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EUROPEAN COMMISSION

COMMISSION NOTICE

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)

1. Introduction

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.

The environmental impact assessment (EIA) procedure also improves the business certainty in the interest of public and private investment, in line with the principles of Better Regulation. EU law can sometimes require several environmental assessments for a single project. Each assessment is designed to maximise environmental protection of a specific kind. However, 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.

This notice provides guidance on streamlining the EIA procedure. It focuses on certain steps of the EIA procedure and identifies ways of streamlining different environmental assessments in the context of joint and/or coordinated procedures (See Chapter 4). This notice is not binding, and it has no bearing on whether Member States are required to choose between the coordinated and the joint procedure or to combine the two. Lastly, it should be noted that the Court of Justice of the European Union is the only source of definitive interpretation of EU law.

⁽¹⁾ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ L 124, 25.4.2014, p. 1). Directive 2011/92/EU is a codification of the Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, amended by Directive 1997/11/EC, Directive 2003/35/EC and Directive 2009/31/EC.

2. Joint and coordinated procedures conducted under Article 2(3) of the EIA Directive, as amended

The EIA Directive ⁽¹⁾ provides for two procedures to streamline environmental assessments of projects that are subject to the environmental impact assessment (EIA) directive and other environmental assessments under the applicable EU legislation. They are:

- (i) the joint procedure; and
- (ii) the coordinated procedure.

Either one or both combined can be applied to a project or type of project. Coordinating or joining the environmental assessment procedures applied to a project, so as to avoid overlaps and redundancy, while also taking full advantage of synergies and minimising the time needed for authorisation, is known as 'streamlining'. The Member States can introduce coordinated and/or joint procedures that meet the requirements of the directives concerned, taking into account the specific arrangements they require.

Under the joint procedure, Member States arrange a single assessment of the environmental impact of a given project. This does not affect any provisions in other EU legislation that may state otherwise ⁽²⁾. A single assessment, conducted in accordance with the EIA Directive, replaces multiple assessments of a given project. The single assessment ensures that the project is compliant with the applicable *acquis*.

Under the coordinated procedure, Member States designate an authority to coordinate the various assessments of a project's environmental impact. This does not affect any provisions in other EU legislation that may state otherwise. Having a single point of contact responsible for all environmental assessments can improve clarity and efficiency for developers and administration alike, and provide guidance throughout the procedure. The designated administrative body plays a central role in coordination and ensures that the environmental assessments run smoothly.

Member States can choose different approaches to applying each procedure. Some have already introduced coordinated and/or joint procedures as referred to in Article 2(3) of the EIA Directive ⁽³⁾. It is a Member State's duty to ensure the transposition and implementation of the Article 2(3) including by introducing certain modifications in its national legislation.

To this end, if a Member State opts for a joint procedure, it would be appropriate to provide for a single assessment of the environmental impacts of a particular project. If a Member State opts for a coordinated procedure, it would be appropriate to designate an authority for coordinating the individual assessments.

The extent to which the national legislation transposing the Directive needs to be amended also depends on whether the Member States have incorporated environmental impact assessments into existing procedures for development consent of projects, other procedures, or procedures established to comply with the objectives of the EIA Directive (Article 2(2) of the EIA Directive).

⁽¹⁾ Article 2(3) of the amended EIA Directive reads:

'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.

⁽²⁾ Article 2(3), paragraph 4 of the EIA Directive, as amended provides that the joint procedure referred therein applies 'without prejudice to any provisions to the contrary contained in other relevant Union legislation'.

⁽³⁾ For example, Council Directive 97/11/EC of 3 March 1997, amending Council Directive 85/337/EEC (EIA Directive), introduced the following option: 'Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control.' (Article 2a).

The Commission was mandated to provide guidance on setting up any coordinated and/or joint procedures for projects that simultaneously require assessment under the EIA Directive and Directives 92/43/EEC ('Habitats Directive') ⁽¹⁾, 2000/60/EC ('Water Framework Directive', WFD), 2009/147/EC ('Birds Directive') ⁽²⁾ or 2010/75/EU ('Industrial Emissions Directive', IED). The Commission considers such guidance also being consistent with the objectives of recital 37 of Directive 2014/52/EU ⁽³⁾, which should be taken into account by the Member States in implementing the EIA Directive, as amended.

While streamlining is mandatory – 'where appropriate' – as regards the EIA and 'appropriate assessment' under the Habitats Directive ⁽⁴⁾, and/or under the Birds Directive it is up to the individual Member States to decide whether to apply it to the EIA Directive and the Water Framework Directive or the Industrial Emissions Directive.

3. Planning streamlined procedures

The purpose of streamlining is to establish a flexible, comprehensive approach to assessment that can be tailored to each project without compromising the environmental objectives or implications of individual assessments. The streamlining approach helps the developer consider the applicable assessments, the authorities to be involved and the consultation process. This helps avoid duplication of assessments and delays in conducting them.

Irrespective of whether the joint or coordinated approach is taken, or a combination of the two, the scope of the environmental assessments to be conducted needs to be established early on. This enables the environmental factors on which the project is likely to have a significant impact to be identified. As regards efficiency, planning the streamlined coordinated and/or joint procedures creates certainty and regulatory stability. Such an approach makes it easier to draft the environmental reports and information required by different directives.

Where the joint procedure is applied, the Commission encourages Member States to opt for a single, integrated environmental report covering the information obtained from all the assessments conducted. To ensure a systematic assessment procedure and compliance with all the directives concerned, it is advisable to assess all relevant aspects of a project from the very outset. In the case of a coordinated procedure, a designated authority manages the various assessments to be conducted. A joint assessment, on the other hand, means that there is just one assessment of the environmental impact.

3.1. Environmental impact assessment (EIA) and the appropriate assessment (AA)

The EIA Directive prescribes that, in the case of projects for which the obligation to conduct environmental impact assessments arises from both the EIA Directive and the Habitats Directive, in particular Article 6(3)-(4) of the Habitats Directive (appropriate assessment (AA)) and/or under the Birds Directive, Member States shall, where appropriate, ensure that coordinated and/or joint procedures meeting the requirements of those two directives are provided for.

The word 'shall' in the first paragraph of Article 2(3) of the EIA Directive, as amended, means that there is an obligation to hold the procedures; in contrast, the second paragraph of the same article uses the verb 'may' instead, indicating that a choice exists. The words 'where appropriate' refer to the issue of whether the two procedures are actually relevant in the case in question. In other words, if the project concerned requires assessments under the EIA Directive and the Habitats Directive, a coordinated or joint procedure shall be held unless it is not relevant to the project in question. It is up to the Member State concerned to determine whether or not the procedure is relevant.

⁽¹⁾ This guidance document pays particular attention to the 'appropriate assessment' of implications on Natura 2000 sites, i.e. Sites of Community Importance (SCI) and Special Areas of Conservation (SAC) under the Habitats Directive and Special Protection Areas (SPAs) under the Birds Directive, as laid down in Article 6(3)-(4) of the Habitats Directive. In addition to the appropriate assessment, assessment procedures may result from the application of Articles 12 and 16 of the Habitats Directive and Articles 5 and 9 of the Birds Directive.

⁽²⁾ In accordance with Article 7 of the Habitats Directive, SPAs classified in accordance with the Birds Directive are also subject to the appropriate assessment provisions under Article 6 of the Habitats Directive.

⁽³⁾ '(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.'

⁽⁴⁾ Article 2(3) EIA Directive, paragraph 1.

3.2. EIA and other EU legislation

There are projects for which the obligation to carry out environmental impact assessments arises both from the EIA Directive and from EU legislation other than the Habitats Directive (e.g. the Water Framework Directive (WFD), or the Industrial Emissions Directive (IED)). In such cases, Member States may apply the coordinated procedure, the joint procedure, or a combination of the two. It is not obligatory for a Member State to streamline environmental impact assessments under these circumstances.

