

Annex 9



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Environmental impact assessment: Commission to take legal action to improve implementation in Hungary, Latvia, Lithuania and Slovenia

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Environmental impact assessment: Commission to take legal action to improve implementation in Hungary, Latvia, Lithuania and Slovenia

The European Commission is initiating infringement procedures against Hungary, Latvia, Lithuania and Slovenia over violations of a key EU law on the environmental impact assessment (EIA) of projects. This directive aims to ensure that the environmental effects of a wide range of infrastructural, industrial and other projects are properly examined before any works are undertaken. The law also gives important participation rights to citizens. The Commission has identified gaps and deficiencies in the laws of these four Member States and is therefore sending first written warnings to ensure that they comply with all the provisions of the Directive.

Environment Commissioner Stavros Dimas said: "Environmental impact assessment is an essential tool for ensuring that major projects are designed and carried out in ways that minimise damage to the environment. However, environmental protection is weakened if it is not transposed and implemented properly. I hope the Member States concerned will need no further encouragement to bring themselves fully into line."

The EIA Directive

The EIA Directive^[1] requires Member States to carry out environmental impact assessments of certain public and private projects, before they are authorised, where it is believed that the projects are likely to have a significant impact on the environment. The objective is to identify the environmental impacts and assess whether prevention or mitigation is appropriate. The public must be consulted and its comments taken into account when a decision is taken on whether to authorise the project.

For some projects, such as motorway construction, EIAs are obligatory, while for others, for example urban development projects, Member States must operate a screening system to determine which ones require assessment. The goal is to ensure that all environmentally significant projects are assessed. Account must be taken of specific factors such as whether the location is important for nature conservation.

The Directive was adopted in 1985 and strengthened by a revision in 1997. A further amendment was adopted in 2003 giving citizens rights to seek judicial

redress in relation to public participation.

Having evaluated the national legislation implementing the revised Directive in each Member State, the Commission has identified a number of areas where Member States fail to comply fully. In July 2006, the Commission sent first warning letters to the following Member States: Austria, Belgium, Cyprus, Czech Republic, Germany, Greece, Luxembourg, Malta, Netherlands and Poland (see IP/06/905). It has now decided to send similar warning letters to **Hungary, Latvia, Lithuania and Slovenia.**

Different grounds for non-compliance were identified in each Member State. Common problems include not requiring certain project categories to undergo EIAs and a failure to make adequate provision for screening projects to see if an EIA is needed. In particular, smaller projects were not adequately addressed.

Key shortcomings in each Member State are as follows:

Hungary:

Hungary's legislation omits certain categories of project mentioned in the Directive and covers other categories inadequately (for example, groundwater abstraction and water transfers). It is not evident that the Hungarian rules for determining the need for EIA in individual cases properly reflect those of the Directive, for example in relation to smaller projects located in sensitive areas. It is therefore possible that environmentally significant projects may escape having to undergo an EIA. There are also problems in how Hungary defines some key concepts and problems with regard to its detailed arrangements for public information and consultation.

Latvia:

The Latvian legislation has a narrower definition of a "project" than the Directive. The rules for determining whether an individual project should undergo an assessment do not take account of all the criteria set out in the Directive. Environmentally significant projects may therefore avoid having to undergo an EIA. The Latvian legislation is also inadequate in terms of consulting the public in neighbouring Member States affected by transboundary projects.

Lithuania:

Lithuania's legislation defines the concept of a "project" more narrowly than the Directive. The provisions for determining whether an EIA should be carried out in individual cases are too weak. Environmentally significant projects may therefore escape having to undergo an EIA. The Lithuanian legislation is insufficiently precise as regards requirements for consulting other Member States where a project is likely to have transboundary impacts.

Slovenia:

The Slovenian legislation omits certain categories of project mentioned in the Directive (such as groundwater abstraction) and covers other project categories inadequately. The criteria for determining whether individual projects should undergo EIA are also inadequately transposed into national law. The effect of these shortcomings is that projects which might need an EIA will escape one.

Legal Process

Article 226 of the Treaty gives the Commission powers to take legal action against a Member State that is not respecting its obligations.

If the Commission considers that there may be an infringement of EU law that warrants the opening of an infringement procedure, it addresses a "Letter of Formal Notice" (first written warning) to the Member State concerned, requesting it to submit its observations by a specified date, usually two months.

In the light of the reply or absence of a reply from the Member State concerned, the Commission may decide to address a "Reasoned Opinion" (final written warning) to the Member State. This clearly and definitively sets out the reasons why it considers there to have been an infringement of EU law, and calls upon the Member State to comply within a specified period, usually two months.

If the Member State fails to comply with the Reasoned Opinion, the Commission may decide to bring the case before the Court of Justice. Where the Court of Justice finds that the Treaty has been infringed, the offending Member State is required to take the measures necessary to conform.

For current statistics on infringements in general see:

http://ec.europa.eu/community_law/eulaw/Index_en.htm#infractions

[11] Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EC, and by Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC