

ROADMAP	
TITLE OF THE INITIATIVE	Review of the Environmental Impact Assessment (EIA)Directive
TYPE OF INITIATIVE	<input checked="" type="checkbox"/> CWP <input type="checkbox"/> Non-CWP <input type="checkbox"/> Implementing act/Delegated act
LEAD DG – RESPONSIBLE UNIT	ENV A.3
EXPECTED DATE OF ADOPTION	Month/Year: 7/2012
VERSION OF ROADMAP	No: 5 Last modification: Month/Year: 8/2011

This indicative roadmap is provided for information purposes only and is subject to change.
It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.

A. Context, problem definition
<p>(i) What is the political context of the initiative? (ii) How does it relate to past and possible future initiatives, and to other EU policies? (iii) What ex-post analysis of the existing policy has been carried out and what results are relevant for this initiative?</p>
<p>The integration of environmental concerns into other policy areas is one of the basic principles of environmental policy. It is enshrined in Article 11 of the Treaty on the Functioning of the European Union. Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/CE (hereinafter the Environmental Impact Assessment – EIA Directive) is a key instrument of environmental integration, covering a wide range of projects and making them environmentally sustainable. The existing legal framework aims to protect the environment and the quality of life, while ensuring approximation of national laws with regard to the assessment of the environmental effects of public and private projects.</p> <p>In its mid-term review of the Sixth Community Environment Action Programme (COM(2007)225), the Commission stressed the need for improving the assessment of environmental impacts at national level and announced that the effectiveness of Directives on Environmental Impact Assessments and Strategic Environmental Assessments would be reviewed. The Commission would seek to speed up these procedures while ensuring that the protection of the environment is not compromised.</p> <p>While ensuring that the EIA Directive is implemented effectively and consistently across the EU, it is also necessary to identify areas where improvements are needed, such as implementation gaps, potential for reducing regulatory and administrative burdens, overlaps with other pieces of legislation and inconsistencies with other EU policies. In this regard, the EIA Directive has been identified as a potential instrument for a future simplification exercise (COM(2009)15).</p> <p>The Commission published in 2009 two reports on the application and the effectiveness of the EIA and of the SEA Directives (COM(2009)378 and COM(2009)469). The results of those reports are relevant for the review of the EIA Directive.</p>
<p>What are the main problems which this initiative will address?</p>
<p>The Commission report of July 2009 on the application and effectiveness of the EIA Directive (COM(2009)378) concluded that the principal objective of the EIA Directive had been achieved. The principles of environmental assessment have been integrated into the national EIA systems. All Member States have established comprehensive regulatory frameworks and implement the EIA in a manner which is largely in line with the Directive's requirements.</p> <p>However, the Commission report also identified several weaknesses in the application of the Directive and pointed out the main areas where improvements are needed (e.g. screening procedure, public participation, quality of the EIA process, EIA transboundary procedures, coordination between the EIA and other environmental directives and policies).</p> <p>Moreover, after 25 years of application the EIA Directive has not considerably evolved (apart from targeted amendments) while the policy, legal and technical contexts have changed:</p> <ul style="list-style-type: none"> - The EU was enlarged and new policies have developed (i.e. there are growing environmental challenges in the areas of climate change, biodiversity, energy, maritime and marine policies). - The project categories listed in the Annexes of the Directive have not been significantly modified since its adoption. Updates are necessary in order to remove obsolete categories of projects and add new ones, clarify

