



SUMMARY

of a Justice and Environment survey on the implementation of the new EIA rules

Justice and Environment 2021

Association Justice and Environment, z.s. is a European network of environmental law organisations that strives to protect the environment and nature by improving environmental legislation and enhancing the enforcement thereof.

J&E constantly monitors the effective implementation of certain provisions of the EIA Directive. In 2020 and 2021 the survey of Justice and Environment focused on how the transposition of the amended provisions of the EIA Directive impacted on the national EIAs.

Introduction

Projects that will likely have significant impact on the environment have to undergo an environmental impact assessment (EIA) procedure as required by the EU environmental legislation. During an EIA procedure, the developer of the project and the competent authorities identify, consider, and evaluate the environmental implications of projects before authorisation. Directive 2011/92/EU (the EIA Directive)¹ provides the legal framework for carrying out the EIA of public and private projects. Two different types of projects fall under the scope of the EIA Directive: in case of the activities listed in Annex I to the EIA Directive the EIA procedure is obligatory. Further, the significance of the likely environmental impacts of projects set out in Annex II to this Directive is evaluated in screening procedure. In case of the competent authorities determine that the likely impacts of the project may be significant, the screening is followed by a full EIA proceeding.

By adopting Directive 2014/52/EU² relevant amendments were made to the EIA procedure. The amendments of the EIA Directive are aimed at simplifying the rules for assessing the projects' potential effects on the environment, reducing the administrative burden and require Member States to sanction any infringements of the underlying rules.

Main changes in the EIA Directive

The EIA Directive's requirements on screening provide now a more detailed level of information and analysis, at an earlier stage of realization of a project than before the amendments. During the screening procedure, the information that the developer must provide is to be specified. By providing these details, the developer must focus on the key aspects that allow the competent

¹ 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, available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32011L0092>

² 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, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0052>

authority to make its determination and the authorities are also required to provide a more detailed explanation of their screening decisions.

To improve the quality of an EIA and to simplify the procedure, the competent authority must, if requested by the developer, issue an opinion on the scope and level of detail of the environmental information to be submitted in the form of an EIA report (scoping). The scoping process is optional for developers, but the EIA Report must be based on the scoping opinion, if it was requested. The new rules on scoping contain clearer requirements on the assessment of the projects' impact on biodiversity, climate change, disaster risks and the landscape.

The likely environmental impacts projects are described and evaluated in the EIA Report. The EIA Directive obliges decision-makers to consider whether the EIA Report is up to date when making their decision on granting a development consent. Under the EIA Directive decision-makers also have the power to require further information from the developer. Under the new rules, experts involved in the preparation of EIA report must be qualified and competent. Sufficient expertise, in the relevant field of the project concerned, is required to ensure that the information provided by the developer is complete and of a high level of quality.

Precautionary actions need to be taken for certain projects that - because of their vulnerability to major accidents or natural disasters - are likely to have significant adverse effects on the environment. For such projects, at least the following factors are to be considered: their exposure and resilience, the risk of accidents and natural disasters occurring and the implications of the likelihood of significant adverse effects on the environment. Where a project entails significant adverse effects on the environment, the developer will be obliged to take the steps necessary to avoid, prevent or reduce negative effects.

If development consent is granted for a project, the relevant decision makers must also consider, whether any appropriate measures to monitor the significant adverse environmental effects of the project are necessary or appropriate.

The duration of EIAs is expected to be more predictable due to the timeframes introduced by the new rules for the different stages of the procedure. The period for consulting the public concerned on the EIA report must be at least 30 days. Additionally, authorities must provide screening decisions within 90 days of receipt of the necessary information from the developer. The deadline can be extended in exceptional circumstances where the nature, complexity, location, or size of the project so requires.

To enhance public access to information, timely information shall also be accessible in electronic format. The competent authority is required to substantiate its decision when it grants development consent to a project and must also indicate that it has considered the results of the consultations carried out and the relevant information it has gathered. Member States must establish at least a central portal or points of access, at the appropriate administrative level, that enables the public to access information in an easily and effectively manner.

The amended EIA Directive also requires functional separation of the roles of the developer and the decision-maker to avoid conflict of interest between these two roles.

Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment lays down rules requiring developers of certain projects to carry out a thorough assessment of the impact their planned projects might have on the environment before it receives consent. Emerging challenges such as resource efficiency and sustainability, biodiversity protection, climate change and risks of accidents and disasters have become more important in policy making, leading the EU to strengthen its legislation on environmental impact assessment procedure.

