

Mr. Romas Svedas,
Chair of the Implementation Committee,
Implementation Committee,
Convention on Environmental Impact Assessment
In a Transboundary Context
Protocol on Strategic Environmental Assessment

9th May 2019

Dear Mr. Svedas,

Re: Fifth Review of Implementation of the Convention

With reference to your correspondence dated 11th April 2019, please find Malta's reply as per below:

"With reference to Malta's responses to the questionnaire on implementing the Convention in the period from 2013 to 2015, kindly note that the then Malta Environment and Planning Authority had replied to Question I.17, as follows (excerpt from the questionnaire is being reproduced below):

I.17. How do you ensure sufficient quality of the EIA documentation as Party of origin? Please specify:

- (a) The competent authority checks the information provided and ensures it includes all information required under appendix II as a minimum before making it available for comments
- (b) By using quality checklists
- (c) There are no specific procedures or mechanisms
- (d) Other (please specify):

Your comments: Although there are no specific mechanisms, quality control of the EIA documentation is ensured against the terms of reference which the competent authority on EIA issues to the developer during the scoping stage. The contents of the terms of reference also reflect the information provided under Appendix II of the Convention.

The requirements detailed in Regulations 13 to 18 of the national EIA legislation are also applicable for projects that may have transboundary effects. These provisions include the procedures to be followed in the preparation of an EIA.

It should be noted that to date, Malta has had no experience as Party of origin that may have transboundary impacts and which would therefore need to be subject to consultations associated with such transboundary effects.

As indicated in the above reply, it should be noted that the requirements of Article 4 (1) of the Espoo Convention (1. The environmental impact assessment documentation to be submitted to the competent authority of the Party of Origin shall contain, as a minimum, the information described in appendix II), in relation to the content of the environmental impact assessment were covered by the former Regulation 13 – 18 of the EIA Regulations, 2007, as per below:

“Regulation 13: A full environmental impact assessment for development shall involve the following procedures:

- (a) Describing the development including all ancillary facilities;*
- (b) Describing the extent of the existing environment likely to be affected by the proposed development;*
- (c) Identifying and assessing the effects of the proposed development on the existing environment;*
- (d) Designing mitigation measures;*
- (e) Formulating monitoring and auditing requirements; and,*
- (f) Preparing a non-technical summary of the environmental impact statement.*

Regulation 14: (1) The consultants shall describe the proposed development, including:

- (a) A justification for the proposal;*
- (b) A description of the physical characteristics and features of the project including production processes (if relevant) and amounts of emissions, wastes and residues expected during both construction and operation;*
- (c) A description of the financial feasibility of the project. A description of the alternative sites considered, and alternative technologies that could be employed during construction and when in operation, shall also be included. In doing so, they may also refer to the project description statement mentioned in regulation 5.*

(2) Without prejudice to article 39 of the Act, where the proposed development has a limited life, the after use of the development shall also be described.

Regulation 15: The consultants shall describe the existing environmental conditions in and around the site in terms of:

(a) Physical features;

- (i) Population;*
- (ii) Flora, fauna and ecosystems (terrestrial and marine), including both habitats and species and, in particular, protected and endangered species and their habitats;*
- (iii) Soil, agricultural quality and produce;*
- (iv) Geology and geomorphology, including palaeontology and noting geological sites;*

(v) Water and hydrological features;

(vi) Air, including prevailing meteorological factors and air quality;

(vii) Cultural heritage and protected sites and areas;

(viii) Landscape and topography, including the coast and submarine features;

(ix) Land use, including recreational uses; and,

(x) Any other relevant environmental features.

(b) Policy framework:

(i) The planning policy framework which affects the development shall also be analysed. Such analysis shall include the relevant planning policies set out in the Act, in development plans and in other planning policies approved under the provisions of the Act, the Environment Protection Act, and under any other law;

(ii) In particular, but without prejudice to the generality of sub-paragraph (i), the policy review shall relate to:

- (1) The site of the proposed development;*
- (2) The surrounding areas in which impacts may be experienced by the proposed development;*
- (3) Any treaty adhered to by Malta;*
- (4) Policies adopted by any department and Government entity which might have a bearing on the development;*
- (5) Protective scheduling or other designations pertaining to the site and its surroundings; and,*
- (6) Any other law having a bearing on the development*

Regulation 16: *(1) The probable effects, both of the finished development and during construction, shall be predicted.*

(2) All significant impacts of the proposed development shall be considered and assessed including the main effects on:

- (a) Buildings and other man-made features (including infrastructure);*
- (b) Flora, fauna, ecology and geology including geomorphology and palaeontology;*
- (c) Land;*
- (d) Water;*
- (e) Air and climate;*
- (f) Other indirect and secondary effects associated with the development;*
- (g) Human beings (including health and safety measures).*

(3) Hazard and risk assessment of the development shall also be undertaken.

(4) If any effects assessed in sub-regulations (1) to (3) are envisaged to have transboundary impacts, these should be assessed and clearly stated in the environmental impact statement. Provisions dealing with such impacts shall follow the procedures set in Part V.

Regulation 17: *Where adverse impacts are identified, the consultants shall state clearly what significance they attribute to these effects and the mitigation measures they propose to be incorporated in the development and evaluate their effectiveness.*

Regulation 18: *(1) The consultants shall devise a scheme to monitor the impacts of the development which may arise during the construction and operational phases.*

(2) The consultants shall also identify which records the applicant shall keep for the purpose of monitoring the environmental impacts of the development.

(3) The Authority shall have access to any such records both during the construction and operational phases of the development."

In this regard, whilst noting that the original reply issued at the time indicated that 'there are no specific procedures or mechanisms', this reply may have been erroneously 'ticked', in view that all the necessary provisions, in line with Article 4(1) of the Convention were already duly transposed in the former Regulations (vide Regulations 13 – 18 above) and actually

implemented. In addition, Regulation 22 and 23 in the same legislation also provided for a quality control mechanism through the review of the environmental impact statement.

Further to the above, this inadvertent marking has also been rectified in the new questionnaire that Malta referred to the UNECE in March 2019, wherein the same query (Question I.20) was replied to as follows (extract follows suit), based on the more recent version of the EIA Regulations, issued in 2017:

I.20. How do you ensure sufficient quality of the EIA documentation As a Party of origin? Please specify:

- (a) The competent authority checks the information provided and ensures it includes all information required under appendix II as a minimum before making it available for comments
- (b) By using quality checklists
- (c) There are no specific procedures or mechanisms
- (d) Other (please specify):

Your comments:

In terms of quality control, the requirements for proposals which do not have any transboundary impacts, as detailed in Regulation 18 of the EIA Regulations, 2017 (S.L. 549.46), are also applicable in the case of projects that may have transboundary effects.

“Regulation 18: (1) The EIA report shall cover all the requirements specified in the terms of reference issued by the Authority, and shall include at least:

- (a) A description of the project, including information on the design, size and other relevant features;*
- (b) A description of the project site and its surroundings, including their environmental characteristics;*
- (c) A description of the likely significant effects of the project on the environment;*
- (d) A description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset any likely significant adverse effects on the environment;*
- (e) A description of the reasonable alternatives studied, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment; and*
- (f) Any additional information specified in Schedule IV as relevant to the project and to the environmental features likely to be affected.*

(2) The EIA report shall:

(a) be in either the Maltese or English language or both, as most appropriate in relation to the nature of the project, the site context, the public concerned and any international or transboundary relevance;

(b) contain a non-technical summary of the information referred to in sub-regulation (1), which shall be a separate document presented in both the Maltese and English languages; and

(c) list the names of the consultants and contributors responsible for the preparation of the EIA report, technical studies, appendices, non-technical summary and other components of the report, clearly identifying their respective contributions and responsibilities.

