



Rialtas na hÉireann
Government of Ireland

Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment

August 2018

Prepared by the Department of Housing, Planning and Local Government

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Foreword by Mr Eoghan Murphy, T.D., Minister for Housing, Planning and Local Government




Environmental Impact Assessment (EIA) is an increasingly important element of European Union environmental policy. The first EIA Directive was adopted in 1985 (Directive 85/337/EEC) and, following the adoption of amending Directives in 1997, 2003 and 2009, a codified Directive was adopted in 2011 (Directive 2011/92/EU). Directive 2014/52/EU amends the 2011 codified Directive but does not replace it. The EIA Directive requires that public and private projects that are likely to have significant effects on the environment be made subject to an assessment prior to development consent being given.

Environmental Impact Assessment is a process to be undertaken in respect of applications for specified classes of development listed in the Directive before a decision in respect of development consent is made. The process involves the preparation of an Environmental Impact Assessment Report (EIAR) by the applicant, consultations with the public, relevant prescribed bodies and any other affected Member States, and an examination and analysis of the EIAR and other relevant information leading to a reasoned conclusion by the competent authority on the likely significant effects of the proposed development on the environment. EIA does not, in itself, dictate the outcome of the development consent decision of the authority, but is an important and essential consideration in decision making procedures and the achievement of high quality, sustainable development.

The provisions of the 2014 Directive are aimed at enhancing the EIA process through ensuring the completeness and quality of the EIARs submitted by the applicant and the examination undertaken by the competent authority and by providing for early and effective public participation before the development consent decision is made.

The Directive requires the EIAR to be prepared by competent experts and for the competent authority to have, or have access to, the necessary expertise to examine



the EIAR and reach a reasoned conclusion in respect of the likely significant effects on the environment resulting from the proposed development. In order to enhance the opportunity for effective public participation, the Directive requires early public notification of all EIA development consent applications and that easy access to the relevant application information be provided by electronic means as well as by the more traditional newspaper and site notices. In this regard, a central EIA Portal is now in operation. The Portal is managed by my Department and contains the necessary notification information as well as providing a direct link to the relevant competent authority's website and file number where the detailed information is published relating to an EIA application as it progresses through the consent process. The Portal covers all EIA applications, marine and terrestrial, across all legislative codes, and is searchable in respect of the range of information it holds. It provides a 'simple to use' gateway to all EIA applications.

The publication of these Guidelines coincides with the making of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018) and the coming into operation of the Regulations on 1st September 2018 in order to transpose the Directive into Irish planning law. The Guidelines replace *Guidelines for Planning Authorities and An Bord Pleanála on carrying out environmental impact assessment* issued by the Department of the Environment, Community and Local Government in March 2013. The purpose of the new Guidelines is to give practical guidance on procedural issues and the EIA process arising from the requirements of Directive 2014/52/EU and to assist with the achievement of a consistency of approach in the implementation of the Directive.

Eoghan Murphy, T.D.

Minister for Housing, Planning and Local Government

1 Introduction

The Directive

- 1.1. Environmental Impact Assessment (EIA) is a very significant and expanding instrument in the implementation of EU environmental policy. Since the adoption of Directive 85/337/EEC (on 27th June 1985) on the assessment of the effects of certain public and private projects on the environment, both the law and EIA practices have evolved significantly¹. The 1985 Directive was amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC, and the Directive and its amendments were codified in 2011 by Directive 2011/92/EU. The current Directive 2014/52/EU amends the 2011 codified Directive, but does not replace it. The full text of the codified Directive showing the 2014 Directive amendments is contained in Appendix 1 of these Guidelines.
- 1.2. The objective of the Directive (Directive 2011/92/EU), as amended by Directive 2014/52/EU, is to ensure a high level of protection of the environment and human health, through the establishment of minimum requirements for environmental impact assessment (EIA), prior to development consent being given, of public and private developments that are likely to have significant effects on the environment. Planning authorities and An Bord Pleanála have long experience in assessing the effects of a proposed development on the environment as this is an integral part of considering whether the proposal is in the interests of the proper planning and sustainable development of the area. The European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018) transpose the requirements of the 2014 EIA Directive into existing planning consent procedures.
- 1.3. Footnotes are provided throughout these Guidelines. References to provisions of the Planning and Development Acts 2000-2018 and the Planning and Development Regulations 2001-2018 are, where appropriate, references to the Acts and Regulations as amended by the transposing Regulations. In general, the statutory

¹ The term 'project' appears in the Directive but the term 'development' is generally used throughout Irish planning legislation. The terms are interchangeable in these Guidelines.

references relate to the standard planning application and appeal process but corresponding legislative amendments have also been made in relation to the other consent systems covered by the Act.

1.4. The amended Directive provides a definition of EIA for the first time². It is defined as a process consisting of:

- (a) the preparation of an Environmental Impact Assessment Report (EIAR) by the developer³
- (b) the carrying out of consultations⁴
- (c) the examination by the competent authority of the EIAR, any supplementary information provided, where necessary, by the developer⁵ and relevant information received through consultations with the public, prescribed bodies and any affected Member States⁶
- (d) the reasoned conclusion of the competent authority on the significant effects of the project on the environment⁷, and
- (e) the integration of the competent authority's reasoned conclusion into any development consent decision.

1.5. The definition of EIA provides for a clear distinction between the process of environmental impact assessment to be carried out by the competent authority and the preparation by the developer of an Environmental Impact Assessment Report (EIAR).

1.6. The environmental impact assessment must identify, describe and assess the direct and indirect significant effects of the project on specified environmental factors⁸. These factors include changes from the 2011 Directive, the most notable being the replacement of 'Human Beings' by 'Population and Human Health', the addition of 'Land' and the replacement of 'Flora and Fauna' by 'Biodiversity with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC' (the Habitats and Birds Directives). The significant effects on these environmental factors must include the expected significant effects arising from the

² See Article 1(2)(g) of the Directive & Sn 171A of the Act.

³ As referred to in Article 5(1) and (2) of the Directive & Sn 171A(a)(i) of the Act.

⁴ As referred to in Article 6 and, where relevant, Article 7 of the Directive & Sn 171A(a)(ii) of the Act.

⁵ In accordance with Article 5(3) of the Directive & Sn 171A(a)(iii) of the Act.

⁶ Under Articles 6 and 7 of the Directive & Sn 171A(a)(iii) of the Act

⁷ Taking into account the results of the examination in point (iii) above and, where appropriate, its own supplementary examination. See Sn 171A(a)(iv) of the Act.

⁸ Article 3(1) of the Directive and Sns 171A(b) and 172(1J)(b) of the Act.

vulnerability of the project to the risks of major accidents and/or disasters which are relevant to the project⁹.

1.7. Key amendments introduced by the 2014 Directive include the following:

- The refinement of environmental factors to be considered in the assessment process – resource efficiency, climate change, population and human health, biodiversity and disaster risk prevention and management
- Strengthening of the procedures for screening, particularly through the introduction of new information requirements to be provided by the developer (Annex IIA)¹⁰ and revised selection criteria to be used by the competent authority in making a determination (Annex III of Directive)¹¹
- Expansion of the information to be included in the EIAR (formerly known in Ireland as EIS)(Annex III of Directive)¹²
- Requirement that the EIAR must be prepared by competent experts and for the competent authority to have, or have access to, sufficient expertise to examine the EIAR
- Expansion of the information to be included in a development consent decision including a requirement for a ‘reasoned conclusion’ to be incorporated into the decision in respect of the significant effects of the project on the environment
- Requirements to inform the public and to make relevant environmental information publicly accessible through electronic means and in a timely fashion during the assessment process and at the time of the decision
- Requirement for monitoring of significant adverse effects resulting from the construction and operation of a project.

⁹ Article 3(2) of the Directive. See Sn 171A(b)(ii) of the Act.

¹⁰ Schedule 7A to the Regulations, as inserted by article 97 of S.I. No. 296 of 2018..

¹¹ Schedule 7 to the Regulations, as inserted by article 97 of S.I. No. 296 of 2018.

¹² Schedule 6 to the Regulations, as substituted by article 97 of S.I. No. 296 of 2018.

- 1.8. The objectives and purpose of the 2014 Directive are set out in the Recitals and these should be referenced when interpreting specific provisions and requirements of the Directive.

The Guidelines

- 1.9. These Guidelines are issued to planning authorities and An Bord Pleanála (the Board) under section 28 of the Planning and Development Act 2000, as amended (the Act), and both are required to have regard to the Guidelines in the performance of their functions under the Act. They replace *Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment* issued by the Department of the Environment, Community and Local Government in March 2013.
- 1.10. The purpose of the Guidelines is to provide practical guidance for planning authorities and the Board (Competent authorities) on legal and procedural issues and matters of interpretation arising from the amended Directive, which should result in greater consistency in procedures adopted by competent authorities in the planning system.
- 1.11. The Guidelines, for the greater part, address key areas of change introduced by Directive 2014/52/EU. Guidance is given in relation to the following:
- Pre-application stage
 - Screening
 - Scoping

 - Application stage
 - The EIAR
 - Non-technical Summary
 - Competent experts
 - Reasonable alternatives

 - Environmental factors
 - Human health
 - Biodiversity

- Land
 - Climate
 - Risk of major accidents and disasters
 - Baseline scenario
- Consultations and EIA Portal
 - Consultations with prescribed bodies
 - Informing and consulting the public electronically
 - EIA Portal and Competent Authority websites
- The Assessment
 - Examination/Assessment/Reasoned Conclusion
 - Likely significant effects
 - Cumulative effects
- The Decision
 - Monitoring Conditions

1.12. The Guidelines contain an outline and guide to sections 171A and sections 172, 172A, 172B, and 172C of the Act, arising from the transposition of the Directive.

1.13. These Guidelines should be read in conjunction with the transposing Regulations¹³. While guidance is offered on the interpretation of the amended Directive, only the Courts can provide definitive interpretation. However, planning authorities and the Board should have regard to the ruling of the European Court that the EIA Directive has a “wide scope and a broad purpose” when determining if EIA is required¹⁴.

1.14. Other important guidance documents that should be consulted include the following:

- *Draft Guidelines on the information to be contained in Environmental Impact Assessment Reports*, Environmental Protection Agency, 2017¹⁵. These are expected to be finalised shortly and the final text should be consulted when available.

¹³ S.I. No.296 of 2018. See www.irishstatutebook.ie

¹⁴ ECJ cases C-72/95, C-2/07 and C-275/09.

¹⁵ At <http://www.epa.ie/pubs/advice/licensee/drafteiarguidelines.html>

- European Commission guidance documents on the implementation of the EIA Directive (Directive 2011/92/EU as amended by 2014/52/EU)¹⁶ as follows:
 - *Environmental Impact Assessment of Projects: Guidance on Screening*, European Commission, 2017
 - *Environmental Impact Assessment of Projects: Guidance on Scoping*, European Commission, 2017
 - *Environmental Impact Assessment of Projects: Guidance on the preparation of the Environmental Impact Assessment Report*, European Commission, 2017

¹⁶ <http://ec.europa.eu/environment/eia/eia-support.htm>

2 What is Environmental Impact Assessment?

- 2.1. The Directive requires that, before development consent is given, projects likely to have significant effects on the environment by virtue of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment (EIA)¹⁷.
- 2.2. Under Article 2 of the Directive, for a project to require an environmental impact assessment, it must come within one of the categories in Annex I or II to the Directive¹⁸. It should be noted, however, that the annexes refer to sectoral categories of projects, without describing the precise nature of the works provided for within those categories. Such works may, in themselves, fall within a class of development requiring EIA.
- 2.3. Schedule 5 Part 1 projects require EIA if the stated threshold set therein has been met or exceeded or where no thresholds are set. Schedule 5 Part 2 projects meeting or exceeding national thresholds set out therein, or where no thresholds are set, require EIA. Sub-threshold projects in Schedule 5 Part 2 require screening for EIA, except in cases where the likelihood of significant effects can be readily excluded. This issue is further addressed in the screening section of these Guidelines.
- 2.4. It is intended to urgently review the thresholds of some Part 2 projects with a view to setting, where appropriate, revised upper national thresholds for mandatory EIA and also setting lower thresholds below which no determination will be required, with projects falling between these thresholds requiring screening (a traffic light system). Further guidance will be provided when any changes arising from the review are legislated for.
- 2.5. Where EIA is required, the developer must prepare and submit an EIAR and the Directive sets out the minimum information which the EIAR must include¹⁹. There is a new requirement that the developer must ensure that 'competent experts' prepare the EIAR and that the competent authority must have, or have access to, 'sufficient

¹⁷ See Article 2(1) of the Directive and Sn 172 of the Act.

¹⁸ See Environmental Impact Assessment of Projects, Rulings of the Court of Justice, European Union, 2017 pg.23.

http://ec.europa.eu/environment/eia/pdf/EIA_rulings_web.pdf

¹⁹ Article 5(1) and Annex IV of the Directive. See also article 94 of, and Schedule 6 to, the 2001 Regulations.

expertise' in order to examine the EIAR²⁰. This is addressed further in subsections 4.8 to 4.11 of these Guidelines.

