

Proposed Changes to EU Environmental Impact Assessment rules – Reducing the burden?

Following a lengthy review process, the European Commission has proposed reforms to the Environmental Impact Assessment (EIA) Directive and how EIA should be conducted in relation to development projects¹. The Commission is seeking to ensure that EIA is applied consistently to projects across the EU whilst targeting assessment only on the most significant impacts and thereby speeding up projects whether or not assessment is required.

A number of pressures have led to the review of the Directive including experience of poor application of screening procedures and use of blanket exemptions, the provision of poor quality environmental information and dealing with new challenges of biodiversity and climate change. This review also takes the opportunity to incorporate the results of a number of EIA cases in the European Courts into the processes of the Directive.

Given the developed state of EIA law and practice in the UK compared with some areas of the EU, many of these changes have already been made to UK EIA procedures and practice and this briefing therefore concentrates on the new aspects².

An overarching change is the clarification that the assessment required by the Directive should be restricted to the "significant" effects of development upon the environment. Whilst this is already the position taken in the UK regulations, this is a welcome reinforcement of the principle at European level.

EIA Screening and scoping

The Proposed Directive suggests a number of reforms to the EIA screening stage (for projects that only need to be assessed if they are likely to have significant environmental effects³) including:

Key issues

- Possible mandatory screening process and broader screening requirements.
- New requirement to consider alternatives and for assessment by accredited experts.
- New time limits and other process changes may lead to structural changes to EIA in England.

¹ [Proposal for a Directive Of The European Parliament And Of The Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.](#)

² In making comments about the impacts of the proposed changes on the domestic EIA process, this briefing describes the position with regard to England only.

³ These are Schedule 2 projects in England e.g. large regeneration projects.

- The drafting of the Proposed Directive suggests that the screening stage might become mandatory - this contrasts with the approach in England where a developer could decide to proceed with an application for planning permission based on its own view that EIA is not required.
- With its screening application, a developer will be required to supply prescribed information. In particular, impacts from waste or use of natural resources would have to be explained and any mitigation works which would reduce the environmental impacts need to be included. The idea is that the more information that is provided up front, the more likely it is that projects which are not likely to have significant environmental effects can avoid needing to be subject to full EIA.
- The selection criteria to decide whether EIA is required have been extended to give more prevalence to impacts of the project on, and its resilience to, climate change, and impacts on cultural heritage and landscape; these in turn will have to be expressly dealt with in the new requirement to provide reasons for the screening decision (which is already required in England). The types of Schedule 2 project subject to EIA are not being changed but the Proposed Directive allows the Commission to amend the selection criteria and this could ultimately be used to establish specific criteria or thresholds for developments to be subject to EIA at EU level - these could override those set out in domestic EIA regulations.
- The Commission proposes that the scoping process which allows developers to ask the authority to determine the level and scope of information needed in the Environmental Statement (ES) should be obligatory; and that the screening decision would contain the scoping decision.
- A new timetable would require a screening decision (and scoping decision) to be made within 3 months of the application for planning permission (potentially extendable up to 6 months). Given that the screening / scoping process in England generally runs before the planning application is made, this is not likely to be a significant change.

The result of these changes in England is that the requirements will be more onerous for many developments due to the possible mandatory screening process and broader criteria to trigger a requirement for an EIA.

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Contents of the Environmental Statement

For a UK developer, there are a number of novelties included in the Proposed Directive on the production of the ES:

- The ES will need to be prepared by an accredited and technically competent person (ATCP) and the ES will then need to be verified by a different ATCP (on behalf of the relevant authority). Depending on how this is interpreted, the new requirements could add cost and have timing implications for the EIA process in England.
- The Explanatory Note to the Proposed Directive states that consideration of alternatives to the development will be mandatory. In the past this has been optional (at EU and domestic level), albeit advisable. The current drafting of the provisions themselves does not appear to make it mandatory but this is likely to be altered.

The Proposed Directive inserts clearer requirements for the assessment of the impact of projects in a number of areas including biodiversity, climate change, landscape and natural and man-made disaster risks (which would include, for example, flooding). Whilst these will generally be covered where relevant in current EIAs, this is likely to require an increased emphasis in these areas. Additional requirements are incorporated on topics with which UK developers have become familiar including: assessment of baselines and cumulative effects.

Process and decision-making

The Proposed Directive establishes prescriptive timeframes for public consultation on the EIA: consultation must not last less than 30 days nor exceed 60 days (or 90 days in certain complex cases). This would extend the standard consultation time in England for development projects from the current minimum 14 or 21 day limits. It does not sit well with the multi-stage nature of consultation procedures for Nationally Significant Infrastructure Projects 'NSIPs' under the Planning Act 2008.

Where the ES and consultation responses point to the development having significant adverse effects, the authority determining the application (the "Planning Authority"), the developer and consultees are required to consult together to determine whether the project and ES should be modified to reduce the adverse effects or alter any mitigation or compensation measures. This is likely to build further delay into the process. The Planning Authority will also formally have to consider whether the ES is up-to-date before determining the application which will possibly trigger more requests for developers to provide updated environmental information.

There is a new requirement for the development consent⁴ to contain information on the EIA including the main reasons why consent was given, a summary of consultation responses and how environmental considerations have been integrated into the development consent. This is likely to require more detailed reasoning to be provided by the Planning Authority than is currently required under the EIA process in England.

The Planning Authority is required to build into the development consent a mechanism to monitor significant adverse environmental effects and the effectiveness of mitigation and compensation measures. Whilst guidance in England already suggests that mitigation measures should be subject to planning condition or planning obligation, the monitoring of such measures would in the future become an enforceable legal requirement.

The Proposed Directive provides that the EIA process (from receipt of full information to decision) should take no more than 3 months (or 6 months for certain complex projects). Unless this can run from conclusion of an Inquiry or Hearing (which is not clear), it is difficult to see how this could work for major UK projects, for example Nationally Significant Infrastructure Projects, without divorcing the EIA decision aspect from the grant of development consent / planning permission (which happens in some countries).

The Proposed Directive also seeks to improve the co-ordination of assessments required under different legislation: for example, "appropriate assessments" required under the European Habitats Directive or assessments under environmental permitting. Authorities will be able to choose to either combine the assessments carried out or simply co-ordinate the assessments. It looks unlikely that the UK would choose to combine the assessments given the changes to current procedures this would involve and also that, in some cases, a different authority is involved in making the assessment (i.e. the Environment Agency in the case of environmental permitting procedures).

Final Comments

The review of the EIA directive is likely to lead to less upheaval in England than in some countries where EIA has been applied inadequately and inconsistently. However, a number of the proposed changes will, if implemented, require some structural change to UK EIA regulations – in particular, the mandatory scoping and even screening stage and the prescriptive time limits and the requirement for accredited assessors. It is not wholly clear that these changes will do much to ease the administrative burden from EIA on developers / authorities in England.

⁴ This could be planning permission, or development consent under the Planning Act 2008 in England.

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