

Modifications on the EIA process in EU and in France

Michel Prieur

Osaka

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Legal framework

- Assessment of public and private projects directive 85/337 of 27 June 1985 amended and then codified by directive 2011/92 of 13 December 2011 amended by directive 2014/52 of 16 April 2014
- Assessment of plans and programs directive 2001/42
- EU Party to Espoo convention 1991, Kiev protocol 2008 and to Aarhus convention 1998

- I. The new 2014/52 directive on EIA of 16 April 2014 to comply by 16 May 2017
- II. The first European Court of Justice (ECJ) cases about plans and programs directive
- III. The French transposition

I. The new EIA 2014 directive

- Reaffirm main objective: to ensure a high level of protection of the environment (art 191 TFUE), included marine, and human health= tool of non regression of environmental protection
- Introduce biodiversity, disaster issue and Hyogo FAP
- Promote cultural heritage and landscape issue
- Insist on soil protection and land degradation
- Ensure objectivity by preventing conflicts of interest between developer and public body

Procedural modifications of 2014

- Screening procedure and state the main reasons for requiring or not requiring preliminary assessment before 90 days (art. 4-5)
- scoping in order to improve the quality of EIA (art. 5-2) remains voluntary upon request by the developer
- Requirement of experts qualified and competent (art. 5-3)
- Consultation regional and local authorities; effective participation of the public minimum 30 days (art.6-7)

- Covers demolition works (ECJ C-50/09)
- Transboundary consultation: shall agree on a reasonable time-frame period of consultation detailed arrangements by agreements to enable effective participation of the public (art. 7)
- Assessment of “reasonable” alternatives (annex IV)
- Development consent must incorporate the reasoned conclusion taking into account the results of consultations and the information gathered (art. 8)
- Monitoring measures of significant adverse effects on the environment (art. 8 bis-4)
- Requirement of rules of penalties applicable to infringements of EIA regulations (art. 10 bis)
- Applies to more than 200 projects categories listed in Annex I and II

II. The first cases about Plans and programmes

- Preliminary ruling actions : interpretation of the directive
- Action programmes for management of nitrogen in agriculture pursuant directive on protection of water against nitrate pollution, are plans and programmes (ECJ 17 June 2010)
- An assessment under 1985 directive does not dispense to carry out an assessment under directive 2001/42 (ECJ 22 September 2011)

- The directive applies to plans and programmes compulsory or not .
- abrogation or repeal must be considered as a modification: applied to a total or partial repeal of a land use plan (ECJ 22 march 2012)

III. The French transposition

- France had EIA procedure before UE in 1976 law and 1977 decree: 4000 EIA/ year
- Procedure for failure to fulfill obligations: ECJ 7 November 2002: -no scoping procedure at the request of developers – no information of the public of the reasons for a decision
- Then Commission send new notice claim in 2005 and 2006, reasoned opinion in 2009
- Law Grenelle II 12 July 2010 and decree 29 December 2011

Main reforms in 2010 to adapt French EIA procedure to UE law

- Annex 2 projects : case by case examination even with threshold, according criteria of annex III
- Suppression of the financial threshold of 1, 9 millions Euros
- Introduction of the scoping at request of the developers
- Integration of cumulative impacts
- Confirmation of the 2009 “environmental authority” to check the content of the EIA

2015 review

- New Commission requirements during French process of environmental law modernization and simplification
- 2014 special French Committee on EIA: revision and adaptation without regression of environmental protection
- Main issues for the 2015 new revision:
 - exemption of EIA after case by case examination must be decided after screening as a preliminary assessment

- requirement , where appropriate, of monitoring measures of significant adverse effects on the environment (art 8bis 1 et 4 directive 2014) –
- situation of projects under the threshold but with environmental impact, possibility of case by case examination
 - Conflict of interest and competent authorities: statute of the “environmental authority” and decision by the prefect for public works
 - integration of disasters and risks of major accidents

Main issue of annex 2: scope of application with thresholds

- Case law by European Court of Justice
 - C/392/96 of 21/09/ 1999 Ireland
 - C/435/09 of 24/03/2011 Belgium

threshold cannot take into account only the dimension of the project but too their nature and localization, impact on man, fauna, flora, soil, air , cultural heritage, cumulative impact, risks of accidents, carrying capacity of the natural environment....

Transposition of plans and programmes directive

- Law 2010 and two Decrees of 2012
 - But Commission critics in 2012 and 2013
 - too many exemptions of plans and programmes
 - conflict of interest between environmental authority and administrative competent body
- new case law to come about France?

Pecuniary penalties

- Failure of a member State to fulfil obligation by failing to take the necessary measures to comply with judgment of the ECJ may conduct the Commission to order to pay pecuniary penalties under article 260 TFEU
- For failure of Ireland to comply a judgment of November 2008 about incorrect transposition of EIA directive, ECJ 19 December 2012 order to pay a lump sum of 1 500 000 Euros