Directive 2014/52/EU aims to strengthen EIA effectiveness by improving its quality, enhancing its efficiency through closer synergies with other EU laws, avoiding conflicts of interest and simplifying procedures. Projects that could have a significant impact on the environment because of their nature, size or location must receive development consent and comprehensive prior assessment.

The environmental impact assessment report shall provide details of the project's site, design, size and other relevant features and the measures proposed to avoid, prevent or offset significant adverse effects. The information covers the potential direct and indirect impact on the local population, human health, biodiversity, land, soil, water, air, climate, material assets, cultural heritage, and the landscape. Furthermore, the developer shall provide details of reasonable alternatives. To ensure effective public participation, the competent authorities shall provide information on the project and the proceeding, in due time, electronically, or by other appropriate means. The authority shall decide within a reasonable timeframe whether to grant authorisation to the project and the decision must be reasoned and published. According to the EIA Directive, as amended, Member States are entitled to provide more stringent conditions and determine penalties for any infringements of the transposing provisions.

Following Directive 2011/92/EU, developers must prepare an environmental impact assessment report. This provides details of the project's site, design, size and other relevant features and the measures proposed to avoid, prevent or offset significant adverse effects. The information covers the potential direct and indirect impact on the local population, human health, biodiversity, land, soil, water, air, climate, material assets, cultural heritage and the landscape. Details of reasonable alternatives must be proposed. To ensure effective public participation, information must be provided as early as possible. This can be done electronically, by public notices or bill posting, or via local newspapers.

Authorities must decide within a reasonable time whether to authorise the project or not. They must make available to the public and environmental, local and regional bodies the content of a positive decision, including the main reasons for their approval and any environmental or other conditions they attach. If they refuse development consent, they should explain why. EU countries may lay down more stringent conditions and determine penalties for any infringements.

The survey and its results

In the survey covering 6 Member States (Austria, Bulgaria, Croatia, Estonia, Hungary, and Slovenia), the national legal experts of J&E firstly determined if the new or amended requirement of the EIA has been transposed into national legislation. If the transposition has been carried out, and there is already practical experience on the application of that national provision, the expert - based on his/her knowledge - indicated if and how the implementation affected on the domestic EIA proceedings. In case of BG, although the amended provisions of the EIA Directive have been mostly transposed into national law, due to the lack of practical information, the impact of the legislative change could not be evaluated.

The Directive's provisions which mainly led to positive changes in the national EIA practice are linked to:

- clarification of 'development' consent in Articles 2(1) and (2) - in HR and SI;
- broadened scope of EIA to cover new factors in Articles 3(1) in HR, and Article 3(2) in HR and HU;
- Article 4(3) on setting thresholds or criteria to determine when projects need not undergo a screening procedure - in SI
- Article 4(5) requiring the consideration of the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation - in HU;
- Article 5(1) details of content of the EIA Report - in HR and HU
- Article 6(1) and 6(6) on electronic information to ensure more effective public participation - in AT and HU
- Article 9a requiring the objectivity of authorities and to avoid conflict of interest - in HR
- Annex III providing the criteria to determine whether the projects listed in annex ii should be subject to an environmental impact assessment - in HR and HU
- Annex IV setting out the information for the environmental impact assessment report - in HR and HU

Where the national EIA regime already provided a quality control mechanism as required by Article 5(3) of the EIA Directive, administrative procedural and monitoring rules in line with Article 8a, or sanctions to the infringement of the EIA rules (e.g. in AT, HR, HU and SI), the transposing provisions did not impact the EIA proceedings significantly.

The impact of the amended EIA rule was considered rather neutral in the following cases:

- definition of environmental impact assessment in Article 1(2)(g) - e.g. in HR and HU
- integrated procedure with the development consent proceeding and one-stop shop procedure for other environmental assessments in Article 2(3) - e.g. in AT, HR, HU and SI
- Article 3(1) on the scope of the EIA - in AT and HU
- Article 4(3) setting thresholds or criteria to determine when projects need not undergo a screening procedure - in AT, HR, HU
- requirement on providing information in screening procedure in Article 4(4) - in AT, HU
- requirement on considering the results of preliminary environmental assessments in Article 4(5) - in AT and SI
- determination of the time limit for screening in Article 4(6) - e.g. in AT and HU
- Article 5(2) and (3) on scoping and quality control mechanisms - in AT, HR, HU, and SI
- Article 6(1) on the consultation with authorities concerned - in AT, HU, and SI
- Article 6(6) on reasonable timeframes - in AT and HU
- Annex IIA listing the information to be provided by the developer in screening procedure - in HU and SI

