

Report of the European Union for 2012-2015 on the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (1991 Espoo Convention)

The European Union recalls its previous replies provided to the Espoo Secretariat in 2003¹, 2006², 2009³ and 2012, regarding its competence to answer the questionnaires issued for the review of the Espoo Convention implementation. These responses remain valid and serve as basis of the European Union's reply to the current questionnaire, subject of the below information.

1. Amendment of the EIA Directive (Directive 2011/92/EU)

The initial EIA Directive of 1985⁴ and its three amendments were codified by Directive 2011/92/EU⁵ of 13 December 2011. Directive 2011/92/EU was amended on 15 May 2014 by Directive 2014/52/EU⁶. The amendment entered into force on 16 May 2014. However, Member States are granted three year transposition period and have to apply the new provisions as from 16 May 2017. Member States have to communicate to the European Commission the national legislation transposing the amendments in their national legal orders.

The amended EIA Directive provides for better protection of environment while reducing administrative burdens stemming from EU law, in line with the Commission's drive for smarter regulation. The Directive will also enhance business certainty where public and private investments are concerned. The new approach focuses on risks and challenges that have emerged since the original rules came into force. This means more attention to areas such as resource efficiency, climate change, and disaster prevention, which are now better reflected in the assessment process.

The main amendments are as follows:

- Member States now have a mandate to simplify their various environmental assessment procedures.

Timeframes are introduced for the different stages of environmental assessments: screening decisions should be taken within 90 days (although extensions are possible in exceptional cases) and public consultations should last at least 30 days. Member States also need to ensure that final decisions are taken within reasonable period of time.

- The screening procedure to determine whether or not an EIA is required has been simplified. Decisions must be duly motivated in the light of the updated screening criteria.

¹ <http://www.unece.org/env/eia/documents/Review%202003-2005/Questionnaire%20-%202003%20-%20EC.pdf>

² <http://www.unece.org/env/eia/documents/Review%202003-2005/Questionnaire%20-%202003-2005%20-%20EU.pdf> and <http://www.unece.org/env/eia/documents/Review%202003-2005/Questionnaire%20-%202003-2005%20-%20EU%20-%20annex.pdf>

³ http://www.unece.org/fileadmin/DAM/env/eia/documents/Review_2006_2009/Questionnaire2006_09_EU_reply_en.pdf

⁴ Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, OJ L 175 05.07/85, amended by Council Directive 97/11/EC, OJ L 73, 14.03.97, amended by European Parliament and Council Directive 2003/35/EC, OJ L 156, 25.06.03 [<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1410342705813&uri=CELEX:01985L0337-20090625>], repealed by Directive 2011/92/EU.

⁵ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification), OJ L26, 28.1.2012, p.1 [<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0092>].

⁶ 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 [<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0052>].

- EIA reports are to be made clearer for the public, especially as regards assessments of the current state of the environment and the consideration of alternatives to the project being proposed.
- The quality and the content of the reports will be improved. Competent authorities will also need to prove their objectivity, so as to avoid conflicts of interest.
- Concerning the transboundary EIA procedure (Article 7 of the EIA Directive), the amendment provides that the transboundary consultations may be conducted through an appropriate joint body. The detailed arrangements for implementing the transboundary EIA procedure, including the establishment of time-frames for consultations, shall be determined by the Member States concerned, on the basis of the arrangements and timeframes referred to in Article 6(5) to (7) of the EIA Directive, and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures for the project.
- The grounds for development consent decisions must be clear and made more transparent for the public. Member States may also set timeframes for the validity of any reasoned conclusions or opinions issued as part of the EIA procedure.
- If projects do entail significant adverse effects on the environment, developers will be obliged to take steps to avoid, prevent or reduce such effects. These projects will need to be monitored using procedures determined by the Member States. Existing monitoring arrangements may be used to avoid duplication of monitoring and unnecessary costs.

Against this background and the EU commitment undertaken at the time of signing and ratifying the Espoo Convention that the EIA Directive (Council Directive 85/337/EEC, repealed by Directive 2011/92/EU) covers the field of the Convention, EU informed the UN Treaty Depository about Directive 2014/52/EU amending Directive 2011/92/EU.

2. EIA guidance documents (2013-2015)

- Interpretation of definitions of project categories of annex I and II of the EIA Directive (May 2015)⁷, available in EN, FR, DE;
- Guidance on the Application of the Environmental Impact Assessment Procedure for Large-scale transboundary Project (2013)⁸;
- Environmental Impact Assessment of Projects – Rulings of the Court of Justice (2013)⁹;
- Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs)¹⁰(2013);
- Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment¹¹(2013).

⁷ http://ec.europa.eu/environment/eia/pdf/cover_2015_en.pdf

⁸ <http://ec.europa.eu/environment/eia/pdf/Transboundry%20EIA%20Guide.pdf>

⁹ http://ec.europa.eu/environment/eia/pdf/eia_case_law.pdf

¹⁰ http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf

¹¹ <http://ec.europa.eu/environment/eia/pdf/EIA%20Guidance.pdf>