For example, certain projects listed in the EIA Directive could affect protected species and habitats at Natura 2000 sites, or can lead to changes in water bodies. Projects involving installations mentioned in both the EIA Directive and the Industrial Emissions Directive (IED) are subject to both directives' requirements. Where possible, assessment procedures should be conducted by using the joint procedure, thereby making data collection, public consultation and the assessment process itself more efficient.

4. Streamlining environmental assessments: best practices

4.1. Drawing up the environmental impact assessment report

The content of the environmental impact assessment (EIA) report is liable to differ from one case to another, depending on the project's specific characteristics and the environmental features likely to be affected. The data and information the developer includes in the EIA report should be in accordance with Annex IV of the EIA Directive⁽¹⁾. The information and the results of other assessments required under EU or national legislation could, where relevant, be taken into account with a view to avoiding duplication of assessments. Relevant legislation includes the 'appropriate assessment' under the Habitats Directive, the Industrial Emissions Directive, and the Water Framework Directive.

However, given the differences in the scope of the EIA and AA, the information relevant to the AA and the relevant conclusions with regard to it must be readily identifiable in the environmental impact assessment report. Information gathered in the course of the EIA procedure cannot substitute the AA information, as neither procedure overrides the other.

Establishing the scope and level of detail of the environmental information to be provided in an environmental impact assessment report (i.e. scoping) is optional. However, the competent authority must issue an opinion on the scope and level of detail of the information to be included by the developer in the EIA report if the developer so requests. Particular account will be taken of the project's specific features, including its location, technical capacity and likely impact on the environment⁽²⁾.

Scoping can be useful in cases where the joint and coordinated procedures required by the relevant directives could be carried out in different combinations. For instance, the EIA and the appropriate assessment (AA) could be performed either as a joint or as a coordinated procedure. The WFD and IED assessments could be added, where appropriate. The WFD and IED assessment could be conducted jointly with the EIA and the AA, or could be coordinated with them.

To ensure high-quality environmental information, it is advisable to make scoping a compulsory step in the streamlined assessments. Introducing reasonable time-frames for scoping can help in streamlining assessments. Scoping is also useful for the project developer, ensuring transparency and legal certainty. An early coordination phase involving the competent authorities, the public and the developer before the impact assessment starts can thus make the overall process easier and identify any problems from the outset.

Where the coordinated procedure is applied, streamlining enables the developer to coordinate data collection and the management of the procedures required by the various environmental assessments. Ideally, this should be done by an ad hoc coordinator or designated competent body. It would then be possible to coordinate the drafting of the individual reports.

It is advisable for the national authorities to set up a national or regional database containing information that defines environmental status before the project is carried out. An electronic submission system or online sharing platform, for instance, may simplify and help centralise the resources available for collecting and disseminating data.

If the environmental impact assessment (EIA) and the appropriate assessment procedure (AA) are dealt with using the joint procedure, complemented by a coordinated procedure for the other applicable assessments, the joint and coordinated procedures could be combined. Depending on the outcome of the scoping and the nature of the project, the best solution could be to draw up a single, comprehensive environmental report.

⁽¹⁾ Article 5 of the EIA Directive, as amended.

⁽²⁾ Article 5(2) of the Environmental Impact Assessment (EIA) Directive, as amended.

GUIDANCE ON DRAWING UP THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT

- Developers should start collecting data as soon as possible while the project is at the preparation stage, on the basis of the advice received by the competent authorities.
- Scoping is good practice in any procedures, whether joint, coordinated or combined. It makes it easier to establish the scope and content of the overall environmental report and ensure that the information to be provided on the basis of the various environmental assessments is coherent.
- If a Member State opts for the joint procedure, the environmental report should preferably be drawn up as a single document including all the necessary information and conclusions. It should address the specific features of each environmental assessment to be conducted in connection with the project.
- If a Member State opts for the coordinated procedure, the developer may draw up more than one environmental report. These could later be consolidated into a single document. Alternatively, their contents could be coordinated.