Adverse impacts on the national EIA practice were mentioned in the case of

- Article 1(3) on the exemption from EIA - in HR
- Article 2(3) on one-stop shop for assessments arising from the EIA and the nature protection Directives - in EE
- the possibility to extend the administrative time limit for screening procedure in the second sub-paragraph of Article 4(6) - HR
- Annex IIA listing the information to be provided by the developer and Annex IV on the information for the environmental impact assessment report - in AT

Experiences differ where the national EIA regime already provided synergies with other environmental assessments. The transposition did not significantly change the implementation in AT and HU. Whilst, in EE, the transposition of Article 2(3) of the EIA Directive was considered as having negative impact in practice.

Article 5(1) of the Directive as amended clarifies the content of the EIA report. The impacts indicated by the countries involved show a diverse picture in this regard. The expert of AT indicated that this provision impacted on national EIAs negatively as it can be argued that the addition of further required information has led to less detail in EIA reports overall. On the other

hand, in the EIAs' practice of HR and HU, the more detailed provisions resulted in positive change.

As mentioned above, **few provisions of the Directive have both positive and negative impact on national EIAs.** For instance, in HU, the transposing provisions of Annex IV pt. 5(e) - the cumulation of effects with other existing and/or approved projects or Annex IV pt. 5(f) the impact of the project on climate and the vulnerability of the project to climate change improved the national EIAs. On the other hand, the expert of AT argued that - by transposing Article 5(1), Annexes II.A and IV of the Directive, the addition of further required information in the national legislation led to less detail in EIA reports overall.

OVERVIEW TABLE OF THE QUESTIONNAIRES

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| <i>The Directive's provision - as amended - is not transposed or the option provided by the Directive has not been used.</i> |
| <i>No practical experience on the implementation of the transposing provision.</i> |
| <i>The new/amended national provision has a NEGATIVE impact on national EIAs.</i> |
| <i>The new/amended provision has NOT SIGNIFICANTLY INFLUENCED national EIA proceedings.</i> |
| <i>The new/amended provision has a POSITIVE impact on EIA proceedings.</i> |

| Article | Text | AT | BG | EE | HR | HU | SI | Results |
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| 1(2)(g) | For the purposes of this Directive, the following definitions shall apply: "environmental impact assessment" means a process consisting of: (i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2); (ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7; (iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7; (iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and (v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a. | | | | | | | Article 1(2)(g) of Directive 2014/52/EU laid down the new definition of environmental impact assessment to make clear the steps of the EIA procedure. AT and EE have not transposed this provision of the Directive. Whilst the transposition in HR and in HU did not lead to significant changes in practice. |
| 1(3) | Member States may decide, on a case-by-case basis and if so provided under national law, not to apply this Directive to projects, or parts of projects, having defence as their sole purpose, or to projects having the response to civil emergencies as their sole purpose , if they deem that such application would have an adverse effect on those purposes. | | | | | | | This paragraph clarifies the existing exemption based on the case-law of CJEU (C-435/97). According to the HR questionnaire, the application of this Directive's provision affected on national EIA's rather adversely. |
| 2(1) | Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4. | | | | | | | Unifying the wording of the Directive, "development" was added to "consent" in line with the definition under Article 1(2)(c). |

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| | | | | | | | | | This provision had a positive impact on the EIA regime in HR, but no change was perceived by AT, HU and SI. |
| 2(2) | The environmental impact assessment may be integrated into the existing procedures for development consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive. | | | | | | | | This provision had a positive impact on the EIA regime in HR and SI but no change was perceived by AT and HU. |
| 2(3) | In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC and/or Directive 2009/147/EC of the European Parliament and the Council, Member States shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for. | | | | | | | | This new provision introduces one-stop shop for assessments arising from the EIA and the nature protection Directives. The questionnaire from EE indicated that the transposition of this requirement influenced the EIA proceedings negatively. In other countries (AT, HR, HU, SI) this provision did not result in a significant change. |
| | In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union legislation other than the Directives listed in the first subparagraph, Member States may provide for coordinated and/or joint procedures. | | | | | | | | This is a new provision introducing one-stop shop for assessments arising from the EIA and other Union legislation. The questionnaire of EE indicated that the transposition of this requirement influenced the EIA proceedings negatively. In other countries (AT, HR, HU, SI) this provision did not result in a significant change. |
| | Under the coordinated procedure referred to in the first and second subparagraphs, Member States shall endeavour to coordinate the various individual assessments of the environmental impact of a particular project, required by the relevant Union legislation, by designating an authority for this purpose, without prejudice to any provisions to the contrary contained in other relevant Union legislation. | | | | | | | | This is a new provision introducing one-stop shop for assessments arising from the EIA and other Union legislation. In the |

