Survey report

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European Network of Environmental Law Organizations

Justice and Environment survey on Article 2(3) of the EIA Directive on the joint or coordinated environmental assessments and on the effectiveness of ex post monitoring of the assessments' protection/mitigation measures

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1. Introduction

The legal institution of EIA has run an extraordinary carrier in the world's environmental laws since the 1970 National Environmental Protection Act (NEPA) of the USA and since its appearance in the EU law in 1985. One of the most outstanding signals of its appreciation is that several versions, alterations were developed within environmental law and in many other fields of laws, such as water management, protection of nature and cultural heritage, industrial administration. "The amended Environmental Impact Assessment (EIA) Directive[1] aims to improve environmental protection by *integrating* environmental considerations in the decision-making process for the approval of public and private projects that require assessment of possible effects on the environment."[2]

The 2014 amendment of the European EIA Directive aimed at enhancing its effectiveness in two basic ways: by streamlining the multiple environmental assessment procedures and by reinforcing the implementation and follow up stages of the EIA decisions.

As the Commissions 2016 Guidance on the implementation of the 2014 amendments points out, multiple statutory requirements and parallel assessments for a single project can lead to delays, discrepancies and administrative uncertainty in their application. Administrative and implementation costs may also increase, and there may be discrepancies between the assessments and consultations linked with a given project.

In our views there are three factors in streamlining the EIA procedures in short:

- saving time and resources for the investors
- integrating the examination of environmental effects and
- resulting in a more complicated procedure that raises challenges for the authorities, experts and especially for the members and organisations of the public.

We note that the third factor gets less attention, although these disadvantages are also part of the picture. Large, merged procedures represent a risk not only for the authorities, experts and laymen participants, but for the investors, too. They have to invest huge resources and long time into the whole process, while it is possible that at some point of it they meet unsurmountable barriers and have to give up the whole project. Decreased public participation, on the other hand, might mean less independent data and professional

[1] See the relevant provisions of Directive 2014/52/EU in Annex I below.

[2] Commission guidance document on streamlining environmental assessments conducted under Article 2(3) of the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU) (2016/C 273/01)

approach, which, after all is disadvantageous for the project and leads quite possibly to lengthy conflicts.

Article 2(3) of the EIA Drective introduced a one-stop shop for assessments arising from the EIA, the nature Directives and other Union legislation. Establishing a joint or coordinated procedures for the appropriate assessment (AA) provided by Article 6(4) of the Habitats Directive is required, whilst merging/coordinating other assessment procedures with the EIA is optional for the Member States.

Concerning the second element of the 2014 amendment, the Commission Guideline goes: "where the EIA decision prescribes measures designed to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment, and prescribes procedures for monitoring such effects, it is recommended, in the context of the streamlined environmental assessments, that information be included about the *alternative solutions*, mitigation measures and, if relevant, compensation measures identified with regard to Natura 2000 sites.

The second element closely relates to the first one: streamlining shall maintain and even reinforce the overall environmental protection goals of the EIA and the other related procedures. Logically, this entails with more systematic and consequential implementation, monitoring and enforcement measures, including effective sanctions, too.

Justice and Environment, a network of public interest environmental lawyers, decided to run a research to assess the familiarity of environmental CSOs with the Art. 2.3 of the EIA Directive procedure and of the effectiveness of ex post monitoring of assessments' protection/mitigation measures in these two major topics of the 2014 EIA amendments. In 5 countries (Austria, Bulgaria, Croatia, Estonia and Hungary) we asked professional NGO experts to respond our questionnaire. The result of this initial research is a professional legal analysis and at the same time an opinion based survey of the newest developments in the European EIA laws and its first practical experiences.

A. Joint and coordinated assessment procedures under Article 2(3) of the EIA Directive

The results of the surveys in this topic are summarized in the below table.

	Croatia	Bulgaria	Estonia	Austria	Hungary
Joint procedure for EIA and nature	yes, based on Natura 2000 laws	yes, based on Natura 2000 laws	yes, full EIA in all AA cases, based on EIA laws (while legislative changes are projected in which they detach AA from the EIA)	yes, EIA merges all environmental assessments; Simplified EIA might be available when a project become subject to EIA just because it is on a Natura 2000 site	Yes, the 'appropriate assessment' under Art. 6(4) of the Habitats Directive is part of the EIA proceeding, where the given activity is subject to such proceeding as well
Coordinated procedure for EIA/nature	no	partly yes, the Biodiversity Act contains special provisions for it	no, until the legislative chances happen	no	no
Clear procedural rules for EIA/nature	no specific rules available for the joint procedure; deadlines are seldom met	clearly the EIA procedure applies; for sites of national importance, specific legal remedy	detailed rules for the selection of authorities, deadlines, remedies etc. apply to the joint procedures, too	detailed rules for the general EIA procedure apply to the joint procedures, too, with a differentiated set of rules for the lead	The detailed rules for the general EIA procedure apply. The competent authority in both proceedings is the

		rules apply, though		authorities and deadlines	environmental authority.
Public participation in the nature protection part for EIA/nature	limited access to influence the AA part	just as in the EIA procedure; wide scope standing; no exhaustion condition for remedies	general standing rules apply; in scoping there is no participation, only legal remedies when direct interest can be proven	wide circle of participants has standing	just as in the EIA procedure; wide scope standing; no exhaustion condition for remedies
Joint procedure for EIA/others	yes, as main rule	yes, the case with IED is regulated in the EIA Act	no	yes, EIA merges all environmental assessments	yes, the case with IED is regulated in the EIA legislation
Coordinated procedure for EIA/others	no	Specific IED rules might exclude the joint procedure	na.	na.	if an activity - subject to EIA/IED - entails intervention to waters, it shall be verified in the environmental impact assessment, whether the conditions set out by Art. 4(7) of the Water Framework Directive are met.

Clear procedural rules for EIA/others	Procedural rules will be the same as for EIA	na.	na.	EIA procedure prevails	In the case of Article 4(7) of WFD, the assessment of the project's impacts on waters is integral part of the EIA procedure.

I. EIA and AA under Natura 2000 Directives

1. Joint or coordinated procedures for projects subject to EIA as well as Natura 2000 appropriate assessment (AA) in national legislations

Summary

Based on our survey in the selected Member States *a joint procedure* seems to be the natural solution when a project falls within the scope of both EIA and AA procedures. This might ensue from the holistic logic of the EIA laws (Austria) or from an *expressis verbis* provision in the EIA law (Estonia) or can be stipulated by the national Natura 2000 laws (Bulgaria, Croatia and Hungary). Coordinated procedures appear only as exemptions from the main rule (Bulgaria). We note, however, that the Estonian legislator is reported to consider a detached, singular AA examination for those projects, which otherwise have no significant environmental effects.

As concerns the *substantive legal relationship* between EIA and AA, the general solution is that once a project might exert significant effects on a Natura 2000 site, it will undergo a full EIA examination in all or in more cases than without nature protection aspects.

The Austrian researchers point out that not only the characteristics of a project (e.g. size, emissions) but also the characteristics of its location are relevant in the assessment of possible environmental impacts, including areas worthy of nature protection. If, for example, a project is located within a Natura 2000 site (according to the Habitats and the Birds Directives), certain projects are potentially subject to EIA *at a lower threshold value*. In such cases, however, simplified procedures might be available as a logical balance of the wider circle of activities subject to EIA. EIA is inherently a concentrated approval procedure in which one authority, in

Austria the provincial government, applies all material laws relevant to the realization of a project (e.g. Nature Conservation Laws). As concludes, it seems to be just logical that all substantive provisions of the AA will be applied in a naturally joint procedure in Austria when the EU and domestic Natura 2000 laws provide so. (AUT)

In Estonia the EIA procedure fully merges AA into it. The Environmental Impact Assessment and Environmental Management System Act stipulates that an EIA must be carried out *always* if the proposed project potentially results in a significant environmental impact or if it cannot be precluded that the proposed project significantly and adversely affects a Natura 2000 site. There is no procedure for the appropriate assessment of Natura 2000 that can be carried out without initiating an EIA. Therefore, the national legislation provides that a joint procedure is conducted for projects subject to the EIA, as well as to the Natura 2000 legislation. However, an amendment to the act is currently being discussed that would allow a separate appropriate assessment for Natura 2000 in case no other environmental impacts need to be assessed and therefore there is no need to initiate an EIA. (EST)

In Croatia the Nature Protection Act provides for joint procedures for the AA in the scope of EIA, including a joint screening procedures for EIA or SEA. The assessment of acceptability of a project for the ecological network is carried out in the environmental impact assessment procedure, but it is less comprehensible to the public and less available for commenting. Assessing the impact on the ecological network always happens before the public consultation, in which the assessment is presented as a final opinion of the competent ministry. This means that the public has difficulties in participating in the nature protection part of the procedure or challenge a decision that contains that such an assessment is not necessary at all. This is dysfunctional, if we take into consideration that the explanation of the Ministry about which activities are not to be covered by the AA provisions is sometimes controversial, for instance referring to old, habitual environmental effects, or ‘’regular’’ activities, such as maintenance of riverbeds. (CRO).

In Bulgaria the Biodiversity Act (BA) stipulates that for the investment proposals (projects) falling to the scope of the Environmental Protection Act (EPA), too, the appropriate assessment (AA) is to be carried out through the EIA procedure in accordance with the EPA (a joint procedure) and in compliance with the special provisions of the BA and the Ordinance on Appropriate Assessment. (BUL)

In Hungary, the national EIA legislation refers to that the specific legislation on conservation areas of Community importance shall be considered in the EIA and consolidated environmental use permitting procedures (IED). In addition, the Government Decree transposing the Natura 2000 Directives clearly stipulates that the appropriate assessment shall be part of the EIA proceeding, where the given activity is subject to such proceeding as well.

2. Availability of the most relevant procedural rules (competent authority, administrative time-limit, legal standing for NGOs and individuals)

Summary

Availability of the mandatory legal provisions is a natural constitutional legal requirement in every European country. Moreover, in the last 4-5 decades the legal institution of environmental impact assessment has become a part of our general legal culture. However, a joint EIA-AA procedure might be too complicated for fully comprehending and being effectively influenced by many NGOs, local communities or private persons.

As concerns the most important procedural provisions, in most countries several authorities might have competence for the joint EIA/AA procedures, whereas the division of competences is mostly based only on the complexity and environmental significance of the cases (Austria, Bulgaria, Croatia). While higher level authorities might have better resources and expertise, local or regional level authorities are closer to the problems and usually have more complex portfolio, which allows them to consider the integrated effects of the planned projects. Naturally, the professional priorities and approaches are quite different when a local municipality council, an environmental, a nature protection or a construction (road construction, mining, forestry etc.) authority deals with the same project.

Time aspects of the EIA and AA procedures are also regulated – but according to our practical experiences the deadlines can seldom be kept, long delays are rather typical (Croatia). There might be different deadlines for certain procedural steps (e.g. for public participation, several stages of the procedure, like screening and scoping and for the final decision itself). However, these deadlines are different for EIA and AA (naturally shorter) and this collision is oftentimes hard to solve in a joint procedure.

Legal remedies might be restricted in the strategically (in social-economic-political terms) most important cases (Bulgaria), which might contradict to the spirit of the regular AA cases, where the intention of the Habitats Directives is the primacy of the interests of the nature, not of the economy. A similar collision might appear if we consider that the EIA procedure is itself a part of a serial of decisions, started from the SEA decision, continuing in several levels of construction permitting (preliminary, main and usage permits) and closed by a serial of supervisions until the project ceases to exist.

In Austria, Annex 1 to UVP-G 2000 lists about 89 types of projects for which an EIA must be carried out under certain conditions. These are projects that are likely to have a significant impact on the environment (e.g. hydroelectric power plants; roads and railroad lines; shopping centres, lodging establishments and parking lots open to the public). The list of projects in Annex 1 consists of 3 columns. Most of these types of projects are potentially

subject to EIA only above a certain size, i.e. Annex 1 sets a threshold or a certain criterion for the respective project (e.g. production capacity, land use). Only the projects listed in Annex 1, columns 1 and 2 are subject to EIA in any case: The projects listed in column 1 are subject to a (regular or ordinary) EIA procedure. Column 2 contains those projects for which a simplified EIA procedure has to be carried out.

Column 3 contains projects in areas worthy of protection (e.g. Natura 2000 sites, Category A, explained in Annex 2). The relevant thresholds are lower than in columns 1 or 2, and they are not subject to an *ex lege* EIA. Pursuant to § 3 para 4 and 4a UVP-G, they must be examined by the authority on a case-by-case basis to determine whether, taking into account the extent and sustainability of the environmental effects, the habitat worthy of protection or the protective purpose of this area will be significantly impaired. In this procedure, the criteria listed in the main text of UVP-G have to be taken into account. If an EIA has to be carried out, it is in the form of a simplified procedure.

The relevant EIA authority for projects listed in Annex 1 of the UVP-G 2000 is the provincial government. Their jurisdiction extends to all proceedings under the first and second section of the UVP-G. The local jurisdiction is determined by the location of the project. EIAs for federal highways and high-capacity roads are a matter for the federal government pursuant to the Constitutional Law. The EIA authority for federal highways and high-capacity roads is the Minister of Transport.

In the case of projects listed in column 2 or 3 of Appendix 1, the authority shall make the decision on the permit application without undue delay, no later than six months after the application has been submitted. In the case of projects listed in column 1 of Appendix 1, the authority shall make the decision no later than nine months after the application is filed. (AUT)

In Croatia, procedural rules are specified by EIA Regulation and Rules for AA. Competent authorities are ministry or county bodies depending on the complexity of project. Even though administrative procedures within which the EIA is being conducted are limited in time, they are usually delayed, and time limit is not respected.

In general, information and administrative decisions related to EIA, AA, IPPC/IED are published on the website of the administrative body which issued them, which, as we noted, can be the Ministry of Economy and Sustainable Development (responsible for environment) or some County level regional authorities depending on the location and other specifics of the project as determined by EIA Regulation. For example, the types of projects required to undergo scoping procedure are given in Annex II and Annex III of the EIA Regulation. Projects listed in Annex II, e.g. tourist zones outside settlements of 15 ha or larger, fall within the competence of the Ministry (of Economy and Sustainable Development). Projects listed in Annex III, e.g. tourism theme parks of 5 ha or larger, fall within the competence of the regional authority for the environment protection. The logic here is that bigger and more complex projects are

assessed at a higher level of government based on the premise that these levels of government have better capacities to process these requests. (CRO)

In Bulgaria, the competent authorities are the Minister of the Environment or the directors of the 16 regional environmental inspectorates. For the individual stages of response to a project notification, for screening, etc., 14-day deadlines are observed, which may be extended, if necessary, by the competent authorities. The period for preparing the EIS is not limited in time, but there is such a limit for AA, which is 1 year. The minimum terms for public discussions of the EIA and AA are 1 month.

The decisions of the first-instance court of appeals in the cases against decisions of the competent body on assessment of projects related to the implementation of sites, which are defined as *sites of national importance* by an act of the Council of Ministers and are sites of strategic importance are final. (BUL)

In Estonia the developer orders the EIS from experts, the authority (the Environmental Board, Agriculture and Food Board, local government etc.) is responsible for spreading this information (distributing the EIS amongst the participants) and organising the proceedings; there are the programme and report phases of the SEA/EIA continuity of procedures – naturally, the SEA decision will influence the joint procedure, while it is questionable whether in that early phase the specific nature protection viewpoints were taken into consideration in a proper emphasis. Time limits and legal remedies, such as recourse to court to dispute the final decision (environmental permit, construction permit etc.) are also regulated in detail. (EST)

The Hungarian EIA – available online for the public as well - require the developer to have the EIS prepared by an environmental expert and to submit it to the environmental authority as part of the developer's application for the environmental permit. Administrative rules, relevant time limits and the provisions on the content of the EIA documents are provided by the Environmental Protection Act and the EIA decree.

3. Public participation in joint or coordinated permitting procedures

Summary

Public participation is historically a central element of the environmental impact assessment procedure – EIA is an inherently consultative, trans-disciplinary process, so public participation is ensured in the examined countries mostly in a generous way (e.g. in Austria, Bulgaria, Hungary and Croatia). However, this is not always true in respect to the examination of the nature protection effects of a planned project. Importantly, in the last two decades some restrictions were introduced into the European domestic EIA laws, too, such as a general administrative procedural provision that demands participation in the first instance procedure

for those who wish to raise any kinds of legal remedies (exhaustion rule). This general exhaustion rule is directly exempted from the EIA procedures in some countries (Bulgaria). Public participation in the preliminary (screening) stage of the EIA procedure is not everywhere open for the public (not in Estonia, while yes, in principle in Hungary).

In Austria, the party and participant status in the concentrated EIA approval procedure is regulated in UVP-G, too. In addition to the project applicant, the following parties have party status: neighbours, environmental advocate ("Landesumweltanwält/in"), water management planning body ("Wasserwirtschatliches Planungsorgan"), municipalities, citizens' initiatives ("Bürgerinitiative"), environmental organizations, representative of the chamber of commerce ("Standortanwält/in") and the parties provided for in the applicable administrative regulations, insofar as they are not already entitled to party status pursuant to UVP-G. (AUT)

The Bulgarian legislation grants *standing to interested persons* (ENGOs and physical persons) to bring to court both measures of a general nature such as protected areas management plans and normative administrative acts – secondary legislation issued by the executive authorities. There is no exhaustion rule there (participation in the first administrative procedure is not a condition for applying legal remedies). (BUL)

In Croatia NGOs and general public have a right to participate in the assessment procedure by giving opinions within 30 days. There are no restrictions related to participation in different environmental procedures such as EIA, AA, SEA or IPPC/IED, meaning that everybody can provide comments. The Environmental protection Act includes a recognition of legal interest of persons belonging to the public concerned. The impairment of the right is a prerequisite for access to justice against decisions passed in procedures governed by the Environmental Protection Act. Also, the EPA determines that a civil society organisation which promotes environmental protection has a sufficient (probable) legal interest in the procedures regulated by the EPA which provide for the participation of the public concerned if specific requirements are met. (CRO)

In Estonia NGOs' standing is related to their objectives set out in their articles of association, individuals' standing is related to whether it affects them directly and significantly (based on the General Part of the Environmental Code). There is no public proceeding and the preliminary assessment (including the decision on not to carry out an EIA) are not publicised beforehand. NGOs or affected individuals can usually only challenge the final decision on issuing a permit, based on the EIA. Moreover, the EIA programme or report can be independently challenged only if it itself violates the rights of the NGO/individual. (EST)

In Hungary, the environmental authority is responsible for ensuring access to the most relevant information on the EIA procedure and the EIS to the public. Members of the public concerned can submit their comments and opinions, can participate in the public hearings and may request legal standing. Associations established to represent environmental interests, and other civil organizations not deemed to be a political party or interest representative

(lobby group), operating in the impact area, automatically enjoys the status of a client in all administrative procedures relating to the environment. This privileged legal standing is also confirmed by the national EIA decree laying down the framework of EIA and IED procedures, which declares that NGOs operating in the area affected by the activity subject to EIA always have to be deemed 'concerned'.

II. EIA and other environmental assessments

1. Joint or coordinated procedures with EIA for projects subject to the assessments of other environmental impacts (based on the Water Framework Directive or the Industrial Emissions Directive etc.) in national legislations

Summary

Our experiences show that the legal background and practical experiences for merging or coordinating EIA with other than Natura 2000 environmental assessments is much less developed yet in the EU Member States. However, in those countries where the integrative logic of the EIA process is consequentially applied (Austria, most clearly), any parallel environmental examination (or such elements of the parallel procedures) is to be naturally included in the EIA.

The old institution of Integrated Pollution Prevention Control (IPPC) offers a natural solution where other environmental type of permits or examinations are required, such as the IED permit and the Article 4(7) examination in the WFD (Hungary).

As regards Austria, assessments according to other directives (e.g. nature impact assessments according to the FFH-Directive, exceptions to the prohibition of deterioration under the Water Framework Directive) are also applied in the course of the EIA. There are no (legal) environmental matters in Austria that are not embedded in the concentrated approval procedure of the EIA. Furthermore, as mentioned above, Appendix 1, column 3 contains projects in areas worthy of protection. These include Natura 2000 sites (Category A), as well as for example Water protection and conservation areas according the WRG2 (Category C), which implements the Water Framework Directive. Furthermore, column 3 includes for example polluted areas (air; Category D). The Federal Minister for Climate Protection, Environment, Energy, Mobility, Innovation and Technology may determine by ordinance those areas of the respective province in which the emission limit values of the IG-L3, as amended, are exceeded repeatedly or for a longer period of time. Such areas will have priorities in the EIA screening procedures with a higher probability for opting for the full EIA. (AUT)

In Croatia there can be joint/coordinated procedure for EIA and IPPC/IED permit (in Croatian: okolišna dozvola) as well as for SEA and EIA. In the time being it seems to be only a theoretical possibility.(CRO)

In Bulgaria, carrying out a joint procedure of EIA and IED is regulated in the EPA Act as an option depending *on the request* of the operator, in cases when the assessment of a specially authorised and competent body is not obligatory. This means, in the same time, that in the latter cases a coordinated decision is needed – in the sense that the procedures and the decisions of the environmental protection authority and the industrial legal authority shall be in harmony. Not any cases of this sort are known yet. (BUL)

In Estonia, there is no such a norm that specifies the relationship of these proceedings (meaning that EIA will take only according to the EIA lists of activities and screening decisions, while the WFD or IED examinations run on separate legal bases). (EST)

In Hungary, the permitting procedure falling under the scope of the IED and EIA may be conducted jointly in a so-called unified (consolidated) environmental use permit (IPPC permit) procedure which is also governed by the national EIA Decree. Furthermore, where an appropriate assessment and/or the assessment of the conditions whether the exemption under Art. 4(7) of the Water Framework Directive exist, such assessments is conducted within the EIA. In these cases, the territorial environmental and nature protection authority is the competent authority and only one proceeding is conducted involving expert authorities in relation to water protection. (HU)

2. Availability of the most relevant procedural rules (competent authority, administrative time-limit, legal standing for NGOs and individuals)

Starting out from the findings in Point 1 above, namely the rarity or not-yet-existence of such merged or coordinated procedures in respect to EIA on one side and non-Natura 2000 related fields of law on the other, the statements of the country researchers about the availability of specific procedural rules in such cases are merely theoretical ones.

In Austria the procedure described under Question A.I.2. is applicable to such cases, too. If a project listed in Annex 1 is subject to an EIA, it must be subjected to a concentrated approval procedure (following the actual EIA) in accordance with UVP-G. This replaces all administrative approval procedures that would otherwise be cumulatively required. The results of the EIA must be taken into account by the authority when deciding whether to approve the comprehensive concentration of procedures and permits, so called “one-stop-shop-principle” for a project. No permits may be issued for projects subject to other (water, IED) assessments before the EIA or the case-by-case assessment has been completed.

In Croatia and in Hungary, where there is a joint/coordinated procedure the same rules apply for this procedure as described above in I. 2. for joint EIA and IPPC/IED procedure.

B. Effectiveness of ex post monitoring of assessments' protection/mitigation measures

The results of the surveys in this topic are summarized in the below table.

	Croatia	**Bulgaria**	**Estonia**	**Austria**	**Hungary**
EIA rep. contains prot. and mit. measures	yes	yes, in details (for all stages)	yes	yes	yes
Decision contains prot. and mit. measures	yes, but only as a not obligatory recommendation	yes, in details (with deadline and implementation plan)	yes, they shall be based on the EIS, or be reasoned if they differ from it	yes, based on the EIS	yes, they shall be based on the EIS and reasoned
Other documents contain prot. and mit. measures	location permit, concession contract	na	na	na	na
Inspections refer to these documents	no direct reference		usage permit and follow up control, and upon prescription construction monitoring ensures the observation of the measures		no direct reference
Examples of the measures		measures to avoid, prevent, reduce and, if possible, eliminate the identified significant adverse effects;	requirements, conditions, time limits, project modifications, compensatory measures, monitoring and	requirement conditions, time limits, project modifications, aftercare, monitoring, reporting and compensatory	measures to avoid, prevent, reduce and, if possible, eliminate the identified significant

		monitoring prescriptions	reporting obligations, aftercare, compensation or replacement measures	measures or other prescriptions also carried out on stockpiled land (land pools, "Vorratsflächen")	adverse effects; monitoring prescriptions
Authorities responsible for monitoring	several ones, the permitting authority, Environmental Inspection Authority, city municipality authorities; State Inspectorate is responsible for inspections other than environmental ones, too	regional Inspectorates and basin directorates, national parks, regional governors and the mayors of the municipalities	permitting authorities	the permitting authority for the acceptance inspection; for the follow-up monitoring competent authorities according to the substantive laws	permitting authorities
Capacity of the authorities	Scarcity in experts and funding, supervision authorities might even be subject to political-economic pressure, especially at local level	Understaffing, fluctuation, low salaries. Furthermore: pressure from the regulated community might hinder effective monitoring	significant short-comings might be in certain regions, smaller States have less resources	Insufficient resources in smaller states	Lack of sufficient resources. Understaffing, fluctuation, low salaries.
Procedural rules of monitoring	Facilities are informed in advance				In general, the user of the environment is informed in advance.
Public participation in monitoring	Not publicly available procedures, not even the results/decisions of them		The results of monitoring are sent only to the operator; public is informed about on the results of monitoring only with big		Public participation is possible, however, the public is not informed on the monitoring

			delay; standing is determined for a narrow circle of parties		procedure automatically.
Quality of the sanctions	No information about fines in any post EIA cases	fine or apply coercive administrative measures and stop the operation of the facility violating the requirements or measures	Misdemeanour procedure. Periodic penalty payments. Enforcement of sanctions. Implementing environmental liability.	fines for administrative offences, compensation or replacement measures	environmental fine, application of restrictive administrative measures

I. Documents containing the protection and mitigation measures (the EIA Report, the decision granting authorisation or other ones)

Summary

There is a logical line in achieving the goals of the EIA procedure. It starts with the prevention, mitigation and compensation measures described in the environmental impact study (EIS) prepared by the investor and issued to the environmental authority as an attachment to the request for an EIA permit. In the EIA procedure the participants discuss these conditions of the project in several rounds and this leads to an integrative decision by the authority that obliges (or just suggests in some countries, like Croatia) the initiator of the project to fulfil her original offerings in the EIS together with the professional suggestions from the participants that were accepted by the authority or with the conditions raised by the authority on its own.

The authority granting the permit must consider the protection and mitigation measures described in the EIA report when making the decision to grant or refuse the requested permit or give a reason in its decision for not taking these measures into account (Hungary, Estonia). These conditions shall be implemented by the investor (during the construction phase) and by the operator (in the implementation phase) and be kept monitored by them and by the authorities. Third party monitoring is more and more practical, too, as the legal technical conditions allow for it. Enforcement actions and sanctions might close the logical circle when they are necessary.

In Austria, the EIA approval notification ("UVP-Genehmigungsbescheid") pursuant to UVP-G the results of the EIA (e.g. EIA Statement, EIA Report) shall be taken into account in the authority's decision. Appropriate requirements, conditions, time limits, project modifications, compensatory measures or other prescriptions, in particular, also for monitoring measures for

significant adverse effects, measurement and reporting obligations and measures to ensure aftercare, shall contribute to a high level of protection for the environment. The monitoring measures shall be determined appropriately according to the type, location and scope of the project and the extent of its impact on the environment.

Where stipulated by state law, compensation or replacement measures carried out on stockpiled land (land pools, "Vorratsflächen") may be credited. The commissioning for maintenance and the legal safeguarding of the areas are to be documented within the approval notification. (AUT)

In Croatia the EIA Report contains protection and mitigation measures. Any permit or decision following EIA contains them also, but as a recommendation, non-obligatory methodology. A decision on the acceptability of the project for the environment (EIA report), is followed by a location permit for the project and that contains protection and mitigation measures, too. The environmental impact study contains mitigation measures, too, but none of the inspections refer to them. (CRO)

In Bulgaria the EIA report shall contain description of the planned measures to avoid, prevent, reduce and, if possible, eliminate the identified significant adverse effects on the environment and human health, together with a description of the proposed monitoring measures (e.g. the preparation of a post-implementation analysis of the investment proposal) with deadlines. This description must cover both the *construction stage and the operation stage* and contain a plan for the implementation of the measures. (BUL)

In Estonia the EIA report contains proposals for protection and mitigation measures but does not itself create an obligation to implement them. The permit authorising the proposed activity contains the protection and mitigation measures that the operator must implement. (EST)

In Hungary, the planned measures for environmental protection must be described in the EIS. Environmental protection measures cover measures to prevent, reduce, offset or respond to possible use, pollution and damage of the environment. (HU)

II. Responsibility for monitoring the implementation of such measures. Capacities for carrying out effective monitoring available to the competent authorities (or those responsible for monitoring)

Summary

We have already referred to the historical fact that the EIA concept and methodology has spread out in our legal systems (in environmental law and neighbouring fields of law). In

broader sense, the serial of EIA like procedures (SEA, EIA, IPPC, environmental revision permitting etc.) and also the sectoral construction permits (preliminary permit, permit for establishing, usage permit etc.), where the environmental authority plays a consultative role usually – all serve as occasions to check if the investor/operators keeps herself to the conditions set out by the authorities in the EIA procedure.

As concerns the organisational background of monitoring and law enforcement in the field of EIA, a multiplicity of tasks and specialisations can be observed. The natural selection is for the enforcement authority position is the permitting body itself, while other sectoral authorities, as well as state (not always governmental ones) bodies of general portfolio (such as ombudspersons, state auditors, public attorneys) have important controlling functions, too. Furthermore, local authorities might have important tasks in monitoring, as the closest ones to the events and effects. The resources of these authorities, especially of the local ones and the environmental administrative bodies are meagre; they are often forced to overlook minor infringements of the conditions set in the EIA permits.

Case studies in this field are really eye-opening (from Bulgaria and Estonia).

In Austria the following three types of monitoring responsibilities are exercised by the environmental authorities:

- Acceptance inspections ("Abnahmeprüfung"): The project applicant must notify the authority of the completion of the project before it is put into operation according UVP-G. The authority shall review the project to determine whether it complies with the approval notification.

- Follow-up Control ("Nachkontrolle"): Only for projects listed in column 1 of Appendix 1, the authority under UVP-G (the competent authority according to the substantive laws), on the initiative of the provincial governments' authorities, jointly review the project not earlier than three years, and not later than five years, after notification of completion, or at the time specified in the notice of approval, in order to determine whether the approval notification is being complied with and whether the assumptions and projections of the EIA are consistent with the actual effects of the project on the environment. This means that a comparison of the assumptions and forecasts made in the EIA about the environmental impacts with the actual state must be made.

In practice, it has proven useful to set priorities depending on the environmental impacts. Follow-up control should also serve to document findings for future EIA procedures, e.g., by identifying problematic areas or best practices. This includes, among other things, the evaluation of measures to determine the efficiency of compensatory and accompanying measures.

This follow-up control is not stipulated for projects falling under the simplified procedure.

- Control and monitoring is carried out by construction supervisors (sog. Bauaufsicht) for the various specialist areas, e.g. ecological construction supervision for conditions relevant to nature conservation, wildlife ecology construction supervision for grouse, etc. As a rule, ecological construction supervision is prescribed as a possible condition of the positive decision. The construction supervisor is selected, commissioned and paid by the applicant - the authority is informed. In most cases, the construction supervision is carried out by companies/persons who have already been involved in the planning. Monitoring is carried out either as provided for in the project or as specified in the notice requirements. The construction supervisors must provide reports to the authorities, but the number and duration of these reports vary depending on the procedure. The quality of the construction supervisors also varies considerably. Control by the authority is limited because there are too few resources for it. At some point, there is an official colludation hearing (sog. Kollaudierungsverhandlung), where deviations in implementation are often noted "as minor".

The competent authorities according to the substantive laws are responsible for monitoring the implementation of the measures imposed by the EIA decision. However, the authorities do not in the closest have enough resources to check compliance with every imposed measure. They are severely understaffed. Therefore, there is a large discrepancy between the project modifications and measures and their actual implementation. The controlling instance (“*ökologische Bauaufsicht”)* shows low efficiency, and only reports to the project applicant. Therefore, information is passed on to the competent authority, and later to the public, with long delays. Furthermore, recognised NGOs do not have the right to access files in the period between the EIA approval notification and the acceptance inspections. In the acceptance inspections, only a limited circle of the parties have standing. Neighbours, parties according to the material laws and the site attorney do not have party status.

Another issue is the possibility for project applicants to introduce major modifications of the approved project by introducing them retrospectively. This problem has been aggravated by the latest amendment to the Environmental Impact Assessment Act (UVP-G).

Whether or not the respective authorities have sufficient capacities depends on the respective Federal State, too. While bigger states with many EIA procedures have more resources, smaller states suffer from insufficient resources according to a study done by ÖKOBÜRO. (AUT)

In Croatia, the primary responsibility for monitoring lays upon the decision granting authorisation, the state inspectorate. Furthermore, generally, different inspections are responsible for different components of the environment, including the Environmental Protection Inspection body. Naturally, environmental inspections concern those activities, too, that either did not have an EIA responsibility or the authority decided that in the given case an EIA is not necessary. Urban municipalities have the right and responsibility to perform environmental monitoring activities, too.

In some cases, the maritime asset concession contract stipulates that the investor must spend some money on environmental protection on an annual basis. The State Inspectorate, which should monitor whether the prescribed measures are being followed, does not have enough people or funds for monitoring. Heads of administrative offices of the units of regional self-government in charge of the procedures are politically appointed, and under the heavy influence of the local politics.

Regarding the compliance with nature protection conditions and the implementation of monitoring from EIA decision granting authorisation, all public institutions have regularly stated that nothing is being monitored or implemented, there are not enough control or sanctions that it is mostly not binding on them. A typical example would be the construction of the marina in Slano Bay, which is a Natura 2000 site for Posidonia. No one has ever carried out monitoring for Posidonia, and the initial study on the condition of Posidonia meadows was disastrous, shameful, because our habitat mapping after encroachment showed a completely different picture than it is in that study.

The results of monitoring carried out by the Environmental Protection Inspection is not publicly available – while, according to the country researchers, it should be in order to support meaningful participation.

The Ministry of Economy and Sustainable Development is the main state administrative body responsible for environmental laws implementation, so also for monitoring implementation of measures in question. The scope of competence of the Ministry covers, among other things, activities related to protection and preservation of the environment and nature in accordance with the policy of sustainable development of Croatia, activities related to water management, and administrative and other activities in the field of energy. As of 1st January 2019, the State Inspectorate (Državni inspektorat) also includes Environment Inspection, Nature Protection Inspection, Forestry Inspection, Water Management Inspection, Agriculture, etc. Before 2019, inspections operated as part of the specific ministry responsible for the specific area.

As far as information is available on this matter, the state inspectorate does not have sufficient capacities, for instance, there are just few environmental inspectors for the whole Dalmatia county. Usually, they don't have the proper equipment either to conduct monitoring so they need to hire other companies to conduct it which is costly. The authority announces their arrival for periodic checks, which further decreases the effectivity of monitoring. Country researchers have no information whether they are checking the measures prescribed by the decision on the acceptability of the project for the environment. (CRO)

In Bulgaria regional Inspectorates and basin directorates, national parks, regional governors and the mayors of the municipalities are the primarily responsible persons for environmental monitoring in general and specifically for implementing the EIA decisions, too. Unfortunately, practice shows that this control is rarely applied, as the lack of capacity, personnel and

financial means in regional authorities are the main reasons for weak control. The administrative capacity of the competent authorities is always of a concern, because these administrative bodies are understaffed, with relatively low salaries and tendency to leave the job after a few years. Also, the influence of the big operators and employers at local level could be a factor that impact the readiness of the authorities to exercise strict control and impose coercive administrative measures, which could lead to temporary closing down of the production activities. (BUL)

In Estonia the authority that issued the permit, plus the Environmental Board (EB) have the responsibility to monitor the implementation of the EIA decisions. However, they are significantly understaffed and lacking resources for effectively monitoring the implementation of the protective measures. Yet, MoE, EB and other relevant state authorities have relatively acceptable level of capacity, compared to the small Local Governments, which indeed lack capacity and expertise to assess/ensure quality of EIA Reports. Also, the Local Governments tend to be not neutral arbiters in EIA, as their income depends on economic activities/new developments in the area. (EST)

An example of poor quality implementation from the bird conservation practice of BirdLife Estonia (BLE).

In the case of the Paldiski LNG terminal, large and hasty construction of LNG jetties and piers, including dredging, piling, and other activities, took place in the Pakri Natura bird and nature reserve in connection with the beginning of the Ukrainian war and the subsequent disconnection from Russian gas. Sentinel satellite images showed extensive sediment dispersion around the construction area. At the same time, nearby on Pakri cliff, the nesting area of the II category species, the black guillemot (*Cepphus grylle*), was impacted by the sediment dispersion, which could affect their feeding. We submitted a request to the Environmental Board for oversight.

During the inspection, it was revealed that the main mitigation measure mentioned in the EIA report – curtains to prevent sediment dispersion, which was also a condition in the environmental permit – had not been implemented. The developer argued that the measure was not applicable because the sea in the area was too deep. However, when BirdLife Estonia asked the impact assessor, they said that the measure was feasible. When BLE inquired about how compliance with environmental permit conditions and mitigation measures is supervised in Natura areas, the Environmental Board informed them that monitoring is only conducted if there is a report of a potential violation because they lack resources for such comprehensive (or even random) checks. The misdemeanour proceedings in this case were terminated, because – among other things – the developer was cooperative; no impacts were identified (although no long-term monitoring was conducted to provide information about potential impacts at all), and there was “no public interest” (!). The permit conditions were amended to be more specific after BLE drew attention to the fact that the permit conditions were taken from the draft of the EIA report and not from the officially approved report. These differed

significantly, especially regarding the organization of comprehensive monitoring. In the EIA working version, the requirement was to: "Assess the distribution and condition of the reef habitat type near the jetty. Perform the assessment for the first time two years after construction works." However, in the approved report, it was stated: "Conduct monitoring during the suitable season immediately after construction works, and then annually for two years." Due to this mistake, the monitoring was not carried out on time. BLE's experience shows that there are significant problems with administrative capacity in this case.

In Hungary, the environmental authority has competence to monitor the implementation of the EIA decision, the compliance with the conditions included in the permit. According to the interviews made with national environmental NGOs, the environmental authority lacks sufficient human and financial resources for conducting effective monitoring. (HU)

III. Sanctions the authorities may apply in the case of non-compliance – their proportional, dissuasive and effective qualities

Summary

As we have seen, monitoring and enforcement activities of the environmental authorities in the field of EIA are not systemic and exhaustive at best. Therefore, the legal practice of the otherwise available sanctions is sporadic, too. One could add that in environmental law the utmost priority is prevention, rather than *post factum* punishment of the wrongdoers (while naturally, if a quick arrival of a due sanction is of high probability, it will have a supportive effect on prevention).

Sanctions can be grouped in multiple ways. Some of them are milder, such as the majority of the administrative sanctions, others (such as a repeated EIA, serous limitations of the operation or the most misdemeanour and criminal sanctions) are more severe. Possibly the most important division between sanctions is the differentiation of ones targeting legal personalities and those that are applied to natural persons. While the white collar perpetrators are extremely seldom caught in environmental criminal or petty offence cases in Europe (compared especially to US), the pecuniary administrative sanctions against companies have little if any deterrent effect.

In Austria there are several groups of available sanctions:

- An *acceptance notification* ("Abnahmebescheid") shall be issued for the acceptance inspection (equivalent to usage permit procedure). In this notice, the elimination of any deviations found shall be ordered. If deficiencies or deviations are found during a follow-up inspection, these must be rectified by the project applicant;

- Unless the act constitutes a criminal offense within the jurisdiction of the courts, the following commits an administrative offense and shall be punished by the authority with a fine:

- Up to EUR 35,000,- whoever carries out or operates a project subject to an EIA without the permit required under the UVP-G,

- up to EUR 17,500,- who carries out or operates the approved project among other things not in conformity with the project or without the required modification permit, who fails to comply with ancillary provisions (requirements and other obligations).

- It is also envisaged that a concept can be approved for *compensation* or replacement measures with which the planned interventions are to be compensated. The concretization of the compensation or replacement measures is to be decided in an amendment procedure. In addition, the possibility of compensation payments is to be created if compensatory or replacement measures are not possible due to lack of feasibility. However, a lack of concretization of the compensatory measures is contrary to European Union law (see 8a para 1 lit b EIA Directive). Particularly in the area of nature conservation areas protected under EU law, the FFH-Directive prescribes specific requirements for compensatory measures. Thus Art 6 para 4 FFH-Directive provides that in the event of a negative outcome of the impact assessment, all necessary compensatory measures must be taken to ensure that the global coherence of Natura 2000 is protected. In concrete terms, this means that compensatory measures should be of a comparable scope to the habitats and species affected and must perform functions comparable to those that were critical to the selection of the original site, particularly with respect to the appropriate geographic distribution. It also follows from the requirement that compensatory measures must ensure the maintenance of the overall coherence of the Natura 2000 network that a site must not be irreversibly affected by a project before compensation has actually taken place. The outsourcing of the specification of compensatory measures to a subsequent procedure contradicts this principle. Likewise, the possibility of compensation is also contrary to EU law, because it does not provide a factual or functional reference to the compensation according to the above-mentioned standards.

As concerns the practice of possibly proportionate, dissuasive and effective sanctioning, the country researchers could not have access to meaningful data. The country researchers have no information on criminal proceedings either; however, for administrative fines, as a rule, only small sums are involved, which are unlikely to have a deterrent effect. In case of "restoration" this can be quite complex and expensive, however, in many cases such restoration is not possible at all, e.g. if protected habitats (e.g. bogs) have been destroyed or protected animals have been driven away or killed, or if quarrying has been carried out in a quarry beyond the authorized extraction limit.

The administrative penalty provisions already don’t prove very strict. Their ineffectiveness is amplified by lax enforcement through authorities. Seeing as the provincial governments partly are the competent authorities, it is also a political question how strongly they sanction the project applicants. (AUT)

In Croatia sanctions are mostly fines and ordering implementation of environmental protection measures and environmental monitoring, but it is possible to prohibit operations. State inspectorate can submit a charge proposal according to the Misdemeanour Code or submit a criminal report to the competent authority for the criminal part. Especially serious measure could be for the operator the possibility to order subsequent EIA procedure for the activity/project that has already been carried out. Sanctions, however, are rarely used in practice, especially for noncompliance with AA granting decisions. The Croatian researchers are not aware that anyone has ever paid a fine. If it has happened, that information is not available to the public. The permit could be annulled or revoked theoretically, and Environmental Inspection could issue a fine to investor or even start procedure before Misdemeanour court, also theoretically but the researchers are not aware either that this happens in practice.

In sum, the sanctions are not effective at all, since there is barely any sanctions determined and basically without steady practice. (CRO)

In Bulgaria the authorities impose fine or apply coercive administrative measures and stop the operation of the facility violating the requirements or measures. Financial penalties are low and usually violators pay them and continue with the violations. Administrative coercion is rarely applied, mainly due to the fear of the annulment of such a measure *if appealed to a national court* and the possible financial losses from such cases. Basic conditions for effectiveness of sanctions include independence from any political and economic influence. Not many good examples were found in this respect. (BUL)

In Estonia, in case of non-compliance, the authorities may initiate an administrative or misdemeanour procedure. In the administrative proceedings, the authority can initiate the process of amending the conditions of the permit based on the Environmental Impact Assessment and Environmental Management System Act. The authority can also issue an order for penalty payments that may be repeated, of up to 9600 euros in each cases. If the operator has altogether violated the requirement to carry out an EIA/SEA, the Environmental Board can fine it up to 3200 euros (or 1200 euros, if the operator is a natural person).

In case the operator operates without a required environmental permit or does not fulfil the requirements set out in the permit, including requirements to implement protection and mitigation measures, the prosecutor may initiate criminal (misdemeanour) proceedings that may result in a pecuniary punishment or imprisonment of up to one year. However, these proceedings can only be brought to a result in case the non-compliance caused danger to human life or health or significant harm to the environment (that is, it exceeded 4000 euros). During the past 15 years, this provision has been applied roughly once a year, most often related to mining beyond the borders set out in the mining permit.

In the past five years, the Environmental Board has initiated, on average, less than 10 administrative proceedings and around 25 misdemeanour proceedings a year against

operators who do not comply with the conditions set out in the environmental permit. However, researchers do not know how many of these cases were concluded. So overall, there is no information about whether the sanctions are proportionate, dissuasive and effective. According to the publicly available data, the Environmental Board has never amended the conditions of the permit as set out in the Environmental Impact Assessment and Environmental Management System Act. (EST)

IV. Overall evaluation of the effectiveness of the above measures by the country researchers

To the question if the protection and mitigation measures, as well as the monitoring of the implementation and the possible sanctions made the projects more environmentally friendly and socially acceptable, the researchers gave some answers that summarize their opinion on the subject.

The Austrian researchers established that only if the planning is really good and professionally validated can it be assumed that impairments to nature will really be reduced. As a rule, once approval has been granted, there is little influence left on the part of the authorities. The quality of the planning, the expertise and assertiveness, but also the frequency of the presence of the ecological site supervisor on the construction site are essential factors for the effectiveness of nature conservation measures. In some EIAs, changes were repeatedly approved in several subsequent procedures, so that often little of the original conservation measures remained (e.g., Urstein industrial park, ÖBB KW Tauernmoos). Often, not all effects of a project were taken into account in the EIA procedure, so that further interventions in the surrounding area subsequently took place (e.g. the EIA KW Gries, where huge amounts of excavated material were dumped in the surrounding area). These large-scale terrain changes were handled in many, separate nature conservation procedures and were also approved with the argument "environmental protection", so that "the material does not have to be transported so far by trucks".

In principle, it makes sense to conduct concentrated approval procedures. However, under the 3rd section of the UVP-G, there is currently no procedural concentration. This leads to the fact that the focus is drawn from important questions of compliance with EU law, because conflicts of competences between authorities have to be resolved instead. It is a positive development that EU directives on species and habitat protection must now be implemented. However, it might be a good idea to first carry out AA (*Naturverträglichkeitsprüfungen*), before entering into the whole EIA process. (AUT)

For our Estonian colleagues it seems that due to the protection and mitigation measures, developers have become a bit more wary and careful and more willing to accept the fact that they do have to implement some protection measures. It depends greatly on the developer

as well: for example, some large companies take the initiative themselves and consult the potentially affected community before even applying for a permit, whereas others are not at all interested in the community's perspective.

However, the influence of these measures has been at most incremental and despite the measures business-as-more-or-less-usual has been allowed to continue. That is, projects with large carbon footprint, water usage or other resource consumption, land uptake etc. are still allowed to be carried out on a daily basis. The protective measures are balanced against the burden they place on the developer, which means that measures that significantly alter the planned project are rarely even considered. When EIA report finds that impacts of development are not acceptable and/or proposes environmental measures to reduce or mitigate those impacts, and these standpoints are followed by the authority when issuing the EIA permit, the projects have become more environmentally friendly and socially acceptable. (EST)

According to the Bulgarian researchers, due to the reasons already stated above, the effect of the measures in question is not realized in full. The financial sanctions for non-compliance with the requirements and measures of the authorizations must be in an amount that creates the necessary deterrent effect for possible violations. The Ministry of the Environment and its regional structures should increase the number and capacity of their staff in terms of follow-up control and the proper application of administrative enforcement when justified. (BUL)

The Croatian researchers shortly stated: in Croatia, when the project acquires permits and the activity/use starts the control becomes negligible. Measures are not effective at all in their opinion and when the investor gets the permit, monitoring of its implementation is not conducted properly or sometimes not at all. (CRO)

2. Conclusions

The 2014 EIA amendment has not fully reached its goals yet.

The first part of the goals was easier, because merging the administrative procedures related to the same project, all having strong environmental protection elements was a natural, organic development in EIA laws. However, even here our research has revealed some difficulties. The different logics and procedural rules (authorities, deadlines, public participation etc.) of the EIA and the other procedures has not been fully harmonized. Especially the divergent attitudes towards public participation have led to discrepancies: some parts of the merged procedures are simply not available for the members and associations of the public; they might only be informed about them when the decision is brought. Moreover, the joint procedures are too long, complicated and resource demanding for many civil stakeholders, which prevents them from contributing to the factual, expert and legal aspects of the decision.

In sum, a new wave of streamlining is needed in respect to participation, together with strong capacity building provisions. More information, more possibilities to expert consultations, more institutional and procedural help (e.g. more friendly deadlines that consider the circumstances of the participants) will ensure more effective public participation. We have to note here that local municipalities need a strong reinforcement of their capacities, too. They take part in the procedures either as regular participants (representing their constituency) or as local decision-makers and authorities who would exert a close monitoring of the environmental effect of the activities of the EIA permit holders.

A key capacity building tool shall be to prevent the huge imbalance between the access of the public and of the project proponents to the relevant experts. It is in the harmony with the polluter pays principle, indeed, that the investors/operators bear the full cost of numerous kinds of experts that evaluate their plans and actual environmental performances. But it is not fair and not equitable at all that those whose vested interest is to realize their projects despite the possible objections from the concerned communities, would solely control the selection and work of the experts. EU level and domestic EIA laws should be clear about the guarantees of unbiased and high-level expert contributions. There are no serious arguments against, for instance, that the environmental authorities select and control the experts, while their expenses would be borne by the developer.

What is even more important, certain legislative and practical measures do not support but rather decrease the capacity of the public to participate in the EIA and connected procedures. They include a wide range of excuses to close certain parts of the procedures from the public, speeding up the procedures in a way that hardens public participation ("expedited procedures") or seriously restrict legal remedies. Such practices should be denounced by the Commission and legislation should be drafted that exclude such practices.

The monitoring and follow up activities upon a project that is subject to EIA and other related procedures of the environmental and other related authorities should be open for the public. This is in harmony with the spirit of the consultative and integrative nature of the environmental impact assessment procedures and indispensable in the mirror of the facts that the members and associations of the public are in a unique position to collect data about the actual implementation of the EIA decisions, including not expected environmental and social-economic effects of the project once put into operation and as time lasts. Moreover, the public has the motivation, knowledge on the local environment and even can acquire the necessary professional preparedness and technical equipment for being able to serve the authorities with valuable information.

Closely related to this topic is that in certain Member States the time of expiry of the EIA permit is rather vaguely regulated and there are instances where certain projects with significant environmental effects can hold decades long permit, while no systematic control of the original conditions take place. Our scientific knowledge about environmental procedures is exponentially growing and is multiplied within a couple of years – it is quite

contradicting to issue environmental permits therefore, basically for not an exactly determined time span.

As concerns the second pillar of the 2014 EIA amendment, the Commission Guidelines make clear that one of the most important tools to prevent harmful environmental and socio-economic effects of the planned projects is a careful and detailed examination of alternatives. Unfortunately, in many Member States, this legal provision is interpreted in a way that only those alternatives shall be the subject of the EIA procedure, which the proponents took seriously into consideration. If they insisted only one clear-cut solution and were not willing to develop and evaluate other solutions, the authorities in the overwhelming majority of the cases would accept that there are no other ways ahead and change the focus of the procedure towards mitigation or compensation topics. The practice of the European Court of Justice seems to deviate from this interpretation of the European EIA law[3]. In the mirror of the prevention principle and the precautionary principle widely acknowledged by international and EU environmental law, substantive consideration of the meaningful project alternatives seems to be an indispensable element of prevention of possible or certain environmental and socio-economic harms. A clearer message from the European EIA law should be vital in this respect.

Monitoring responsibilities of the national authorities are not fixed yet concretely by the European EIA law, either. As concludes, the authorities of the Member States are not prepared and equipped to run systematic, integrated monitoring programs, based on an overall database of the conditions of the issued EIA permits (contrary to the situation in water management, where the permit databases are used widely). Without an unambiguous legal responsibility, they will not be doing so in the future, and their budget will keep missing the necessary resources.

Compared to prevention, sanctions and other enforcement measures are of secondary importance. However, it is a bad message towards the operators acting upon the conditions set in their respective EIA permits that their facilities, emissions and other environmental effects are controlled only sporadically, and they can run illegal activities contrary to their permits without consequences.

[3] See for instance C-461/17, Point 69

3. Annex I

Excerpts from Directive 2014/52/EU

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

(3) It is necessary to amend Directive 2011/92/EU in order to strengthen the quality of the environmental impact assessment procedure, align that procedure with the principles of smart regulation and enhance coherence and synergies with other Union legislation and policies, as well as strategies and policies developed by Member States in areas of national competence.

(6) Directive 2011/92/EU should also be revised in a way that ensures that environmental protection is improved, resource efficiency increased and sustainable growth supported in the Union. To this end, the procedures it lays down should be simplified and harmonised

(35) Member States should ensure that mitigation and compensation measures are implemented, and that appropriate procedures are determined regarding the monitoring of significant adverse effects on the environment resulting from the construction and operation of a project, inter alia, to identify unforeseen significant adverse effects, in order to be able to undertake appropriate remedial action. Such monitoring should not duplicate or add to monitoring required pursuant to Union legislation other than this Directive and to national legislation.

(37) In order to improve the effectiveness of the assessments, reduce administrative complexity and increase economic efficiency, where the obligation to carry out assessments related to environmental issues arises simultaneously from this Directive and Directive 92/43/EEC and/or Directive 2009/147/EC, Member States should ensure that coordinated and/or joint procedures fulfilling the requirements of these Directives are provided, where appropriate and taking into account their specific organisational characteristics. Where the obligation to carry out assessments related to environmental issues arises simultaneously from this Directive and from other Union legislation, such as Directive 2000/60/EC of the European Parliament and of the Council, Directive 2001/42/EC, Directive 2008/98/EC of the European Parliament and of the Council, Directive 2010/75/EU of the European Parliament and of the Council and Directive 2012/18/EU, Member States should be able to provide for coordinated and/or joint procedures fulfilling the requirements of the relevant Union legislation. Where coordinated or joint procedures are set up, Member States should designate an authority responsible for performing the corresponding duties. Taking into account institutional

structures, Member States should be able to, where they deem it necessary, designate more than one authority.

(38) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. Member States should be free to decide the kind or form of those penalties. The penalties thus provided for should be effective, proportionate and dissuasive.

Article 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.

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.

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.

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.

The Commission shall provide guidance regarding the setting up of any coordinated or joint procedures for projects that are simultaneously subject to assessments under this Directive and Directives 92/43/EEC, 2000/60/EC, 2009/147/EC or 2010/75/EU.

Article 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.

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.

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.

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.

Article 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.

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https://justiceandenvironment.org/wp-content/uploads/2024/03/Public-participation-in-administrative-procedures-having-relevance-to-environmental-protection-1.pdf