



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 October 2012

**Interinstitutional File:
2012/0297 (COD)**

**15627/12
ADD1**

**ENV 825
CODEC 2533**

COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 26 October 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No Cion doc.: SWD(2012) 354 final

Subject: COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT
Accompanying the document 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

Delegations will find attached Commission document SWD(2012) 354 final.

Encl.: SWD(2012) 354 final



Brussels, 26.10.2012
SWD(2012) 354 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**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}
{SWD(2012) 355 final}

1. INTRODUCTION

Directive 2011/92/EU requires an Environmental Impact Assessment (EIA) of projects likely to have significant environmental effects, prior to their authorisation. It explicitly aims to harmonise the EIA principles by introducing minimum requirements. As part of the permitting process, the EIA also assesses the environmental costs and benefits of projects to ensure their sustainability¹.

Average n° of EIAs: 15000 to 26000/year
Average n° of screenings: 27400 to 33800/year
Average duration of the EIA process: 11.6 months

2. PROBLEM DEFINITION

There is consensus that the EIA Directive (EIAD) is a useful crosscutting tool of environmental policy, which provides environmental and socio-economic benefits², but has important shortcomings³.

The EIAD has laid down essentially procedural requirements leaving quality standards for the EIA process to national authorities. The implementation gaps of the EIAD (concerning screening process, insufficient quality of the EIA documentation and public participation) represent 12% of the infringements related to EU environmental law. Implementation gaps are often observed in Member States (MS) where a high number of infrastructure projects are carried out and which have less experience in applying the EIAD, and in MS where its application is decentralised.

The application of the EIAD has **wider socio-economic costs**, even though the fixed administrative costs for an EIA are low⁴. Industry (mainly SMEs) is concerned by costs related to **delays** in EIAs and **legal disputes**. The uneven implementation of the EIA across the EU is likely to impair the **functioning of the internal market** and distort **competitiveness** (e.g. energy sector).

If the shortcomings are not addressed, the level of environmental protection would be reduced and there is a risk of unnecessary burdens.

2.1. Specific problems

Insufficient screening process

The EIAD gives a broad margin of discretion to MS to determine whether an EIA is required for Annex II projects and does not require them to justify their decisions. The large differences in the number of EIAs carried out mean that, in some MS, projects with minor environmental impacts are subject to EIAs, thus generating unnecessary administrative burden, while in other MS, projects with significant environmental impacts escape the EIA requirement. Failures to correctly apply the

¹ <http://ec.europa.eu/environment/eia/home.htm>

² The EIAD ensures that environment is considered early in decision-making. It is a cost-effective tool in avoiding maintenance and remediation costs and health damages, which improved the functioning of the internal market and increased public participation in decision-making.

³ COM(09)378 and <http://ec.europa.eu/environment/consultations/eia.htm> (public consultation).

⁴ The average EIA costs are estimated at 1% of the total costs of projects or around €41,000 per EIA.

screening process constitute the most recurring problem, as they represent 69% of the EIA-related infringements.

Insufficient quality of the EIA

The ability to make valid decisions on the environmental impact of a project depends on the quality of the EIA report and the quality of the EIA process. However, there is no obligation for assessing alternatives and ex-post monitoring, while scoping is only optional. This often results in poor quality of data and analysis in EIA reports, which in turn leads to subsequent decisions of a superficial nature.

Risks of inconsistencies

As the EIAD has not been significantly adapted since 1997, there are risks of overlaps with new environmental assessment requirements (e.g. Industrial Emissions Directive (IED), Habitats Directive, Strategic Environmental Assessment Directive), which can lead to a duplication of costs.

As the EIAD does not specify **time-frames** for the individual steps of the process, the average duration of EIAs ranges from 5 to 27 months. These divergences can generate significant uncertainty and delays. In addition, too short time-frames for public consultation may create a risk of inconsistency with the Aarhus Convention and too long ones may generate additional costs.

2.2. Who is affected?

Public authorities (e.g. time and resources needed to apply legal requirements).

