



Committee of the Regions

ENVE-V-001

**84th plenary session
14 and 15 April 2010**

**OPINION
of the
Committee of the Regions
on
IMPROVING THE EIA AND SEA DIRECTIVES**

Rapporteur: **José Macário Correia (PT/EPP)**
Mayor of Faro

THE COMMITTEE OF THE REGIONS

- underlines the need for both Directives to have formal links with the Habitats Directive and the Biodiversity Action Plan, and to contain a well-established methodology to determine the impacts of climate change;
- proposes the screening mechanism of the EIA Directive to be simplified and clarified and recommends that the Directive introduces mandatory scoping and a transparent accreditation process for consultants where utilised;
- recommends that the EIA Directive makes that the assessment of alternative solutions, the establishment of the duration of validity of the EIA and the monitoring of the possible significant environmental effects and of the protective and corrective measures obligatory;
- stresses that public consultation for EIAs should begin as early as possible, for instance at the scoping and screening stage, and that minimum requirements must be prepared on how to make the EIA documentation available to the public concerned;
- concerning the SEA Directive, draws attention to the need to specify unambiguously its scope, to better define what information the environmental report must contain, to make it obligatory to provide a specific definition of reasonable alternatives and to establish methods and indicators for the monitoring of significant environmental effects and of protective and corrective measures; any initiatives taken must incorporate the principles of subsidiarity, proportionality and better regulation;
- considers that there is a vital need to develop capacity in the Member States so as to ensure effective implementation of the SEA Directive.

Rapporteur:

José Macário Correia (PT/EPP), Mayor of Faro

Reference documents

Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the EIA Directive

COM(2009) 378 final

and

Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the Directive on Strategic Environmental Assessment (SEA)

COM(2009) 469 final

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

A. *General comments and the role of regional and local authorities*

1. affirms the importance of the SEA and EIA Directives as key instruments for local and regional environmental policy insofar as they prevent the likely consequences for the environment of public or private investment programmes, plans or projects;
2. emphasises that the application of both Directives may impose additional costs on businesses and public administrations;
3. points out however that neither of the Directives established obligatory environmental standards: ensuring quality control of EIAs and SEAs is largely left to the national authorities;
4. considers that, although there is provision for public participation and transparency in the decision-making process under the SEA and EIA Directives, there are still gaps that need to be filled, specifically regarding the beginning of the public consultation stage, the form of public information and access to it;
5. draws attention to the fact that some passages of the two Directives overlap. Although they address different matters, with the SEA Directive applying upstream of certain public and private plans and programmes, and the EIA Directive examining public and private projects, the boundary between what defines a plan, a programme and a project is not always clear and doubt remains about whether the subject of an assessment meets the criteria for requiring the application of both Directives or only one. Therefore the assessment needs to be carried out in two stages;
6. underlines the need for both Directives to have formal links with the Habitats Directive, particularly its *Appropriate Assessment* aspect, and the Biodiversity Action Plan, and to contain a well-established methodology to determine the impacts of climate change;

B. *Environmental Impact Assessment (EIA) Directive*

7. confirms that all the Member States have established comprehensive regulatory frameworks and are implementing the EIA Directive, in some cases going beyond the minimum requirements it lays down;
8. notes, however, that in some fields the EIA Directive is in need of improvement and calls for a discussion of experts at Member State level, in particular with regard to screening, public participation, quality of data, EIA transboundary procedures and coordination between the EIA and other Directives and policies;

9. proposes that the screening mechanism set out in Article 4 in conjunction with Annexes II and III, should be simplified and clarified, by detailing the selection criteria set out in Annex III and establishing thresholds, criteria or triggers in the Directive. It is shown that when establishing thresholds, some Member States often exceed their margin of discretion, either by taking account only of some selection criteria in Annex III or by exempting some projects in advance. In addition, there are several cases in which cumulative effects are not taken into account and there is the use of "salami-slicing" practices in projects, especially for big investment plans. Also proposes that the technical characteristics of the projects included in Annexes I and II is spelt out in detail in order to clarify the scope of application;
10. recommends that the Directive introduce mandatory scoping that determines the content and extent of the matters to be covered in the environmental information of the EIA, and a transparent accreditation process for consultants where utilised;
11. also recommends, as a measure contributing to the quality and hence the effectiveness of EIAs, that the Directive specify that assessment of alternative solutions, establishment of the duration of validity of the EIA and monitoring of the possible significant environmental effects of project implementation are obligatory, as well as of the effectiveness of the protective and corrective measures adopted;
12. stresses that the public must be given early and effective opportunities to participate in decision-making. Public consultation should begin as early as possible, for instance at the scoping and screening stage. Minimum requirements must also be prepared on how best to make EIA documentation available to the public concerned;