- 2.6. A key aspect of the Directive is the requirement to inform the public electronically (in addition to other means) as soon as information can reasonably be provided, so as to ensure effective public participation in environmental decision-making procedures²¹. There is also a requirement to ensure that relevant environmental information informing and facilitating consultation is made electronically accessible to the public²². These requirements should be met at the appropriate administrative level, i.e. by the relevant competent authority. This is addressed further in subsections 5.1 to 5.13 of these Guidelines.
- 2.7. The Department of Housing, Planning and Local Government (DHPLG) issued Circular letter PL 1/2017 to all planning authorities and An Bord Pleanála on 15th May 2017 advising as follows:

“In respect of all applications for planning permission or other development consent received on or after 16th May 2017 falling within the scope of Directive 2011/92/EU or within the scope of Directive 2014/52/EU, competent authorities are advised to consider applying the requirements of Directive 2014/52/EU by way of administrative provisions in advance of the transposition of Directive 2014/52/EU into Irish law.”

The text of this Circular Letter is attached at Appendix II.

- 2.8. Transposition of the Directive is required into legislation for other development consent systems and this is the responsibility of the relevant Government Departments.
- 2.9. EIA provisions in relation to planning development consents are contained in the Planning and Development Act 2000, as amended and in the Planning and Development Regulations 2001, as amended. These Guidelines examine key relevant sections of the Act and Regulations, as amended by the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018), which transpose the 2014 Directive into planning law.

²⁰ Article 5(3) of the Directive. See also Sn 172(1B) and 172(1H) of the Act and article 94(e) of the Regulations.

²¹ Article 6.2 of the Directive. See also Sns 38(3)(b), 146(4)(a) and 172B of the Act and article 27(1) of the Regulations.

²² Article 6.5 of the Directive. See also definitions of “EIA Portal” and “confirmation notice” in Sns. 2(1), 146(4)(a) and 172A-172C of the Act and articles 22(2)(ga) & (3), 97 and 97A-97C of the Regulations.

2.10. The outcome of the EIA process does not, in itself, determine the outcome of an application for development consent for a project. The planning authority and An Bord Pleanála must consider each application for development consent on its own merits, taking into account all material considerations, including the reasoned conclusion in respect of EIA, before making its decision to grant, with or without conditions, or to refuse consent.

3 Pre-Application Stage

Screening

- 3.1. Screening is the initial stage in the EIA process and determines whether or not specified public or private developments are likely to have significant effects on the environment and, as such, require EIA to be carried out prior to a decision on a development consent application being made. A screening determination is a matter of professional judgement, based on objective information relating to the proposed project and its receiving environment. Environmental effects can, in principle, be either positive or negative.
- 3.2. Screening must consider the whole development. This includes likely significant effects arising from any demolition works which must be carried out in order to facilitate the proposed development. In the case of transboundary developments, screening must consider the likely significant effects arising from the whole project both sides of the boundary²³. A screening determination that EIA is not required must not undermine the objective of the Directive that no project likely to have significant effects on the environment, within the meaning of the Directive, should be exempt from assessment²⁴.
- 3.3. The first step is to decide if a proposed development falls within a class set out in Annex I or II of the Directive. It should be noted that Directive 2014/52/EU does not make any amendments to the list of projects set out in the two annexes to the 2011 Directive. In Irish legislation, Annexes I and II are broadly transposed by way of the Planning and Development Regulations 2001, as amended, in Schedule 5 Parts 1 and 2, with national thresholds added to many of the Part 2 classes of development. Part 1 developments meeting or exceeding the thresholds set out therein require mandatory EIA and, as such, there is no screening determination required. Part 1 sub-threshold developments require screening in cases where the same class of development is not listed in Part 2 with a lower mandatory threshold. For Part 2 developments, in cases

²³ C-205/08, *Umweltanwalt von Karnten*, paras 54-56.

²⁴ C-435/97, *WWF and Others*, paragraphs 42, 43 and 45

where national thresholds are met or exceeded, or where no threshold is set, there is mandatory EIA; again there is no screening determination required.