<p>the project definitions and review the thresholds.</p> <ul style="list-style-type: none"> - The European Court of Justice has delivered important rulings clarifying some of the EIA provisions (e.g. screening criteria, concept of development consent) and some project categories; the findings of those rulings should be taken into consideration. Furthermore, useful lessons can be drawn from the Commission's experience with the implementation of the EIA Directive (e.g. information from complaints and petitions or EU co-financing procedures). - The EIA Directive must be adapted to the international policy and legal contexts. The existing framework is consistent with the Espoo and Aarhus Conventions, but there are new developments, which should be taken into account, such as the multiplication of large infrastructure projects with transboundary impacts and the Protocol on Strategic Environmental Assessment to the Espoo Convention.
Who will be affected by it?
Public administration (at central, regional and/or local levels), industry and enterprises (mainly those related to the sectors and project categories listed at Annexes I and II of the Directive, e.g. enterprises in the areas of energy infrastructure, extractive industry, mineral, chemical and metal industry, construction, agriculture), consultancy firms preparing environmental impact studies, natural or legal persons and their associations.
<ul style="list-style-type: none"> (i) Is EU action justified on grounds of subsidiarity? (ii) Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? (Necessity Test) (iii) Can the EU achieve the objectives better? (Test of EU Value Added)
<p>EU action is justified for the following reasons:</p> <ol style="list-style-type: none"> 1. The Directive defines the principles of the EIA in line with the requirements of the Espoo and Aarhus Conventions by introducing minimum requirements. Ensuring approximation of national laws requires action at EU level in order to achieve better results. 2. The need to amend the existing legal framework, with a view to reducing burdens and addressing overlaps and inconsistencies with other pieces of EC legislation, requires an assessment at EU level so as to identify an optimal policy mix of EU and national measures. The sole action of Member States can not solve these issues. 3. The scale and the effects of several measures have a strong transboundary character (e.g. EIA transboundary procedures, public participation). Thus, action at EU level is necessary.
B. Objectives of the initiative
What are the main policy objectives?
<p>The global objective of the review is to improve environmental protection at national level by ensuring a more consistent and effective application of the principles of environmental assessment. This global objective has two sub-objectives:</p> <ol style="list-style-type: none"> 1. Improve the functioning of the EIA Directive: <ul style="list-style-type: none"> - Increase the degree of harmonisation of national laws. - Simplify existing EIA procedures (i.e. screening). - Reinforce the quality components of the EIA process (e.g. content of the report, alternatives, review of EIA information, monitoring, validity EIA). - Clarify legal and technical issues (i.e. ECJ case-law, quality of the EIA report). 2. Improve the synergies between the EIA Directive and other EU environmental legislation: <ul style="list-style-type: none"> - Ensure consistency with the international obligations deriving from the Aarhus Convention and the Espoo Convention (including the Protocol on Strategic Environmental Assessment). - Ensure better coordination with sectoral policies and assessments required by other Directives (SEA, Habitats and Birds Directives, IPPC, Water Framework...) and simplify existing assessment and permitting procedures, to the extent possible.
Do the objectives imply developing EU policy in new areas?
No. The objectives are fully in line with existing EU policies.

C. Options

- (i) What are the policy options being considered?
- (ii) What legislative or 'soft law' instruments could be considered?
- (iii) How do the options respect the proportionality principle?

The Commission report of July 2009 stated that all simplification methods would be considered. A codified directive, which will have been agreed by the end of 2011, provides a new starting point for the consideration of further possible simplification. The following options have to be considered:

1. "Do nothing" option: This option would not introduce any substantial modification, but it will enhance the implementation of the Directive through soft law instruments (mainly the update of guidance documents and the development of new ones).
 2. Technical adaptation: this option would introduce a mechanism to update the Annexes of the Directive, on the basis of Articles 290 (delegated acts) and/or 291 TFEU (implementing acts). This option would clarify the screening criteria of Annex III, clarify the information to be provided by the developer under Annex IV and enable the regular update of the project categories listed in Annexes I and II.
 3. Amendments: This option would substantially modify the EIA Directive, as it involves the amendment of its main provisions and its annexes. It can be done either by recasting or by amending the codified Directive.
 4. "One stop shop": Amendment as above, but with focus on a coordinated/joint EIA in relation to sectoral assessments and permits required by other Directives. The "one stop shop" option has two variants depending on the extent of the coordination: a decentralised coordinated procedure (which would only modify the EIA Directive) or a centralised joint procedure (which would require a legislative action reviewing substantially the EIA Directive and repealing the assessments provisions of the sectoral environmental legislation).
 5. Merging of the EIA Directive with the SEA Directive. This option would aim to redefine the borders of assessment both at plan/programme and project levels.
 6. Repeal the EIA Directive and replace it by a new Directive or a Regulation on environmental assessments.
- The abovementioned specific policy options will be assessed in the framework of the Impact Assessment.