Enterprises concerned with the Annexes I/II projects (e.g. time and resources needed to prepare EIA reports, costs due to delays and litigation).

Service providers involved in the EIA process (e.g. revenues from EIA consultancy projects, uncertainties in the EIA process).

Natural/legal persons and their associations (e.g. avoided environmental and health damages, litigation costs).

3. NECESSITY AND ADDED VALUE OF THE EU ACTION

The EU's environmental competence is based on Article 191 TFEU. The EU action is **consistent with the subsidiarity and proportionality principles**:

Many of the problems identified may hamper the functioning of the internal market and distort competition and competitiveness. The need for amending the EIAD to streamline procedures, further harmonise practices and address inconsistencies requires action at EU level.

Since the adoption of the EIAD in 1985, the EU has enlarged and the scope of environmental issues to be tackled and the number of major projects have increased (e.g. energy or transport ones). Due to the transboundary nature of environmental issues and some projects, action at EU level brings added value.

The EU's action has the potential to address issues that are important to the EU (e.g. climate change, biodiversity and disaster prevention) and contributes to achieving Europe's 2020 objectives. The EIAD is also the key tool for complying with the Espoo and Aarhus conventions.

4. POLICY OBJECTIVES

The general objective of the initiative is to adjust the EIAD, so as to correct shortcomings, reflect environmental and socio-economic changes, and align with the principles of smart regulation.

Objectives	
Specific	Operational
Introduce and/or strengthen the quality related elements of the EIAD	Specify the content and justification of the screening decision
	Specify the content and justification of the EIA report and the final decision
	Adjust the EIAD to the new environmental challenges
Enhance policy coherence and synergies with other EU/international law and simplify procedures	Streamline environmental assessments
	Specify time-frames for the various stages of the EIA process

5. POLICY OPTIONS

Several options have been considered, with a varying level of ambition, taking into account the problems and objectives identified and the results of the public consultation. **Option 0 (baseline scenario)** involves no EU action. **Option 0+ (guidance approach)** enhances implementation through enforcement and guidance documents concerning the stages of the EIA process, new issues to be addressed and types of projects.

Option 1 (technical adaptation) includes 5 amendments, mostly of the Annexes, to adapt the EIAD to technical development. **Option 2 (modifications of substance)** amends both the Articles and Annexes of the EIAD and results into sub-options 2A, 2B and 2C, which reflect the varying degrees of changes to the existing EIAD and the level of policy ambition with their associated costs and the interlinkages between the amendments.

Option 3 (merging the SEA and EIA) would introduce a single assessment procedure for plans and projects. It has not been assessed in detail, as it is not feasible or viable, mainly due to the specificities of the EIA and SEA processes, the different authorities involved, and the limited experience in applying the SEA.

Option 4 (new legislation on environmental assessments) would propose new legislation to integrate assessment and/or permit requirements resulting from different instruments (e.g. IED, Habitats, SEA); this option, which would repeal the EIAD and amend other EU environmental legislation (even where recently adopted), is not realistic or proportionate.

Due to the specific circumstances linked to the implementation of the EIAD (i.e. differences in national systems, including more stringent provisions in some MS, variety of environmental issues, multiplicity of projects), the use of a **Regulation** was not considered further.

Table 1 presents an overview of the **policy options 0+, 1 and 2** selected for further analysis.