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| | | | | | | | | implementation in AT and SI, nor negative neither positive impact was perceived. |
| | Under the joint procedure referred to in the first and second subparagraphs, Member States shall endeavour to provide for a single assessment of the environmental impact of a particular project required by the relevant Union legislation, without prejudice to any provisions to the contrary contained in other relevant Union legislation. | | | | | | | This is a new provision introducing one-stop shop for assessments arising from the EIA and other Union legislation. In the implementation in AT, HU and SI, nor negative neither positive impact was perceived. |
| 2(4) | Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project from the provisions laid down in this Directive, where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met: | | | | | | | The application of this paragraph is optional. The questionnaire of HU indicated that the EIA law excludes certain activities from its scope of application, however, the conditions stipulated by the Directive are not provided. |
| 2(5) | Without prejudice to Article 7, in cases where a project is adopted by a specific act of national legislation, Member States may exempt that project from the provisions relating to public consultation laid down in this Directive, provided the objectives of this Directive are met. | | | | | | | The application of this paragraph is optional, and the countries covered by the survey have not chosen to use that. |
| 3(1) | The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors: (a) population and human health; (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC; (c) land, soil, water, air and climate; (d) material assets, cultural heritage and the landscape; (e) the interaction between the factors referred to in points (a) to (d). | | | | | | | Experts for AT and HU did not perceive significant change in this regard, whilst in HR, the broadened scope of the EIA covering new factors (e.g. biodiversity, land) resulted in a positive change in practice. |
| 3(2) | The effects referred to in paragraph 1 on the factors set out therein shall include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned. | | | | | | | The scope of the EIA is broadened to cover also risks of major accidents/disasters. Both in HR and HU, this amendment improved the national EIA regime. |

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| 4(3) | Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. | | | | | | Experts for AT, HR and HU did not perceive significant change in this regard. |
| | Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5. | | | | | | When establishing the criteria and/or thresholds in question, the MSs must consider all the relevant criteria listed in Annex III to the EIA Directive. In this respect, SI indicated that the national EIA have been improved by this amendment. |
| 4(4) | Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to <u>avoid</u> or <u>prevent</u> what might otherwise have been significant adverse effects on the environment. | | | | | | This new paragraph introduces Annex II.A to the EIA Directive on the information to be provided by the developer for projects listed in Annex II. Experts for AT and HU did not perceive significant change in this regard. |
| 4(5) | The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and: (a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or (b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to <u>avoid</u> or <u>prevent</u> what might otherwise have been significant adverse effects on the environment. | | | | | | This new paragraph clarifies the information that must be considered by the competent authority to make its determination on whether the project would have significant effects on the environment and streamlines the screening procedure. In HU, the survey indicated a positive change in EIA practice, whilst in AT, and SI, no significant change was perceived. |
| 4(6) | Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required pursuant to paragraph 4. | | | | | | This new provision sets maximum time frame for concluding a screening. For instance, in AT and HU, the national provisions already set tighter timeframe for screening, |

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| | | | | | | | | thus, no significant change was indicated. |
| | In exceptional cases, for instance relating to the nature, complexity, location or size of the project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected. | | | | | | | This optional provision of the Directive was transposed into the Croatian law and its impact on the national EIA regime was regarded as adverse. |
| 5(1) | Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report. The information to be provided by the developer shall include at least: (a) a description of the project comprising information on the site, design, size and other relevant features of the project; (b) a description of the likely significant effects of the project on the environment; (c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment; (d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment; (e) a non-technical summary of the information referred to in points (a) to (d); and (f) any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected. | | | | | | | This new provision clarifies the content of the EIA report. The impacts indicated by the countries involved show a diverse picture in this regard. The expert of AT indicated that this provision impacted on national EIAs negatively as it can be argued that the addition of further required information has led to less detail in EIA reports overall. On the other hand, in the EIAs of HR and HU, the more detailed provisions resulted in positive change. |
| | Where an opinion is issued pursuant to paragraph 2, the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. | | | | | | | This new sub-paragraph further clarifies the content of the EIA report. This provision did not result in relevant changes in national EIAs. |
| | The developer shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report. | | | | | | | The results of other relevant assessments under EU legislation may include SEA, assessments under HD or WFD. The experts of AT and SI marked in the questionnaire that no relevant changes were |