All options mentioned above are rather limited and do not go beyond what is clearly needed to achieve the identified objectives. The Impact Assessment to be conducted will consider all specific policy options and will identify and thoroughly assess the most realistic. The preferred option will not go beyond what is necessary in order to achieve the objectives.

D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

1. Do nothing and update/development of guidance documents: this option is the softer one. No impacts would be expected on public administration, as the institutional/legislative framework would not be modified. Given that gaps and discrepancies would not be entirely tackled, impacts on environment (e.g. quality of the EIA process) and business (e.g. discrepancies observed at the screening phase) should be assessed.
2. Technical adaptation: this option is a soft one. Limited impact would be expected on public administration (need to progressively adapt the national legislation to the changes of the Annexes). Since several gaps of the Directive would be tackled (obligatory EIA for some projects, screening criteria, definition of project categories, quality of the EIA documentation), positive impact on the environment should be expected. A positive impact on business may also be expected due to the legal clarity and the higher degree of harmonisation.
3. Amendment: this is a quite strong option. Significant impact would be expected on public administration (need to transpose the new Directive and adapt the national legislation accordingly). Since most of the gaps of the Directive would be tackled, positive impact on the environment should certainly be expected. The higher degree of harmonisation (e.g. timescale for consultations) and the improved coordination with other policies/directives would have a positive impact on business, but there may be additional costs and burdens from the introduction of new obligations (e.g. monitoring). The impacts will vary depending the scope (limited/broad) of amendments.
4. "One stop shop": this is also a quite strong option. Significant impact would be expected on public administration (need to transpose the new Directive and adapt the national legislation accordingly, including the creation of mechanisms to ensure coordination or joint procedures for environmental assessments). Since most of the gaps of the Directive would be tackled, positive impact on the environment should certainly be expected. The higher degree of harmonisation (e.g. timescale for consultations) and the establishment of coordinated/joint assessment and permit procedures with other policies/directives would have a very positive impact on business, but there may be additional costs and burdens from the introduction of new obligations (e.g. monitoring).

<p>5. Merging and 6. New Directive/Regulation: both options are rather radical. Very significant impact would be expected on public administration (need to transpose the new Directive and adapt the national legislation both on plan/programme and project levels). Since most of the gaps of the Directive would be tackled, positive impact on the environment should certainly be expected. The higher degree of harmonisation (e.g. timescale for consultations) and the consolidation of licensing procedures would have a major positive impact on business, but there may be additional costs and burdens from the introduction of new obligations (e.g. monitoring).</p> <p>A more detailed assessment of the significant impacts of the policy options will be done in the framework of the upcoming Impact Assessment.</p>
<p>Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?</p>
<p>The review will result in a simplification of the "acquis".</p> <p>No impacts expected on relations with third countries.</p> <p>Options 5 and 6, and some variants of option 4 are likely to create difficulties at the transposition and implementation stage for the Member States. However, the difficulties can be effectively anticipated and addressed, on the basis of the existing implementation experience.</p>
<p>(i) Will an IA be carried out for this initiative and/or possible follow-up initiatives? (ii) When will the IA work start? (iii) When will you set up the IA Steering Group and how often will it meet? (iv) What DGs will be invited?</p>
<p>The initiative will undergo an IA.</p> <p>The work started in September 2009. The first steps involved the establishment of an inter-service steering group, the launching of studies and the preparation of the public consultation.</p> <p>In 2010, the Commission consulted the public and the stakeholders. From June to September, a wide public consultation was launched on the review of the EIA Directive, on the basis of a web questionnaire. The questionnaire was available in all EU official languages and lasted three months. 1365 replies have been received. All the replies to the questionnaire are available on the web (http://ec.europa.eu/environment/consultations/eia.htm).</p> <p>The consultation phase was concluded with a Conference at Leuven (18-19 November 2010). This was a complement to the wide public consultation, as it looked for the views of specific and specialised stakeholders. 200 representatives from the EU and international institutions, from the public authorities - at national, regional and local levels - from industry, from environment organisations, and from the academic community were present at the Conference. The results of the conference, including the speeches delivered and the conclusions, are available on the web (http://ec.europa.eu/environment/eia/conference.htm).</p> <p>An inter-service steering group has been set up (note of Mr K. Falkenberg, 23/11/2009, ARES/2009/322729). The following DGs have been invited: SG, LS, AGRI, ECFIN, EMPL, ENTR, MARE, MARKT, REGIO, TREN (now MOVE and ENER). The following DGs have confirmed their participation: SG, LS, AGRI, EMPL, ENTR, MARE, REGIO, TREN (now MOVE and ENER). The newly created DG CLIMA is also participating.</p> <p>The inter-service steering group will accompany all phases of the Impact Assessment procedure and the proposal for amending the EIA Directive. The first meeting of the group took place on 9 December 2009 to discuss the draft roadmap and the draft questionnaire for the public consultation. The second meeting of the group took place on 4 May 2010 and focused on the policy options for the review of the EIA Directive. The third meeting of the group took place on 24 June 2010 and discussed the Directives and provisions potentially affected by the introduction of a coordinated/joint EIA in relation to sectoral assessments and permits required by other environmental Directives ("one stop shop" option). The fourth meeting took place on 19 October 2010 and discussed the results of the public consultation.</p>
<p>(i) Is any of options likely to have impacts on the EU budget above €5m?</p> <p>(ii) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial regulation? If not, provide information about the timing of the ex-ante evaluation.</p>
<p>No impacts on the EU budget expected.</p>

E. Evidence base, planning of further work and consultation

- (i) What information and data are already available? Will existing impact assessment and evaluation work be used?
- (ii) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?
- (iii) What is the timing for the procurement process & the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?
- (iv) Is any particular communication or information activity foreseen? If so, what, and by when?

The reporting of Member States has generated technical and legal information on the application of the EIA Directive at national level. In addition, the Commission has commissioned several relevant studies. Furthermore, the Commission has issued four reports on the on the application and effectiveness of the EIA Directive. In the context of energy infrastructure, there is also a study on "Permitting procedures for energy infrastructure projects in the EU" which is also relevant for the EIA. Finally, the Commission has a wide experience with the implementation of the EIA Directive, including information from complaints and petitions and the case-law.

More detailed information and data needs to be gathered as regards:

- the annual number of EIAs and screenings carried out at central, regional and/or local levels.
- estimates of the costs of the assessments.
- the duration of the EIA procedures.

This information and data should be coherent and reflect the diversity of national EIA regimes.

The framework contract of ENV.F1 will be used. An external contractor was awarded in December 2009 in order to collect and assess information and data as regards the annual number of EIAs and screenings carried out at central, regional and/or local levels, estimates of the costs of the assessments and the duration of the EIA and development consent procedures. The study was completed end of September 2010.

Subsequently, an external contractor was awarded in December 2010 in order to assist the Commission services with the Impact Assessment (i.e. assessment of the impacts of the different policy options and assessment of the impacts of the possible amendments, analysis of administrative burden etc).

A conference was organised in Leuven on 18-19 November 2010 in order to collect the views and expectations of stakeholders, as a complement to the web consultation; it also coincided with the 25th anniversary from the adoption of the EIA Directive.

Which stakeholders & experts have been or will be consulted, how, and at what stage?

The main policy options and the potential amendments have been discussed in the EIA/SEA Experts Group, which is composed of representatives from Member States.

A broad public consultation, on the basis of an on-line questionnaire available in all official languages of the EU was launched on 28 June 2010 to ensure public participation in the decision-making process. The public consultation ended on 24 September 2010.

A conference was organised on 18-19 November 2010 (Leuven) in order to collect the views and expectations of specialised stakeholders; it also coincided with the 25th anniversary from the adoption of the EIA Directive. 200 representatives from the EU and international institutions, from the public authorities - at national, regional and local levels - from industry, from environment organisations, and from the academic community were present at the Conference. All results are available on the web (<http://ec.europa.eu/environment/eia/conference.htm>).