



November 2012
AK Position Paper

Position on the Amendment of the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (EIA Directive)

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Herbert Tumpel
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm
Director

The AK position in detail

We generally welcome and support the presented proposal of amending the EIA Directive. The Austrian Federal Chamber of Labour regards the improvement of the screening procedure (clarification of EIA obligation), the measures to reinforce the quality of the procedure by obligatory scoping (clarification of the scope of the assessment), the mandatory quality control of EIA information by specifying the content of the EIA report with mandatory assessment of reasonable alternatives, the justification of final decisions, the mandatory post-EIA monitoring of significant adverse effects and the adaptation of the EIA to challenges such as biodiversity, climate change and disaster risks as desirable development, which should also bring significant progress at the level of harmonising the EIA in the various Member States. We also generally welcome the coordination resp. possible joint implementation of the EIA with other applicable legal provisions of the EU, such as the Habitats Directive 92/43/EEC, the SEA Directive 2001/42/EC and the IED Directive 2010/75/EU (Industrial Emissions Directive). In particular the lack of coordination with the Habitats Directive has been criticised time and again from many quarters. But also the lack of coordination and consequently the low significance, which is attributed to implementing the SEA Directive, has caused a wide range of problems.

What regrettably is still missing is a clear mechanism, which prefers the most environmentally friendly or at least the more environmentally friendly project variant, legal protection with suspensive effect, a mandatory review for

all projects similar to the mechanisms of the IED Directive (Industrial Emissions Directive) as well as a clear ban on prohibiting serious environmental impacts, similar to Austrian law. For the sake of clarity – in accordance with current ECJ judicature on the requirements of the Aarhus Convention - Public Participation und Access to Justice - should also be part of the screening procedure.

It appears that not all points have been completely clarified. We would like to make the following remarks:

On para (3) – Article 3:

When listing the factors to be assessed, it should be explained what exactly the term “population, human health...” which replaces the current term “human beings” means and what the differences are.

In addition to the new factors “land” and “climate change” to be assessed, lit b) should also explicitly name energy and resource consumption. The European strategies for a resource efficient Europe must also be considered and shall under no circumstances be allowed to be counteracted. The EIA provides a relevant lever. To support the objective of resource efficiency, see for example page 4 of the document of the European Commission “Resource efficient Europe”: “To achieve a resource-efficient Europe, we need to make technological improvements, a significant transition in energy, industrial, agricultural and transport systems, and changes in behaviour as producers and consumers.”

Furthermore, the Communication “Roadmap for a resource efficient Europe” states on page 17: “The Commission will [...] include broader resource efficiency considerations in the review of the Environmental Impact Assessment (EIA) Directive”

Even if energy efficiency is not necessarily equivalent to saving energy, the reason for the objective of efficient use of energy in the “Energy efficiency” Communication is quite considerable: “Energy efficiency is one of the most cost effective ways to enhance security of energy supply, and to reduce emissions of greenhouse gases and other pollutants. In many ways, energy efficiency can be seen as Europe’s biggest energy resource.”

The with regard to its intention to be welcomed formulation in respect of disasters should be reconsidered to that effect whether it will result in protective consideration or whether the opposite might be the case.

On para (4) – Article 4:

Overall, we very much welcome the more precise and innovative provisions for the screening, in particular the requirements on the decision by the competent authority. The fact that information on environmental aspects gathered from the screening is not lost if the competent authority decides not to carry out an EIA, but that it flows into other assessments must be positively emphasized. This decision shall include a description of planned measures, which avoids, prevents or reduces significant impacts on the environment: a relevant benchmark would be desirable.

On para (8) – Article 8:

We expressly welcome the mandatory assessment of alternatives as well as the assessment of the zero alternative.

However, paragraph 2 is obviously based on the assumption that the competent authority may basically authorise a project with significant negative environmental impacts. Here, the authority should have the obligation to reject such projects or, if applicable, an option to permit such projects if these significant negative environmental impacts are compensated by to be assessed additional damage limitation or compensation measures. What is missing in particular is a mechanism, which enables the competent authority to correct by intervention or regulation or even to abandon the implemented project when any significant negative impacts are detected in the course of the monitoring of the measures. A lack of such scope for intervention contradicts the protection aim of the high level of protection for the environment and human health in Recital 1.

On para (10) – Article 12:

Paragraph 2 lit f requests to inform the Commission every six years of the average cost of the environmental impact assessments: a distinction should be made between the costs for the authorities and the costs for the project applicant, or, if applicable, to specify the costs clearly as those attributed to the authorities.

Should you have any further questions
please do not hesitate to contact

Cornelia Mittendorfer

T: + 43 (0) 1 501 65 2541
cornelia.mittendorfer@akwien.at

as well as

Frank Ey

(in our Brussels Office)
T +32 (0) 2 230 62 54
frank.ey@akeuropa.eu

Bundesarbeitskammer Österreich

Prinz-Eugen-Straße 8-10
A-1040 Vienna, Austria
T +43 (0) 1 501 65-0
F +43 (0) 1 501 65-0

AK EUROPA

Permanent Representation of Austria to the
EU
Avenue de Cortenbergh, 30
B-1040 Brussels, Belgium
T +32 (0) 2 230 62 54
F +32 (0) 2 230 29 73