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| | | | | | | | | perceived in relation to the transposition of this provision. In addition, the HU questionnaire indicates that this is a positive change as the transposing provision also covers the plans and/or programmes subject to SEA procedure. |
| 5(2) | Where requested by the developer, the competent authority, taking into account the information provided by the developer in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment, shall issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report in accordance with paragraph 1 of this Article. The competent authority shall consult the authorities referred to in Article 6(1) before it gives its opinion. | | | | | | | This new provision clarifies the scoping stage. The new/amended provision has not significantly influenced national EIA proceedings in AT, HR, HU, and SI. |
| 5(3) | In order to ensure the completeness and quality of the environmental impact assessment report: (a) the developer shall ensure that the environmental impact assessment report is prepared by competent experts; (b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report; and (c) where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment. | | | | | | | This new provision introduces a quality control mechanism which covers a cumulative obligation. |
| 6(1) | Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent, taking into account, where appropriate, the cases referred to in Article 8a(3). To that end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States. | | | | | | | This provision recognizes any local and regional authority likely to be concerned by the project. The transposition has a positive impact on the EIAs in HR in practice. |
| 6(2) | In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed <u>electronically</u> and by public notices or by other appropriate means, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided: (a) the request for development consent; (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies; (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions; (d) the nature of possible decisions or, where there is one, the draft decision; (e) an indication of the availability of the information gathered pursuant to Article 5; | | | | | | | "Electronically" was added to the wording of this paragraph. This requirement improved the EIA practice in AT and HU. |

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| | (f) an indication of the times and places at which, and the means by which, the relevant information will be made available; (g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article. | | | | | | | |
| 6(5) | The detailed arrangements for informing the public, for example by bill posting within a certain radius or publication in local newspapers, and for consulting the public concerned, for example by written submissions or by way of a public inquiry, shall be determined by the Member States. Member States shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level. | | | | | | | The second sentence is a new provision which concerns the implementation of the Directive with regard to public participation in the decision-making process. This requirement improved the EIA practice in AT and HU. |
| 6(6) | Reasonable time-frames for the different phases shall be provided for, allowing sufficient time for: (a) informing the authorities referred to in paragraph 1 and the public; and (b) the authorities referred to in paragraph 1 and the public concerned to prepare and participate effectively in the environmental decision-making, subject to the provisions of this Article. | | | | | | | This new paragraph sets reasonable time frames for informing the authorities and the public and for participation of the public concerned and the authorities in the decision-making process. Minimum and maximum timeframes ensure legal certainty. As the experts of AT and HU indicated, timeframes had already been in place, thus, the new provision has not significantly influenced national EIA proceedings. |
| 6(7) | The time-frames for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) shall not be shorter than 30 days. | | | | | | | The new provision sets minimum time frame for public consultations. As the experts indicated, timeframes had already been in place, thus, the new provision has not significantly influenced national EIA proceedings. |
| 7(4) | The Member States concerned shall enter into consultations regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time- frame for the duration of the consultation period. | | | | | | | The transposing provision has not significantly influenced national EIA proceedings in HU. |

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| | Such consultations may be conducted through an appropriate joint body. | | | | | | |
| 7(5) | The detailed arrangements for implementing paragraphs 1 to 4 of this Article, including the establishment of time-frames for consultations, shall be determined by the Member States concerned, on the basis of the arrangements and time-frames referred to in Article 6(5) to (7), 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 referred to in Article 2(2) for the project. | | | | | | This paragraph was amended to reflect changes to Art. 6(5) to (7). The transposing provision has not significantly influenced national EIA proceedings in HU. |
| 8 | The results of consultations and the information gathered pursuant to Articles 5 to 7 shall be duly taken into account in the development consent procedure. | | | | | | "Duly" has been added to the text of the Directive's provision. |
| 8a(1) | The decision to grant development consent shall incorporate at least the following information: (a) the reasoned conclusion referred to in Article 1(2)(g)(iv); (b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures . | | | | | | This new provision concerns the content of the positive development consent decision. The transposing provision has not significantly influenced national EIA proceedings in AT and HU. |
| 8a(2) | The decision to refuse development consent shall state the main reasons for the refusal. | | | | | | This new paragraph concerns the content of a negative development consent decision. The transposing provision has not significantly influenced national EIA proceedings. |
| 8a(3) | In the event Member States make use of the procedures referred to in Article 2(2) other than the procedures for development consent, the requirements of paragraphs 1 and 2 of this Article, as appropriate, shall be deemed to be fulfilled when any decision issued in the context of those procedures contains the information referred to in those paragraphs and there are mechanisms in place which enable the fulfilment of the requirements of paragraph 6 of this Article. | | | | | | The application of this paragraph is optional. The transposing provision has not significantly influenced national EIA proceedings in HU. |
| 8a(4) | In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment. | | | | | | This new sub-paragraph concerns monitoring needs. The transposing provision has not significantly influenced national EIA proceedings in AT and HR. |

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| | The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment. | | | | | | | The transposing provision has not significantly influenced national EIA proceedings in AT and HR. |
| | Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring. | | | | | | | The application of this subparagraph is optional. |
| 8a(5) | Member States shall ensure that the competent authority takes any of the decisions referred to in paragraphs 1 to 3 within a reasonable period of time. | | | | | | | The new provision lays down reasonable time frames for taking a development consent decision. The transposing provision has not significantly influenced national EIA proceedings in AT, HU, and SI. |
| 8a(6) | The competent authority shall be satisfied that the reasoned conclusion referred to in Article 1(2)(g)(iv), or any of the decisions referred to in paragraph 3 of this Article, is still up to date when taking a decision to grant development consent. | | | | | | | This is a new paragraph concerning the validity of EIA decisions. The transposing provision has not significantly influenced national EIA proceedings in AT, HR, HU. |
| | To that effect, Member States may set time-frames for the validity of the reasoned conclusion referred to in Article 1(2)(g)(iv) or any of the decisions referred to in paragraph 3 of this Article. | | | | | | | The application of this provision is optional. The transposing provision has positively influenced the national EIA proceedings in HR. |
| 9(1) | When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall promptly inform the public and the authorities referred to in Article 6(1) thereof , in accordance with the national procedures, and shall ensure that the following information is available to the public and to the authorities referred to in Article 6(1), taking into account, where appropriate, the cases referred to in Article 8a(3): (a) the content of the decision and any conditions attached thereto as referred to in Article 8a(1) and (2); (b) the main reasons and considerations on which the decision is based, including information about the public participation process. This also includes the summary of the results of the consultations and the information gathered pursuant to Articles 5 to 7 and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Member State referred to in Article 7. | | | | | | | This provision of the EIA Directive has been substantially revised, and "promptly" is added to the text. The transposing provision has not significantly influenced national EIA proceedings in HU and SI. |

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| 9a | Member States shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest. Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive. | | | | | | | MSs must ensure appropriate separation with the administrative organisation. The transposing provision has positively influenced the national EIA proceedings in HR. |
| 10a | Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive. | | | | | | | This provision introduces the obligation of MSs to impose sanctions on the infringement of the Directive. The transposing provision has not significantly influenced national EIA proceedings in AT, HU, and SI. |
| Annex II.A | Information referred to in article 4(4) (Information to be provided by the developer on the projects listed in annex II) | | | | | | | This Annex has been newly inserted by Directive 2014/52/EU. The questionnaire of AT indicated that the new/amended national provision has a negative impact on national EIAs, as the addition of further required information has led to the developers providing less detailed information overall. |
| | 1. A description of the project, including in particular: (a) a description of the physical characteristics of the whole project and, where relevant, of demolition works; (b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected. | | | | | | | |
| | 2. A description of the aspects of the environment likely to be significantly affected by the project. | | | | | | | |
| | 3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from: (a) the expected residues and emissions and the production of waste, where relevant; (b) the use of natural resources, in particular soil, land, water and biodiversity. | | | | | | | |
| | 4. The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3. | | | | | | | |
| Annex III | Selection criteria referred to in article 4(3) (Criteria to determine whether the projects listed in annex ii should be subject to an environmental impact assessment) | | | | | | | Directive 2014/52/EU made substantial changes to the screening selection |

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| | | | | | | | criteria. The more detailed aspects in the transposing legislation improved the EIAs in HU in practice. |
| | <p>1. Characteristics of projects</p> <p>The characteristics of projects must be considered, with particular regard to:</p> <p>(a) the size and design of the whole project;</p> <p>(b) the cumulation with other existing and/or approved projects;</p> <p>(c) the use of natural resources, in particular land, soil, water and biodiversity;</p> <p>(d) the production of waste;</p> <p>(e) pollution and nuisances;</p> <p>(f) the risk of major accidents and/ or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;</p> <p>(g) the risks to human health (for example due to water contamination or air pollution).</p> | | | | | | The more detailed aspects in the transposing legislation improved the EIAs in HR and in HU in practice. |
| | <p>2. Location of projects</p> <p>The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to:</p> <p>(a) the existing and approved land use;</p> <p>(b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;</p> <p>(c) the absorption capacity of the natural environment, paying particular attention to the following areas:</p> <p>(i) wetlands, riparian areas, river mouths;</p> <p>(ii) coastal zones and the marine environment;</p> <p>(iii) mountain and forest areas;</p> <p>(iv) nature reserves and parks;</p> <p>(v) areas classified or protected under national legislation; Natura 2000 areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;</p> <p>(vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;</p> <p>(vii) densely populated areas;</p> <p>(viii) landscapes and sites of historical, cultural or archaeological significance.</p> | | | | | | The more detailed aspects in the transposing legislation improved the EIAs in HR and in HU in practice. |
| | <p>3. Type and characteristics of the potential impact</p> <p>The likely significant effects of projects on the environment must be considered in relation to criteria set out in points 1 and 2 of this Annex, with regard to the impact of the project on the factors specified in Article 3(1), taking into account:</p> <p>(a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);</p> <p>(b) the nature of the impact;</p> <p>(c) the transboundary nature of the impact;</p> <p>(d) the intensity and complexity of the impact;</p> <p>(e) the probability of the impact;</p> <p>(f) the expected onset, duration, frequency and reversibility of the impact;</p> <p>(g) the cumulation of the impact with the impact of other existing and/or approved projects;</p> <p>(h) the possibility of effectively reducing the impact.</p> | | | | | | The more detailed aspects in the transposing legislation improved the EIAs in HR in practice. |

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| Annex IV | Information referred to in article 5(1) (Information for the environmental impact assessment report) | | | | | | Information to be provided for the EIA report has been also substantially amended in 2014. The transposing provision has positively influenced the national EIA proceedings in HU. |
| | 1. Description of the project, including in particular: (a) a description of the location of the project; (b) a description of the physical characteristics of the whole project, including, where relevant, requisite demolition works , and the land-use requirements during the construction and operational phases; (c) a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used; (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases. | | | | | | The more detailed aspects in the transposing legislation improved the EIAs in HR and HU in practice. However, it has an adverse effect on EIAs in AT. |
| | 2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics , and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects. | | | | | | |
| | 3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge. | | | | | | |
| | 4. A description of the factors specified in Article 3(1) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape. | | | | | | The more detailed aspects in the transposing legislation improved the EIAs in HU in practice. However, it has an adverse effect on EIAs in AT. |
| | 5. A description of the likely significant effects of the project on the environment resulting from, inter alia: (a) the construction and existence of the project, including, where relevant, demolition works; (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources; (c) the emission of pollutants, noise, vibration, light, heat and radiation , the creation of nuisances, and the disposal and recovery of waste; (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters); | | | | | | The more detailed aspects in the transposing legislation improved the EIAs in HU in practice. However, it has an adverse effect on EIAs in AT. |

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| | <p>(e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;</p> <p>(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;</p> <p>(g) the technologies and the substances used.</p> <p>The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.</p> | | | | | | |
| | <p>6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.</p> | | | | | | |
| | <p>7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.</p> | | | | | | |
| | <p>8. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.</p> | | | | | | <p>The more detailed aspects in the transposing legislation have an adverse effect on EIAs in AT.</p> |
| | <p>9. A non-technical summary of the information provided under points 1 to 8.</p> | | | | | | <p>The more detailed aspects in the transposing legislation improved the EIAs in HR in practice.</p> |
| | <p>10. A reference list detailing the sources used for the descriptions and assessments included in the report.</p> | | | | | | <p>The more detailed aspects in the transposing legislation improved the EIAs in HR in practice.</p> |

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The Work Plan of J&E has received funding from the European Union through its LIFE+ funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.