main reasons for this choice and a non-technical summary of this information.

With due regard for rules and practices regarding commercial and industrial secrecy, this information must be made available to interested parties sufficiently early in the decision-making process. Interested parties include:

- the competent environmental authorities likely to be consulted on the authorisation of the project, as well as local and regional authorities;
- the public, by appropriate means, including electronically. The public must also be informed on the procedure for approving the project, details of the authority responsible for approving or rejecting the project and the possibility of public participation in the approval procedure;
- other Member States, if the project is likely to have transboundary effects. Other Member States must in turn make this information available to interested parties on its territory in order to enable them to express an opinion.



Reasonable time-limits must be provided so that all the interested parties may participate in the environmental decision-making procedures and express their opinions. These opinions and the information gathered pursuant to consultations must be taken into account in the approval procedure.

At the end of the procedure, and after examination of the results of the public consultation, the competent authority comes to a decision based on all the information gathered in the process, either authorising, modifying or rejecting the project. Certain information on the approval or rejection of the project and any conditions associated with it, as well as the principal arguments upon which the decision was based, must be made available to the public and transmitted to other concerned Member States. In accordance with national legislation, Member States must ensure that the interested parties can challenge the final decision taken by the competent authority in court.

Benefits and added-value from conducting environmental impact assessments

The EIA Directive is the one of the most cross-cutting pieces of environmental legislation. The Directive has ensured that basic principles for the assessment of numerous project categories apply across the EU. In addition, the application and effectiveness of the EIA Directive shows that its implementation has created specific national dynamics. Member States have often built on the minimum requirements of the Directive and gone beyond them, by introducing more stringent provisions to ensure better environmental protection and more transparency.

Even though quantification and monetization are generally not easy, there is a widespread agreement that the benefits of environmental assessments outweigh the costs. The main advantages resulting from environmental impact assessments of projects can be summarized as follows:

- It ensures a level playing field while at the same time



reducing costs and improving the quality of decision-making. A majority of practitioners agrees that EIA contributes to the quality of the decision making process. A smooth and streamlined permission process is also key to the timely implementation of projects.

- Generates genuine environmental benefits – the application of environmental assessments leads to improvements in environmental quality (with resulting avoided damage to local populations, human health, nature, etc.). The reduced negative environmental impacts in many cases are due to redesign and modification of projects, mitigation of impacts or the choice of more environmentally benign options.
- Improves project design - the possibility to assess various reasonable alternatives can be seen as the main added value of the EIA process. It provides a comparison of options in terms of location and technologies, upon which to make the final decision and, if necessary, to adjust the project in its early development stages in order to minimise environmental impacts.
- It maximizes transparency and social acceptance of projects. Consultations with the public, environmental, local and regional authorities are key features of the EIA procedure. While some project promoters do not want to actively engage in such consultations, by making the information on the likely significant effects widely available, environmental assessments can help allay fears created by a lack of information on proposed projects. Making information available ensures less resistance due to better stakeholder involvement and information disclosure and can help avoid (or minimize) litigation.



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