Table 1: Options linked to problems and amendments						
Problems	Amendments	Content of options				
		0+	1	2A	2B	2C
Projects without significant environmental impacts undergo EIAs	Alternative procedure for Annex II projects to ensure that EIAs are carried out only for projects that would have significant environmental effects, avoiding unnecessary administrative burden for small-scale projects and SMEs					
Projects with significant environmental impacts escape EIA	Modified Annex III criteria to address discrepancies in the screening of Annex II projects					
No justified screening decisions	Justification of screening decisions by the public authorities					
EIA reports do not focus on significant impacts	Mandatory scoping to specify the content/level of detail of the environmental information to be submitted by the developer					
Poor quality EIA reports	Quality control for EIA information (accredited consultants and/or quality control committee)					
No justified decisions on development consent	Justification of final decisions by the public authorities, by specifying how the results of the consultations and the environmental information were taken into consideration					
Too short/long public consultation	Specific time-frames for public consultation					
Excessive time taken by public authorities to process EIA dossiers	Maximum time-frames for the competent authorities to issue their final decision (screening and EIA decision)					
Overlaps with other EU legislation	Coordinated or integrated/joint procedure (EIA 'one-stop shop') of the EIA with other environmental assessments (e.g. IED, Habitats Directive, and SEA)					
Insufficient consideration of impacts of project alternatives	Mandatory assessment of alternatives as part of the information to be submitted by the developer					
Gaps between predicted and actual impacts	Mandatory post EIA monitoring of significant impacts identified					
EIAs do not cover new environmental issues	Additional environmental issues (e.g. climate change, biodiversity, use of natural resources, disaster risks) would be assessed					
Inconsistencies between EIAD and other EU legislation/conventions	Adaptation of Annexes I/II (by moving projects from Annex II to I and adding new ones)					

6. ASSESSMENT OF IMPACTS

All impacts discussed are incremental costs and benefits with regard to **Option 0**. The overall annual costs of EIA are estimated at €558 to 846 million for developers and €146 to 215 million for public authorities.

6.1. Environmental impacts

Option 0+: guidance documents may bring environmental benefits (e.g. better assessment by authorities, better quality of EIA reports or anticipation of EIA requirements by developers). The scale of such benefits is likely to be limited, as such documents are not binding. As significant discrepancies across the EU and unequal level of environmental protection would most likely remain, **limited** benefits are expected.

Option 1 will address all problems related to screening (via the modification of Annexes) and some of them related to the quality of EIA reports (via the mandatory assessment of alternatives and additional environmental issues). **Moderate** environmental benefits are expected.

Option 2A partially addresses problems related to screening, via the modified Annex III, and the quality of the EIA, via the amended EIA process (justification of decisions, time-frames, one-stop shop). **Moderate** environmental benefits are expected.

Option 2B has the same benefits as 2A. Its additional amendments (mandatory assessment of alternatives, additional environmental issues, monitoring, scoping, quality control of the EIA information) bring high benefits, which address all environmental problems related to screening and the quality of the EIA report and process. **Significant** environmental benefits are expected.

Option 2C includes all amendments of 2B and the adaptation of Annexes I/II, which has limited to high environmental benefits depending on the nature of changes made and the MS concerned. This option addresses all problems and will bring a higher combined environmental effect than 2B (due to possible high benefits of the adaptation of Annexes I/II). **Major** benefits are expected.

6.2. Direct administrative costs

Option 0+ will have negligible costs related to the preparation of guidance documents.

Of the 5 amendments under **Option 1**, 2 will result in negligible (modified Annex III) or limited (alternative procedures for Annex II projects) savings, 1 has moderate costs (mandatory assessment of alternatives), and 2 have high costs (additional environmental issues and adaptation of Annexes I/II).

Of the 7 amendments under **Option 2A**, 4 have zero/negligible costs (the ones related to time-frames and the justification of decisions) and 3 will result in negligible (modified Annex III), limited (alternative procedures for Annex II projects) or moderate savings (EIA one-stop shop).

Of the 12 amendments under **Option 2B**, 6 have zero/negligible costs (the ones related to justification of decisions and time-frames, mandatory scoping, quality control of the EIA information), 3 will result in negligible (modified Annex III), limited (alternative procedures for Annex II projects) or moderate (EIA one-stop shop) savings, 2 have moderate costs (mandatory assessment of alternatives, monitoring), and 1 has moderate to high costs (additional environmental issues).

Option 2C will have the same savings as 2B, but it includes the additional high costs of adapting Annexes I/II.

6.3. Wider socio-economic impacts

Option 0+: guidance documents are likely to provide incentives to competent authorities and developers to align with best practices, but their non-binding character will significantly reduce the scale of benefits.