C. Strategic Environmental Assessment (SEA) Directive

13. draws attention to the fact that the overall picture of the application and effectiveness of the SEA Directive across all Member States is a varied one in terms of the institutional and legal arrangements, and in terms of how Member States perceive its role¹;
14. underlines that, although further experience in applying the SEA Directive is needed, the Directive contains a series of elements, which are left for each Member State to describe, that could be specified in a review. It draws attention to the need to:
 - specify unambiguously the scope of the Directive (Article 3(2)(a) and (3)) regarding whether a plan or programme is like to have environmental effects;

¹ More information on the application and effectiveness of both Directives can be found on the following studies by the European Commission:
http://ec.europa.eu/environment/eia/pdf/eia_study_june_09.pdf
<http://ec.europa.eu/environment/eia/pdf/study0309.pdf>

- better define what information the environmental report (Article 5 and Annex I) must contain. Identification of the correct scale of data and of the level of detail of the assessment, and the inclusion of a standard set of environmental criteria could improve the effectiveness of the Directive;
 - provide in the environmental report (Article 5(1)) a specific definition of reasonable alternatives on a mandatory basis;
 - make it obligatory to establish methods and indicators enabling the monitoring of significant environmental effects (Article 10) of implementing plans and programmes, as well as of the effectiveness of the protective and corrective measures adopted;
15. recalls that experience shows that introducing SEAs into regional and local land-use planning increases the relevant costs by 0.1-1% and approval times by 20 to 25% above the normal duration, and that this must be reflected in any amendments made to the SEA Directive;
16. considers that there is a vital need to develop capacity in the Member States so as to ensure effective implementation of the SEA Directive. In order to do this, capacity-building must be strongly encouraged, in particular through targeted campaigns for the recruitment and training of SEA experts and drafting of guidance documents;
17. proposes, lastly, that any initiatives taken must incorporate the principles of subsidiarity, proportionality and better regulation, open a broadly-based debate with all stakeholders, enhance nature conservation, increase the level of harmonisation and simplify existing procedures.
18. notes that time and money can be saved and duplication of work avoided, because the public already has the opportunity to find out about the options envisaged in the course of public hearings while land-use plans are being prepared; an SEA is therefore superfluous as a measure to ensure public involvement. An SEA can be carried out to test alternatives regarding the aim, the technologies used or the environmental impact of a specific, potentially environmentally harmful project.

Brussels, 15 April 2010

The First Vice-President
of the Committee of the Regions

Ramón Luis Valcarcel Siso

The Secretary-General
of the Committee of the Regions

Gerhard Stahl

II. PROCEDURE

Title	Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC and 2003/35/EC) and the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the Directive on Strategic Environmental Assessment (Directive 2001/42/EC)
References	COM(2009) 378 final and COM(2009) 469 final
Legal basis	Article 265(1) of the EC Treaty
Procedural basis	Optional referral
Date of Commission letter	COM(2009) 378 final: 23.07.2009 COM(2009) 469 final: 14.09.2009
Date of President's decision	COM(2009) 378 final: 17.08.2009 COM(2009) 469 final: 16.10.2009
Commission responsible	Commission for Environment, Climate Change and Energy (ENVE)
Rapporteur:	José Macário CORREIA (PT/EPP), Mayor of Faro
Analysis	15.12.2009
Discussed in commission	3 March 2010
Date adopted by commission	3 March 2010
Result of the vote in commission	Majority
Date adopted in plenary	15 April 2010
Previous Committee opinions	<ul style="list-style-type: none"> – Opinion on "New impetus for halting biodiversity loss" – CdR 22/2009 fin² – Opinion on "Industrial Emissions" – CdR 159/2008 fin³ – Opinion on the Proposal from the Commission for a Directive providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EC and 96/61/EC – CdR 99/2001 fin⁴

² OJ C 211 of 4.9.2009, p. 47.

³ OJ C 325 of 19.12.2008, p. 60.

⁴ OJ C 357 of 14.12.2001, p. 58.

	<ul style="list-style-type: none">– Opinion on the Amended proposal for Council Directive on assessment of the effects of certain plans and programmes on the environment – CdR 349/1999 fin⁵– Opinion on the Proposal for a Council Directive on the assessment of the effects of certain plans and programmes on the environment – CdR 172/97 fin⁶– Opinion on the Proposal for a Council Directive amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment – CdR 245/94 fin⁷
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⁵ OJ C 374 of 23.12.1999, p. 9.

⁶ OJ C 64 of 27.2.1998, p. 63.

⁷ OJ C 210 of 14.8.1995, p. 78.