4.2. Consultation and public participation

Public participation is a key step in the EIA procedure and in line with the EU's international commitments stemming from the Aarhus Convention ⁽¹⁾. The EIA Directive lays down binding requirements for public participation ⁽²⁾. The time-frames for consulting the public concerned on the EIA report must be of at least 30 days' duration ⁽³⁾. Ensuring public participation with regard to environmental assessments allows effective tiering of consultations, depending on the specifics of the assessment concerned. It is good practice to inform and involve the public from the outset of the environmental assessment procedure, i.e. the scoping phase. This also applies to the assessment procedures under the Habitats Directive.

In the case of a joint procedure, the single environmental report must be made publicly available within a reasonable period. The public must be given opportunities to participate effectively in the environmental decision-making ⁽⁴⁾.

In the case of a coordinated environmental procedure, the authority designated responsible for coordination can ensure that the public has access to information and can participate as outlined in Article 6(3) and (4) of the EIA Directive, and other pieces of EU legislation that prescribe public consultation and participation, in parallel with the information prepared under the EIA Directive.

GUIDANCE ON CONSULTATION AND PUBLIC PARTICIPATION

- Provision for planning public participation and consultation should exist at the different stages of the streamlined environmental procedures. It is advisable to involve the public early, at the scoping phase.
- If the assessments to be conducted require several public consultations, these should be held either under a single integrated consultation procedure or through coordinated procedures.
- Setting reasonable maximum time-frames for informing the public and conducting public consultations makes the procedure easier and more efficient for both the competent authorities and the developers.

4.3. Decision-making

Unlike the EIA Directive, Article 6(3) of the Habitats Directive stipulates that the results of the 'appropriate assessment' are binding for the development consent of a project. This means that the competent authorities cannot authorise the project unless the 'appropriate assessment' (AA) concludes that it will not adversely affect the integrity of the Natura 2000 site concerned.

If a project requires the simultaneous application of EIA and AA, the joint or coordinated procedure applies. Experience shows that the joint procedure involving both EIA and AA ensures better assessment quality, and it is the recommended way to conduct the two assessments. Consequently, when it is decided to grant or refuse development consent to

⁽¹⁾ It is required under the UNECE Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention,) to which the EU and its Member States are parties.

⁽²⁾ The Water Framework Directive and the Industrial Emissions Directive also include provisions on public participation. Member States must ensure compliance with these provisions in relevant cases.

⁽³⁾ Article 6(7) of the EIA Directive, as amended.

⁽⁴⁾ Article 6 of the EIA Directive, as amended.

a project assessed under both the EIA Directive and Article 6(3) of the Habitats Directive, the decision should preferably be accompanied by information on the AA, and it must be in line with the outcomes of the AA (or with the requirements of Article 6(4) of the Habitats Directive which apply in specific circumstances ⁽¹⁾).

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.

GUIDANCE ON DECISION-MAKING

- The joint EIA and AA procedure ensures better quality, as it is also covered by public consultation. When a decision is taken to grant or refuse consent to develop a project, it is therefore recommended that the decision be complemented by information on the 'appropriate assessment', and that it be in line with that assessment's outcomes.
- The decision following the streamlined environmental assessments could also include information about the alternative solutions, mitigation measures and, if relevant, the compensation measures identified with regard to Natura 2000 sites in the context of the AA or in the overall EIA environmental report.

⁽¹⁾ According to Art 6(4) of the Habitats Directive, if the 'appropriate assessment' concludes that adverse effects cannot be ruled out, authorisation can still be given, provided that specific strict conditions apply (there are no alternative solutions, there are imperative reasons for overriding public interest, compensation measures for damage have been found that will ensure the Natura 2000 network remains coherent). The Commission must be informed in such a case, and, under specific circumstances, give an opinion.