Option 1: the modified Annexes will bring moderate benefits to the functioning of the internal market and competitiveness. This option will bring high benefits in terms of avoided damages, risk prevention and social ones (health, safety, quality of life).

Option 2A: its amendments will increase the degree of harmonisation, which will be beneficial to the internal market. As the different stages of the EIA process will be streamlined, significant competitiveness gains and decreased costs due to delays and legal disputes are expected. The governance benefits will be significant (better justification of decisions).

Option 2B: its amendments will have significant benefits for all kinds of wider socio-economic impacts. The elevated degree of harmonisation and a more stable regulatory framework reduce the risks of delays and legal disputes. This option will

also bring moderate to high benefits in terms of avoided damages, health, safety and quality of life, significant benefits for governance and limited benefits in terms of job creation.

Option 2C will have the same benefits as 2B, with additional benefits (avoided damages and cost savings and benefits in terms of health, safety and quality of life) from the adaptation of Annexes I/II.

7. COMPARISON OF POLICY OPTIONS

Table 2 compares the impacts of the options; their effectiveness, efficiency and coherence is described below.

Table 2: Comparison of the impacts of policy options							
Options	Public authorities		Developers		Benefits*		
	Costs	Savings	Costs	Savings	Environmental	Wider economic	Wider social
	in million €						
0	-		-		-		
0+	0		0		+	0	
1	34.9 to 44**/****	4.3 to 5.3	155.2 to 195.8**/****	21.4	++	++	++
2A	0.96 to 1.2	4.3 to 5.3****	0	21.4****	++	++	++
2B	4.8 to 6.8****		65.7 to 103****		+++	+++	+++
2C	34.9 to 44**/****		178 to 241.5**/****		++++	+++	++++

* The magnitude of benefits depends on the level of influence an option has on problems/objectives: no impact/0, small/+, moderate/++, significant/+++, major/++++
** Assuming that 10% of the projects screened undergo an EIA; the costs can be very high, if 15-20% of the projects screened undergo an EIA
*** Moderate to high COSTS from the addition of environmental issues should be added
**** Moderate SAVINGS from the EIA one-stop shop should be added
Costs/savings with regard to baseline scenario: Zero/negligible: +/- 0-1% Limited: +/- 1-5% Moderate: +/- 5-10% High: +/- 10-25% Very high: > +/- 25%

Option 0+ is not effective, as it will not contribute to achieving any of the objectives of the revision. **Option 1** is not efficient, as it would only partially achieve the objectives at a high cost and with moderate benefits. **Option 2A** is efficient, but its performance in terms of coherence and in achieving the objectives is quite weak.

Option 2B is effective and coherent. As for efficiency, it has high environmental and wider socio-economic benefits (competitiveness and increased harmonisation) and will most likely cause high costs. The costs for the mandatory assessment of alternatives and for monitoring range between 5 and 10% of the baseline costs for developers in each case; for both amendments the possibilities of lowering costs have been duly verified. The costs of adding environmental issues may range between 5 and 25% of the baseline costs. However, the significant environmental and wider socio-economic benefits associated with the implementation of those 3 amendments have the potential to outweigh administrative costs. In addition, this 2B includes all amendments leading to moderate savings.

Option 2C has similar impacts as 2B regarding effectiveness and coherence, but fails on efficiency, since its possible high environmental and social benefits would be outweighed by the very high costs, mainly due to the adaptation of Annexes I/II. **Option 2B** is therefore the preferred policy option.

8. MONITORING AND EVALUATION

Progress indicators
Contribution of the EIAD to correctly assessing environmental impact of projects
Integration of new environmental challenges into future EIAs
Evolution in the harmonisation of EIAs
Reduction of unnecessary administrative burden

The Commission's Group of EIA/SEA National Experts will be used to collect data on key parameters in MS (number of EIAs and screenings per year; number of Annex I/II projects subject to EIA; breakdown of EIAs per project category and by type of developer; average duration and cost of EIA process). The Commission will ensure monitoring and evaluation via its implementation reports every 6 years.