



UEPC POSITION PAPER AND SUGGESTED AMENDMENTS

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(COM(2012)628 FINAL, 26.10.2012)

INTRODUCTION

The European Union of House Builders and Developers (UEPC) takes a close interest in the European Parliament's discussions on the draft Report by Mr Andrea Zanoni on the Environmental Impact Assessment Directive, and followed the first discussion in the Environment, Public Health and Food Safety Committee on 6 May.

UEPC is pleased to note from the draft report that the Rapporteur has already tabled amendments to take on board two of its initial concerns regarding the European Commission proposal, namely that:

- where a deadline is exceptionally extended the competent authority must inform the developer in writing (Rapporteur's Amendment 24),
- removing the obligation for technically competent experts to be accredited (Rapporteur's Amendments 28-32) since this would involve considerable implementation difficulties for the Member States and for economic operators who often already have valid internal expertise.

In other areas of the Directive, particularly in relation to the deadlines for granting of approvals and extensions, UEPC considers that the Commission's proposed maximum timeframes – which the Rapporteur supports – are too long and threaten the viability of certain projects.

UEPC is also concerned that proportionality must be respected, and considers that the screening procedure is not necessary when it concerns projects that are the implementation of:

- plans and programmes which determine the use of small areas at local level and
- minor modifications to plans and programmes

under the condition that it has been determined that these plans and programs are not likely to have significant environmental effects in conformity with Directive 2001/42/EC.

UEPC was pleased to note that, in the debate, a number of the Shadow Rapporteurs suggested that more must be done to reach a balance between protecting the environment and burdening developers and national authorities with additional administrative burdens and processes, and that there was a danger that these procedures were becoming an obstacle.



Regarding the Rapporteur’s suggestion that developers should bear responsibility to undertake corrective measures in the form of additional mitigation and and/or compensation measures (Amendments 6 and 41), UEPC notes that at the monitoring stage the developer, in most cases, does not have rights anymore to the project as in many cases the project will already be sold to investors or directly to private or public clients. We therefore suggest that this aspect requires further consideration in future committee discussions.

UEPC is therefore delighted to submit a series of amendments to improve the European Commission’s proposal in this regard.

SUGGESTED AMENDMENTS

AMENDMENT 1

Article 1, insert new paragraph 4(c) amending EIAD Article 4, paragraphs 3 and 4

Commission Proposal	Suggested amendment
	<p>3. This article does not apply to projects listed in Annex II, that are the implementation of plans and programmes, referred to in article 3, paragraph 3 of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, under the condition that it has been determined that these plans and programs are not likely to have significant environmental effects in conformity with Directive 2001/42/EC</p>

Justification

The general objective of the proposal for a directive is to adjust the provisions of the codified EIA Directive, so as to reflect ongoing environmental and socio-economic changes and challenges, and align with the principles of smart regulation. It is proposed to clarify the **screening** procedure, by specifying the content and justification of screening decisions. The proposed amendments of the Commission “*would ensure that EIAs are carried out only for projects that would have significant environmental effects, avoiding unnecessary administrative burden for small-scale projects*”. “*With a view to avoiding duplication of the assessment, Member States should take account of the fact that environmental assessments may be carried out at different levels or by different instruments.*”

It is also the objective of the proposal for a directive to amend Directive 2011/92/EU in order to enhance coherence and synergies with other Union legislation and policies (...).” *With a view to avoiding duplication of the assessment, Member States should take account of the fact that environmental assessments may be carried out at different levels or by different instruments.*”



The suggested amendment is perfectly in line with the objectives of the proposal for a directive. It suggests that the screening procedure is not necessary when it concerns projects that are the implementation of:

- plans and programmes which determine the use of small areas at local level
- minor modifications to plans and programmes

under the condition that it has been determined that these plans and programs are not likely to have significant environmental effects in conformity with Directive 2001/42/EC.

The SEA Guidelines of the Commission comment on these plans and programmes: http://ec.europa.eu/environment/eia/pdf/030923_sea_guidance.pdf

The meaning of 'small' in the phrase 'small areas at local level' must be defined so as to take account of the differences between Member States. The kind of plan or programme envisaged might be a building plan which, for a particular, limited area, outlines details of how buildings must be constructed, determining, for example, their height, width or design. If it has been determined that these plans and programs are not likely to have significant environmental effects, there is no need for a screening of a project that implements such plans or programmes.

This is a logical and reasonable solution in order to avoid duplication of the assessment, reduce administrative complexity and increase economic efficiency.

