

A COMPARISON OF APPROACH TO ENVIRONMENTAL IMPACT ASSESSMENT IN SLOVAKIA, POLAND, CZECH REPUBLIC AND HUNGARY

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Abstract

The protection of the environment has become an important obligation for any developing state. Thanks to the European Union, investors in the Member States, including Slovakia, Czech Republic, Poland and Hungary (countries of the Visegrad Group), have to meet certain minimum requirements with a view to protecting the environment. The Slovakian, CZ an, PL and Hungarian regulations currently in force are fully in line with the directives and regulations of the European Union. It follows from this that the five most important principles of environment protection must be enforced also in countries of the Visegrad Group: the protection of the environment should be extended to every sector; emphasis should be laid on prevention; pollution should be eliminated at source; measures should be brought wherever they are the most efficient; the polluter should pay for the use of the environment; and should anyone violate the regulations should be fined. The objective of this report was to investigate EIA regulations and guidelines in a country that is a member of the EU (Slovakia, Czech Republic, Poland and Hungary).

1. Introduction

On Jan 1, 1970 the U.S. National Environmental Policy Act (NEPA) was signed into law [1]. NEPA's principal, and most innovative, feature was its requirement that an environmental impact assessment (EIA) be prepared for every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. Since NEPA's enactment, many other EIA laws and policies have been adopted, but the regime created by NEPA remains one of the most comprehensive and far-reaching in

existence. In 1985 the European Community Council issued a Directive requiring all Member States to institute EIA procedures for certain categories of public and private projects. The purpose of the Directive was to harmonize the environmental policies of the Member States and to lessen any economic or trade imbalance that might result from the adoption of individual EIA laws by Member States [1].

Environmental assessment is a procedure that ensures that the environmental implications of construction projects – e.g. dams, motorways, airports, factories and energy projects – are assessed and taken into account before the relevant Member State authority makes a decision on project approval. The common principles for the environmental assessment of individual public and private projects were initially defined in the 1985 EIA Directive and amended in 1997, 2003 and 2009. To help Member States' authorities and developers manage the environmental consequences of construction projects more easily, the Commission has brought together all existing EU legislation governing EIA. The original EIA Directive and its three subsequent revisions have been combined to create a more compact, clearly translated and user-friendly version which comes into force 17.02.2012 [2].

In Slovakia EIA procedures for public and private projects that are likely to have significant effects on the environment have been in place since the adoption of the EIA Law in 1994. In 2006, a new EIA Law was approved, and EIA procedures began to be applied to buildings under the 2006 Planning Law [3]. At present Law No. 408/2011 Coll., amending and supplementing Law No. 24/2006 Coll. on the assessment of environmental influences, has been effective from 1st December 2011 [4].

EIA process was implemented into the Czech Republic's legal system on 1 July 1992, upon the entry into force of Czech National Council Act No. 244/1992 Coll., on environmental impact assessment [5]. The process constituted both an important element in the system of preventive environmental protection instruments and, simultaneously, a significant component of environmental policy. As of 1 January 2002, Czech National Council Act No. 244/1992 Coll., namely its section pertaining to impact assessment of projects, was superseded by Act No. 100/2001 Coll., on environmental impact assessment and amending some related regulations. At present is EIA in Czech Republic regulated by Act No. 38/2012 Coll., amending Act No. 100/2001 Coll., on EIA [6].

In Poland, the beginnings of a process of the EIA can be recognized by approval of the Law on Environmental Protection and Management of 1980, which regulated the investment process of constructions, which could have a negative impact on the environmental elements. Construction of such investments requires the discretion of the department of environmental protection, which may require the investor or investment owner to submit an expert opinion on the impact of investment on the environment. Detailed scope and conditions for implementation of the EIA on the investment have been established in the Regulation of the Minister of the Environment. The work of the law forecasts and assessment of the environmental impact assessment began in Poland in 1994-1995 and in 2001; EIA became a part of a Law of environment protection. In 2008, the legislation was replaced by the new law on access to environmental information, public participation in environmental impact assessment, which has become a basic source of current legislation on EIA.

A comprehensive regulation of EIA came into force in Hungary in 1993 [7]. The first explicit requirement for EIA in Hungary was provided by the Government Decree on the Provisional Regulation of the Environmental Impact Assessment of Certain Private and Public Projects No. 86/1993. In Hungary the Government Decree No. 314/2005 (XII. 25.) on environmental impact assessment and the integrated environmental permit stipulates the necessity of the Environmental Impact Assessment [8].

2. Material and methods

This paper analyzes these laws in light of a variety of issues relevant to all EIA process. It discusses such topics as establishing which types of activities may require EIA and when the EIA process carried out. Analyzes are more other field as preliminary assessment (screening) of proposed actions, timing and “scope” of the EIA, types of impacts to be considered, consideration of alternative actions, review and decision-making, and the role of the public. Each section begins with a short discussion of the issue under consideration, followed by descriptions of how the issue is treated in each of the four countries.

3. Results

3.1. Which types of activities may require EIA?

To determine whether an EIA is required, it is necessary to know what types of activities are subject to EIAs. For example, are private actions subject to EIAs or only government actions? Some laws apply directly to private projects, whereas others extend to private projects only if they require a permit, a license, or some other form of government approval. A second question is whether, in addition to activities that alter the physical environment, the EIA regime applies to programs, policies, and/or proposals for legislation. A third important question is whether the EIA law applies to both future and existing actions. Most regimes apply only to future actions, but some laws also cover certain categories of ongoing activities.

Slovak Republic. Slovak law refers to the impact assessment:

- a. *strategic documents* (proposal of a policy, a development conception, a plan and a programme),
- b. *proposed activities* (project, construction, installation, facility and other intervention in the environment).

Strategic documents set forth in Annex No. 1. require EIA only if so decided by the competent authority. *Proposed activities* set forth in Annex No. 8., part A require EIA obligatory, projects set forth in Annex No. 8., part B require EIA only if so decided by the competent authority.

Czech Republic. EIAs are required for both public and private sector projects. Under the new Czech Act on Environmental Impact Assessment, EIAs are required in two different areas:

- a. *plans* shall be a construction work, activity and technology as set forth in Annex No. 1 to Act,
- b. *conceptions* shall be strategies, policies, plans or programs prepared or formed out by a public administration authority and subsequently approved or submitted for approval by a public administration authority.

Plans and *conceptions* as delimited in Act, the implementation of which could have serious environmental impact, shall be subject to environmental impact assessment.

The subject of EIA of a *plan* shall be:

- *plans* set forth in Annex No. 1, Category I, which shall always be subject to assessment;

- *plans* set forth in Annex No. 1, Category II, if so laid down in a fact-finding procedure;
- changes in any *plan* set forth in Annex No. 1, if its capacity or extent is to be increased by 25% or more, or if there is a significant change in the technology, management of operations or manner of use thereof and if so laid down in a fact-finding procedure.

The subject of environmental impact assessment of a *conception* shall be:

- *conceptions* which set the framework for future permits of plans set forth in Annex No. 1, conceptions for which, in view of their possible effect on the environment, the necessity of their assessment follows from a special regulation and furthermore conceptions co-financed by European Community funds; these conceptions shall always be subject to assessment if the affected territory is comprised of the territorial area of more than one municipality;
- *conceptions* if the affected territory is comprised of the territorial area of only one municipality, if so laid down in a fact-finding procedure;
- changes of *conceptions* if so laid down in a fact-finding procedure.