(3) The technical studies shall be attached to the EIA report in the form of appendices or annexes.

(4) The consultants shall ensure the professional and scientific integrity, veracity, coherence, concreteness, transparency, completeness and effectiveness of the content, discussions, analyses and recommendations in the EIA report. To this effect, it shall be the consultants' responsibility to ensure that, inter alia:

(a) The analysis is presented in a clear, impartial, intelligible, and user-friendly manner, in summary, tabular, graphical, map, diagrammatic or pictorial formats and in a descriptive manner, as appropriate;

(b) The techniques and methods used in the analysis and predictions are clearly described;

(c) Adequate methodology is used, including appropriate timing, duration and frequency of any investigations, surveys and sampling as well as any required provision for any relevant seasonal variation to ensure a sufficiently representative and complete picture of any likely impacts;

(d) All assumptions and conditionalities, and their underlying reasoning, as well as any difficulties encountered and any relevant information that is incomplete, lacking, unclear or unavailable, are clearly and specifically indicated, are reasonable and realistic, and are limited to a minimum through appropriate investigation;

(e) All references to published works and sources of information are duly acknowledged, in such a manner as to enable access to, as well as verification, analysis and or contestation of, the source as relevant;

(f) The various reports constituting the EIA report are written in coordination with one another and presented in a coherent manner;

(g) The EIA report is not limited to a factual description of the situation and its projected evolution, and clearly identifies the likely environmental consequences; and,

(h) recommendations are tangible, specific and realistically implementable, are not dependent on factors beyond the developer's control, and are truly effective in addressing the identified impacts, risks and uncertainties.

(5) If any information cannot be realistically obtained or can only be obtained limitedly, the consultants shall include within the EIA report:

(a) a justification as to why such information is incomplete or unavailable, as well as an explanation of the relevance of such information; and,

(b) a summary of existing credible evidence, or any alternative investigation based upon theoretical approaches, extrapolation or interpolation, or research methods generally accepted in the scientific community, which would provide a reasonable alternative basis for assessment.

(6) The provisions of sub-regulations (4) and (5) shall not preclude the Authority from verifying the justification for any claimed limitation, nor from requiring rectification of unjustified limitations.

(7) In the event that the Authority has any reasonable and significant doubt about the quality, sufficiency or impartiality of the EIA report or any part thereof, or any other significant concern that cannot be addressed effectively and in accordance within the provisions of regulation 21, the Authority may commission an independent assessment at the expense of the developer and may establish such time-frames as it deems fit for this purpose. The Authority shall inform the developer of its intention before such commissioning and shall, in writing, ask the developer whether he wishes to proceed with the assessment or not. The provisions of regulation 6 shall apply, mutatis mutandis.

(8) The Authority shall ensure that it has, or has access to, sufficient expertise to analyse, verify and examine the EIA report and any other documentation relevant to these regulations.

(9) Government entities and local councils shall make available to the consultants, upon the developer's or the consultants' request, any information which they have in their possession and which may be relevant to the environmental impact assessment, provided that they shall not be required to disclose any information which, in terms of any law or code of practice, is considered to be confidential or secret. A reasonable charge covering the costs of providing the information may be made by the body supplying the information in accordance with this sub-regulation, and the costs shall be borne by the developer. The provisions of this sub-regulation shall, mutatis mutandis, also apply to any pursuant to sub-regulation (7).

(10) Notwithstanding the content of the terms of reference, the Authority may, at any stage of the environmental impact assessment, seek from the developer, from the coordinator, from another Government entity or from any other person or combination thereof any supplementary information or communication which is relevant to reaching the reasoned conclusion on the project and its significant effects on the environment."

Conclusion

In this regard, both the former EIA Regulations, 2007 and the current EIA Regulations, 2017, have provisions assuring the quality of the EIA documentation as submitted, as required by Article 4 of the Espoo Convention.

Yours sincerely,



Mr. Alex Camilleri
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Environment and Resources Authority
Malta