

# **Environmental impact assessment in EU law**

## **Balance and perspectives**

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# **Overview – EIA in EU law**

- (1) Directive 2011/92 (ex 85/337): projects**
- (2) Directive 2001/42: plans and programmes**
- (3) Directive 92/43: projects , plans and programmes in protected habitats**
- (4) Directive 2001/18 – Reg. 1829/2003: GMO cultivation and other releases**
- (5) Commission: EIA for legislative proposals and significant communications**

# **Directive 2011/92 (projects)**

- **25 years in operation**
- **Applicable in 28 Member States, which are controlled by the ECJ**
- **55 ECJ judgments on this Directive give coherent interpretation**
- **Has brought administrations to consider    effects of projects  
   alternatives to projects  
   public opinion**
- **Has made administrative decisions more democratic**
- **Has allowed to better consider environmental effects of projects**

# **Directive 2011/92 - problems**

- (1) Policy decision taken, before EIA starts**
- (2) Incomplete or bad EIA: consequences for the project**
- (3) Projects omitted: golf courses, fracking**
- (4) Alternatives to the project**
- (5) Compensation measures**
- (6) Transboundary projects**
- (7) Ex-post evaluation**

# **Directive 2001/42 (plans and programmes)**

- (1) 10 years in operation**
- (2) 216 national laws, 13 ECJ judgments**
- (3) Covers only some plans and programmes (EIA + Dir.92/43)**
- (4) „Plan without an IA must be annulled“ (ECJ)**
- (5) Compliance with Aarhus Convention?**
- (6) Transboundary plans and programmes**
- (7) Access to courts on participation rights**

# **Directive 92/43 (habitats)**

- (1) 20 years in operation, 925 pieces of national legislation**
- (2) Strict impact assessment : negative results prohibit the project/plan**
- (3) Exceptions only:**
  - (a) scientifically proven that no significant impact**
  - (b) no alternative + overriding public interest**
- (4) Commission and MSt generous with exceptions**
- (5) Compensation insufficiently practised**

# **Dir.2001/18 – Reg. 1829/2003 (GMOs)**

- (1) Environmental impact (risk) assessment, Art.13 and Ann.II of Dir.2001/18**
- (2) No risk or no *significant* risk?**
- (3) Risk assessment is largely made by the applicant and checked by EFSA**
- (4) Participation provisions not in compliance with Aarhus Convention**

# Impact Assessment- EU Commission

- (1) No legal basis
- (2) Examines all legislative proposals and important communications
- (3) Examines economic, social and environmental impact
- (4) Assessment by an *Impact Assessment Board*, 9 members; external consultants, if necessary
- (5) „growth and jobs“ is the parameter
- (6) Econometric instruments make economic interests always prevail
- (7) Examples: 7th Environmental Action Programme  
Access to courts



# Balance

- (1) Overall, it is a useful instrument**
- (2) Transparency of procedure and of discussion is vital; otherwise the discretion of administration will not be reduced**
- (3) Citizens' participation capable of being improved; better with projects and local plans, less good with national/ trans-European plans**
- (4) NGOs often not professional enough for participation, in particular with plans and programmes**
- (5) Ex-post evaluation of projects, plans and programmes necessary**
- (6) How does one learn lessons (administration, public, NGO, developer)?**

# Perspectives 1

- (1) Review of Directive 2011/92**
- (2) Proposal for a directive COM(2012)628**
- (3) EP vote on 16-10; Trilogue likely**
- (4) New: scoping (Article 5) which goes rather far, without participation coordinated/joint procedures (motorway in habitat)  
admin. to indicate „reasonable alternatives“  
time limits for consultation and EIA. Sanctions?**

**Overall, limited amount of renewal**

# Perspectives 2

**Is the administration and are the political bodies ready to examine environmental effects of their proposals and discuss this with citizens?**

**Are administrations ready to share know-how – and hence power – with citizens, even when this takes some time?**

**Are citizens and NGOs prepared to participate in decision-making process concerning plans, programmes and projects?**

**Do they have the necessary know-how, general-interest view, resources, money?**

**Why is there no centre within the EU – within the Member States - that makes ex-post assessments of EIAs, in order to learn? Why do universities not take up this job?**

# Perspectives 3

- **New challenges appear: trans-EU networks for motorways**
  - high-speed trains**
  - airports**
  - power-lines**
  - energy shift (coal, petrol, nuclear)**
  - GMOs (free trade area with US)**
- **At present, society is not able to discuss such issues in public. Therefore, policy and administrations have the task to initiate, stimulate and provoke such discussions**
- **„Public authorities hold information on the environment in the PUBLIC interest“  
(Aarhus Convention, Recital 17)**