Poland. Polish legislation distinguishes two basic classes of investments, subject to the EIA process. There are public and private projects which have always a significant impact on the environment and the list is based on the Annex 1 in Directive 2011/92/EU. This Regulation establishes a list of the Council of Ministers of the year 2010 - § 2. The second group are projects that can have a potentially significant impact on the environment in Directive 2011/92/EU contained in Annex 2, and this group of projects is included in the Regulation of the Council of Ministers in § 3. In both cases, the changes of such projects are subject to EIA. It is therefore projects considered as mandatory and optional. In Poland, the need for EIA in the second group of projects is decided by the competent administrative authority, especially taking into account the type and nature of the project and its location, and with regard to these aspects of the potential impact of the project on the environment. A third, separate group is then projects that can have potentially significant effects on sites Natura 2000, and they go on “natura assessment” of environmental impact, which is in Polish legislation also provided in the Act, but it can run completely independently. The criterion in this group of projects is that the project (any project, not one in the project referred to in § 2 and § 3 of the Council of Ministers) can potentially have a significant effect on a site Natura 2000, which goes from union rules specifically from Directive 92/43/EEC. Whether the project may have a significant effect on a site Natura 2000 is decided by the competent administrative authority. The law on access to environmental information, public participation in environmental assessment and environmental impact from 2008 provides a strategic assessment of the environmental impact documents related to the project planning and project policies, strategies, plans and programs in different areas of the economy.

Hungary. Hungarian law refers to the impact assessment: The protection of the environment has become an important obligation for any developing state. The Hungarian regulations currently in force are fully in line with the directives and regulations of the European Union. It follows from this that the five most important principles of environment protection must be enforced also in Hungary: the protection of the environment should be extended to every sector; emphasis should be laid on prevention; pollution should be eliminated at source; measures should be brought wherever they are the most efficient; the polluter should pay for the use of the environment; and should anyone violate the regulations should be fined. In

Hungary, environmental impact analysis is regulated by Government Decree 314/2005 (XII.25.).

3.2. When the EIA process carried out?

An important fact is information about when it is necessary to carry out the EIA process. Therefore, in all countries the legislation enacted when the cause of the EIA process. In this case, it is the timing of the uniform and differences occur here.

Slovak Republic. Slovak law on EIA assessed *strategic documents* before their approval and *proposed activities* before the decision on their location or their permission under special provisions.

Czech Republic. The purpose of the EIA shall be to obtain an objective professional foundation for issuing a decision or measure pursuant to special regulations and thereby contribute to the sustainable development of the society. This foundation shall be one of the basic documents in procedures pursuant to special regulations.

Poland. In Poland, it is possible to distinguish two types of EIA, from the point of timing, the primary and additional assessment. Primary assessment, which is part of the procedure for issuing a decision on the conditions for environmental management as part of the release of one of the investment decision - a building or similar decision (approval of the construction project, the decision to change structures - respectively their use, to permit investment for public road infrastructure, the decision to permit investment in flood protection facilities, etc). Additional assessment (the after-use analysis), which runs after the issuing of the environmental decision at the request of the authority which issued the decision on environmental protection, if there was recognized the need for a new assessment with respect to changes in the application for the permit and license requirements going from the protection of the environment, cumulation of risk of environmental impact from several projects, or if it is requested by the investor.

Hungary. Prior to the commencement of any operation having significant impact on the environment, either legislation or the Environment Protection Inspectorate may obligate the operator to conduct an environmental impact analysis. The environmental impact analysis consists of a preliminary environmental study phase and depending on the type of impact the activities concerned have on the environment may consist of an additional impact analysis procedure or an IPPC (Integrated Pollution Prevention and Control) procedure; or their combination or linkage.

3. Conclusion

The issue of EIA in the European Union is currently much discussed topic and the protection of the environment has become an important obligation for any developing state. Thanks to the European Union, investors in the Member States, including Slovak Republic, Czech Republic, Poland and Hungary, have to meet certain minimum requirements with a view to protecting the environment. The regulations of Member States currently in force are fully in line with the directives and regulations of the European Union.

According to EIA Directive 2011/92/EU, the principles of the assessment of environmental effects should be harmonised, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment. The Member States may lay down stricter rules to protect the environment. This paper has brought information to the two fundamental questions. The result is a comparison that can be supplemented by additional information about EIA process in Slovak Republic, Czech Republic, Poland and Hungary. Further research should bring as for EIA, the good examples found concern, for example:

- Opportunities to challenge screening decisions;
- Assessment of real alternatives;
- Sufficient time limits for Public Participation;
- Information about opportunities for Public Participation, effective public notifications;
- Information to the public on how and where their opinions were considered and if not why not.

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