



Environmental Impact Assessment Directive Review

Revised briefing February 2013

Summary

- EIA has been a crucial tool in the protection of Europe's environment for many years, but has shortcomings
- BirdLife broadly welcomes the proposed changes to the Directive, but proposes a range of further measures to strengthen its implementation

Background

The purpose of Environmental Impact Assessment (EIA) is to ensure that decisions as to whether to consent certain projects are made with full knowledge of that project's likely significant environmental effects. EIA does not prevent projects happening, but it serves to identify likely negative environmental effects and how they should be prevented, reduced or offset, and any positive effects enhanced. This reduces risk to the environment, can help improve the overall quality of development and reduce risk and cost to developers and decision makers by highlighting significant issues early in the consenting process. EIA also requires public consultation, and for this to be taken into account by the decision-maker.

EIA has been in use internationally for more than 40 years, but has been a crucial tool providing a high level of protection to the environment in Europe since the original Directive was adopted in 1985.

Experience in EIA has grown significantly since 1985, and the Directive has been amended several times (in 1997, 2003 and 2009, and then codified into a single 'new' Directive in 2011). However, experience has also highlighted a number of shortcomings, and in 2009 the European Commission decided that the EIA Directive should be updated and simplified. Extensive consultation took place in the summer of 2009. Coinciding with the start of the Review, the Commission produced a report, highlighting areas for improvements and making recommendations for how to do so. BirdLife Europe has significant experience of EIA in Europe, and contributed to the Commission's consultation. Relevant documents are available at <http://ec.europa.eu/environment/eia/review.htm>.

According to the Commission's impact assessment, between fifteen and twenty-six thousand EIAs are carried out each year in the EU, but this represents only a very small proportion of all development projects. These projects are by their nature likely to impose significant costs on the environment.

A high quality environment is crucial to economic development and human well-being. The focus of debate on the Directive must be on achieving good environmental outcomes, recognising that effective EIA helps to avoid the environmental costs imposed by poor development. It also helps to implement a variety of global and European environmental objectives, such as avoiding any net loss of biodiversity in the context of the UN Convention on Biological Diversity and the EU

Biodiversity Strategy. In short, EIA is a vital and integral means of protecting Europe's environment.

Proposed changes to the Directive

BirdLife broadly welcomes many of the proposed changes to the Directive, published in October 2012, but recommends a number of further changes to strengthen its implementation. BirdLife will prepare detailed amendments to the text of the Directive on these points. All references are to the Commission's proposals (2012/0297 (COD)).

Biodiversity

- We welcome **explicit reference to 'biodiversity'** (not just 'flora' and 'fauna'), along with more specific references to species and habitats protected under the Birds and Habitats Directives, climate change and other issues (Article 3a), as well as new references to biodiversity in screening (Annex IIA 3b, Annex III 1c and h, 2b) and the content of environmental statements (Annex IV 1b, 4, 5b). However, for clarity and strengthening we recommend both a **definition of biodiversity** in Article 1, based on the Convention on Biological Diversity, and reference to the desirability of **avoiding any net loss of biodiversity** (see Preamble, paragraphs 7 and 8).
- EIA requires the developer to describe the main measures to prevent, reduce and, if possible, offset significant adverse effects (Annex IV 7). We recommend that this **mitigation hierarchy should be strengthened** to emphasise a preference for avoiding harm, and offsetting only as a last resort.
- Semi-natural grasslands in Europe are under threat from intensive agriculture. Although projects for the use of uncultivated land or semi-natural areas for intensive agriculture are currently included in Annex II, many such projects fail to be screened in because thresholds are inappropriately high. We welcome the proposed inclusion in Annex III 2c of permanent pastures and agriculture areas with a high nature value, but we recommend that **semi-natural grasslands and pastures** are also referred to specifically in Annex II 1b.

Exemptions

- Exemptions generally weaken the implementation of the Directive. Although the Commission's proposals in Article 1 (4) are a step in the right direction, we recommend that this paragraph should be **deleted completely**.

Screening (deciding which projects need an EIA)

- We **oppose** the proposal that the information provided by the developer for screening purposes must include **mitigation measures** (Article 4 (3)), as developers will tend to provide a document which looks like a full environmental statement in order to get the project screened out, thereby avoiding consideration of alternatives, consultation with environmental authorities and public participation.
- We recommend, as a failsafe measure, that the competent authority can only decide that EIA is not required where it is convinced as to the **absence of likely significant effects** of the project on the environment. We recommend **public participation in screening**, and a reasonable minimum timeframe for this to take place.
- **Public participation** should also **be required when Member States set Annex II thresholds** and decide to **exempt specific projects under Article 2 (4)**, prior to making the decision.

Scoping (deciding what the EIA should cover)

- We welcome mandatory pre-application scoping, in consultation with the environmental authorities (Article 5(2)). We recommend this provision is extended to **require public participation at the scoping stage**.

Public participation

- In addition to the points above, we propose a number of further changes to ensure that the Directive is fully compliant with the Aarhus Convention. The current Directive can be interpreted such that public participation can take place after construction work has already started, so we recommend a **revised definition of development consent** to deal with this.
- The Aarhus Convention requires 'due account' to be taken of the outcome of the public participation procedure, but the current Directive only requires it to be 'taken into consideration' (Article 8(1)). We recommend that '**due account**' is used instead. This will also give the entire EIA process more significance in the development consent procedure.
- The Aarhus Convention Compliance Committee found that the EIA Directive lacks provisions clearly requiring the public concerned to be provided with effective remedies, including **injunctive relief**. This is not included in the Commission's proposals and we recommend that this point is addressed, with a timeframe for the public to start review proceedings (such as the 3 month maximum timeframe for judicial reviews proceedings in England and Wales).

Alternatives

- We support **mandatory assessment of 'reasonable alternatives'**, rather than just alternatives which the developer has studied (Article 5(2)). These alternatives must include the 'least environmentally impacting one' (Annex IV (2), which contains further details on the information to be provided).

Accredited and technically competent experts

- We welcome the proposal for mandatory use of 'accredited and technically competent experts' either by the developer or the competent authority (Article 5(3)). However, more could be done to secure the independence and professionalism of the experts, so we recommend that both the developer and the competent authority are required to use accredited and technically competent experts (but not the same one), and that **financial and professional penalties** are introduced for experts whose work is found to be seriously in error. We recommend establishing a completely independent body, such as **a national EIA commission**, to review environmental statements.

Monitoring and compliance

- We support the requirement (Article 8(2)), that the development consent includes measures to **monitor significant adverse environmental impacts**, with further specification in Annex IV (7). Monitoring should be carried out independently and the **results made publicly available**. However, there are no requirements for corrective action where developments result in net biodiversity loss or have other significant adverse environmental impacts. We recommend introducing a requirement for the developer to take **corrective action** where monitoring shows that mitigation and compensation measures are not working or there are

significant adverse environmental impacts. Measures should also include financial penalties when promises regarding mitigation and compensation are not kept or when gross negligence can be shown to have affected the assessment.

One-stop Shop

- We also support in principle the proposal to introduce an EIA 'one-stop-shop', allowing the co-ordination or integration of assessment procedures under the EIA Directive and other EU legislation (Article 2 (3)). However the drafting of this section needs to be improved to give clarity that the **determination of different requirements** (e.g. under the Birds and Habitats Directives) **must be discrete**, as very different legal tests are involved, and that the proposed joint procedure does not result in the appointed authority issuing decisions in relation to matters outside its expertise.

Unconventional gas extraction

- Shale gas, coal bed methane and underground coal gasification operations pose risks for groundwater, biodiversity and climate change. These unconventional gas extraction operations are expanding across Europe. As novel and potentially risky operations, impacts on the environment are poorly understood but potentially significant. These operations should be listed in Annex I of the Directive to ensure the potential impacts are properly assessed and taken into account in all cases.

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