AMENDMENT 2

Article 1, paragraph 4(a) amending Article 4 EIAD, paragraphs 3 and 4

Commission Proposal	Suggested amendment
<p>3. For projects listed in Annex II, the developer shall provide information on the characteristics of the project, its potential impact on the environment and the measures envisaged in order to avoid and reduce significant effects. <i>The detailed list of information to be provided</i> is specified in Annex II.A.</p>	<p>3. For projects listed in Annex II, the developer shall provide information on the characteristics of the project, its potential impact on the environment and the measures envisaged in order to avoid and reduce significant effects <i>by taking into account the relevant parts of</i> the detailed list of information specified in Annex II.A.</p>
<p>4. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the competent authority shall take account of selection criteria related to the characteristics and location of the project and its potential impact on the environment. The detailed list of selection criteria to be <i>used</i> is specified in Annex III.</p>	<p>4. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the competent authority shall take account of <i>the relevant</i> selection criteria related to the characteristics and location of the project and its potential impact on the environment. The detailed list of selection criteria to be <i>taken into account</i> is specified in Annex III.</p>



Justification

There is no need to impose the complete list on the developer in cases where not all the information listed in Annex II.A is relevant to a particular project. The same applies for the competent authority and Annex III. We therefore propose to reinstate the language of the original Directive in order to avoid unnecessary burdens:

Directive 2011/92/EU, Article 4(3)

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the **relevant** selection criteria set out in Annex III shall be **taken into account**.

AMENDMENT 3

Article 1, paragraph 4(b) adding paragraph 6 to EIAD Article 4

Commission Proposal	Suggested amendment
<p>6. The competent authority shall make its decision pursuant to paragraph 2 within three months from the request for development consent and provided that the developer has submitted all the requisite information. Depending on the nature, complexity, location and size of the proposed project, the competent authority may extend that deadline by <i>a further 3 months</i>; in that case, the competent authority shall inform the developer of the reasons justifying the extension and of the date when its determination is expected.</p>	<p>6. The competent authority shall make its decision pursuant to paragraph 2 within three months from the request for development consent and provided that the developer has submitted all the requisite information. Depending on the nature, complexity, location and size of the proposed project, the competent authority may <i>exceptionally</i> extend that deadline by <i>one month</i>; in that case, the competent authority shall inform the developer <i>in writing</i> of the reasons justifying the extension and of the date when its determination is expected.</p>

Justification

Under the proposal, competent authorities would have complete discretion to hold up projects for six months, which means that many projects would not be realized simply due to bureaucracy. The amendment seeks to provide for a more reasonable timeframe (noting that the deadline in the UK is even shorter at three weeks) to provide greater certainty to developers.

Furthermore, it is proposed that the justification of the extension shall also be provided to the developer, in the interests of promoting certainty and good governance.



AMENDMENT 4

Article 1, paragraph 5, replacing EIAD Article 5 paragraph 1:

Commission Proposal	Suggested amendment
<p>1. Where an environmental impact assessment must be carried out in accordance with Articles 5 to 10, the developer shall prepare an environmental report. The environmental report shall be based on the determination pursuant to paragraph 2 of this Article and include the information that may reasonably be required for making informed decisions on the environmental impacts of the proposed project, taking into account current knowledge and methods of assessment, the characteristics, technical capacity and location of the project, the characteristics of the potential impact, alternatives to the proposed project and the extent to which certain matters (including the evaluation of alternatives) are more appropriately assessed at different levels including the planning level, or on the basis of other assessment requirements. The detailed list of information to be provided in the environmental report is specified in Annex IV.</p>	<p>1. Where an environmental impact assessment must be carried out in accordance with Articles 5 to 10, the developer shall prepare an environmental report. The environmental report shall be based on the determination pursuant to paragraph 2 of this Article and include the information that may reasonably be required for making informed decisions on the environmental impacts of the proposed project, taking into account current knowledge and methods of assessment, the characteristics, technical capacity and location of the project, the characteristics of the potential impact, alternatives to the proposed project <i>relative to the significant impacts</i> and the extent to which certain matters (including the evaluation of alternatives) are more appropriately assessed at different levels including the planning level, or on the basis of other assessment requirements. The detailed list of information to be provided in the environmental report is specified in Annex IV.</p>

Justification

In the interests of proportionality, the developer should only be required to present alternatives to the project which are relevant to the significant impacts of the project, since the competent authority would otherwise be burdened with irrelevant information.

AMENDMENT 5

Article 1, paragraph 8 replacing EIAD Article 8

Commission Proposal	Suggested amendment
<p>...</p> <p>2. If the consultations and the information gathered pursuant to Articles 5, 6 and 7 conclude that a project will have significant adverse environmental effects, the competent authority, as early as possible and in close cooperation with the authorities referred to</p>	<p>...</p> <p>2. If the consultations and the information gathered pursuant to Articles 5, 6 and 7 conclude that a project will have significant adverse environmental effects, the competent authority, as early as possible and in close cooperation with the authorities referred to</p>



<p>in Article 6(1) and the developer, shall consider whether the environmental report referred to in Article 5(1) should be revised and the project modified to avoid or reduce these adverse effects and whether additional mitigation or compensation measures are needed.</p> <p>If the competent authority decides to grant development consent, it shall ensure that the development consent includes measures to monitor the significant adverse environmental effects, in order to assess the implementation and the expected effectiveness of mitigation and compensation measures, and to identify any unforeseeable adverse effects.</p> <p>The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the proposed project and the significance of its environmental effects.</p> <p>Existing monitoring arrangements resulting from other Union legislation may be used if appropriate.</p> <p>3. When all necessary information gathered pursuant to Articles 5, 6 and 7 has been provided to the competent authority, including, where relevant, specific assessments required under other Union legislation, and the consultations referred to in Articles 6 and 7 have been completed, the competent authority shall conclude its environmental impact assessment of the project within three months.</p> <p>Depending on the nature, complexity, location and size of the proposed project, the competent authority may extend that deadline by a further 3 months; in that case, the competent authority shall inform the developer of the reasons justifying the extension and of the date when its decision is expected.</p>	<p>in Article 6(1) and the developer, shall consider whether the environmental report referred to in Article 5(1) should be revised and the project modified to avoid or reduce these adverse effects and whether additional mitigation or compensation measures are needed.</p> <p>If the competent authority decides to grant development consent, it shall consider whether the development consent should include measures to monitor the significant adverse environmental effects, in order to assess the implementation and the expected effectiveness of mitigation and compensation measures, and to identify any unforeseeable adverse effects.</p> <p>The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the proposed project and the significance of its environmental effects.</p> <p>Existing monitoring arrangements resulting from other Union legislation may be used if appropriate.</p> <p>3. When all necessary information gathered pursuant to Articles 5, 6 and 7 has been provided to the competent authority, including, where relevant, specific assessments required under other Union legislation, and the consultations referred to in Articles 6 and 7 have been completed, the competent authority shall conclude its environmental impact assessment of the project within one month.</p> <p>Depending on the nature, complexity, location and size of the proposed project, the competent authority may exceptionally extend that deadline by a further one month; in that case, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its decision is expected.</p>
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Justification



Competent authorities should retain the discretion to consider whether monitoring is required, on a case-by-case basis.

In order to avoid excessive delays to projects, it is proposed that the environmental impact assessment should be concluded within one month once the necessary information has been gathered. Any further delay should be limited to one further month, and the developer shall be informed of this extension in writing, in the interests of promoting certainty and good governance.

AMENDMENT 6

ANNEX, replacement of Annex III

Commission Proposal	Suggested amendment
ANNEX III – SELECTION CRITERIA REFERRED TO IN ARTICLE 4(4) ... 2. LOCATION OF PROJECTS The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to: (a) the existing and planned land use, including land take and fragmentation;	ANNEX III – SELECTION CRITERIA REFERRED TO IN ARTICLE 4(4) ... 2. LOCATION OF PROJECTS The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to: (a) the existing land use and the planned land use, where such use is foreseen by formally adopted plans , including land take and fragmentation.

Justification

The term “planned land use” is too vague and it should be clarified that this refers to where plans have already been adopted in line with applicable domestic legislation.

AMENDMENT 7

ANNEX IV – INFORMATION REFERRED TO IN ARTICLE 5(1)

Commission Proposal	Suggested amendment
A description of the technical, locational or other aspects (e.g. in terms of project design, technical capacity, size and scale) of the alternatives considered, including the	A description of the technical, locational or other aspects (e.g. in terms of project design, technical capacity, size and scale) of the alternatives considered, including the



identification of the least environmentally impacting one, and an indication of the main reasons for the choice made, taking into account the environmental effects.	identification of the least environmentally impacting one, an indication of the main reasons for the choice made, taking into account the environmental effects and the <i>technical and economic viability</i> .
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Justification

It is important that the technical and economic viability of alternative solutions is considered, and not only the environmental effects in isolation.

AMENDMENT 8

Article 3

Commission Proposal	Suggested amendment
Projects for which the request for development consent was introduced before the date referred to in the first subparagraph of Article 2(1) and for which the environmental impact assessment has not been concluded <i>before that date shall be subject to the obligations referred to in Articles 3 to 11 of Directive 2011/92/EU as amended by this Directive.</i>	Projects for which the request for development consent which was introduced before the date referred to in the first subparagraph of Article 2(1) and for which the environmental impact assessment has not been concluded <i>will not be subject to the obligations of this Directive.</i>

Justification

To avoid legislation which has not yet been transposed into national law having a retrospective effect, projects for which the request for development consent was introduced before the implementation by Member States shall be subject to the existing Directive.