- 3.4. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment²⁵. This is initiated by the competent authority following the receipt of a planning application or appeal.
- 3.5. A preliminary examination is undertaken, based on professional expertise and experience, and having regard to the 'Source – Pathway – Target' model²⁶, where appropriate. The examination should have regard to the criteria set out in Schedule 7 to the 2001 Regulations.
- 3.6. Where, based on a preliminary examination of the information submitted with the application and any other supplementary information received, the competent authority concludes that, having considered the nature, size and location of the proposed development, there is no real likelihood of significant effects on the environment, this should be recorded with reasons for this conclusion stated, and no EIA required or formal determination made. The recording of the competent authority's view should be brief and concise, but adequate to inform the public. In many cases this considered view will be included in the planner's/inspector's report on the planning application and this may be cross-referenced in the competent authority's decision. Normally, this will be published at the time of the decision of the competent authority.
- 3.7. Where, based on the information submitted with the application and any other supplementary information received, and having considered the nature, size and location of the proposed development in the context of the criteria set out in Schedule 7 to the 2001 Regulations, there is a real likelihood of significant effects on the environment, the competent authority must determine that an EIA is required.²⁷ The main reasons for this determination should be recorded and notified to the developer and an EIAR required. Revised public notices will be required upon submission of the EIAR.

²⁵ Sn 172(1)(b)(ii) of the Act and articles 103(1)(b) and 109(2)(b)(i) of the Regulations.

²⁶ See 'Glossary of Terms' in Annex IV.

²⁷ Articles 103(1)(b)(ii) and 109(2)(b)(ii) of the Regulations.

- 3.8. Where, based on the information submitted with the application and any other supplementary information received, the competent authority, having considered the nature, size and location of the proposed development in the context of the criteria set out in Schedule 7 to the 2001 Regulations, forms the view that there is significant and realistic doubt in regard to the likelihood of significant effects on the environment, the competent authority must proceed to a further examination to determine whether EIA is required. This requires the applicant to submit the information specified in Schedule 7A to the 2001 Regulations in order to facilitate a formal screening determination. The applicant may have submitted this with the application, and where he/she has not done so, the competent authority must request the information to enable the further examination to be undertaken and a formal determination made.²⁸
- 3.9. The relationship between a proposed development and its location is a key consideration in determining if EIA procedures should apply. Even small-scale projects can have significant effects on the environment if the location is such that the environmental factors listed in the Directive are sensitive to the slightest alteration²⁹. Location refers to both the immediate receiving environment and also sensitive sites which have the potential to be significantly affected³⁰. In such cases, it may be appropriate to apply the 'Source-Pathway-Target' model as a tool in coming to a conclusion or making a determination. The model considers the likely significant impacts resulting from the development and impacting on the receiving environment. Sensitive sites may be outside the immediate receiving environment and the model gives consideration to the 'pathways' (connectivity) along which likely significant effects are likely to be transported to those sites. The 'significance' of the effects should have regard to the vulnerability or otherwise of relevant factors in the receiving environment.
- 3.10. To enable a screening determination to be carried out where there is a significant and realistic doubt in regard to the likelihood of significant effects on the environment, the competent authority must have access to the information listed in Schedule 7A to the 2001 Regulations, as amended; this is a new requirement introduced by the 2014 Directive³¹. In providing this information the developer must take into account relevant

²⁸ Articles 103(1)(b)(iii) and 109(2)(b)(iii) of the Regulations.

²⁹ C-392/96, Commission v Ireland, paragraph 66

³⁰ See articles 103(3)(a)(v) and 109(4)(a)(v) of the Regulations.

³¹ Annex IIA of the Directive "Information to be provided by the developer on the projects listed in Annex II" and Schedule 7A to the Regulations.

available results of other assessments on the effects on the environment carried out under other Union legislation (e.g. SEA Directive)³². The developer may also describe features of the project and/or mitigation measures envisaged to avoid or prevent what might otherwise be significant adverse effects on the environment, and this forms part of the information on which the determination is to be based³³. Compensation measures are not considered in the screening determination process. The information provided may be only of a preliminary and/or rough nature and not in any way constitute a full account of any potential significant impacts³⁴. Where the competent authority considers that the information supplied by the developer is not sufficient, the authority may request further information.

- 3.11. Where pre-application consultations take place in relation to a proposed sub-threshold development of a class listed in Schedule 5 Part 2 and, it appears that the likelihood of significant effects cannot be readily excluded, the planning authority should advise the developer that the application documentation to be submitted should include the information listed in Schedule 7A to the 2001 Regulations, as amended, and the information listed in paragraph 3.10 above. This may avoid the necessity of seeking additional information and this causing delay following the submission of the application.
- 3.12. The screening determination by the competent authority must be based on the information provided by the developer and considered in light of the precautionary principle. Criteria to determine whether projects by virtue, inter alia, of their nature, size or location should be subject to EIA, are set out in Schedule 7 to the 2001 Regulations, as amended (Annex III of the 2014 Directive)³⁵; Annex III is amended from the 2011 Directive. The determination made by the competent authority must include reasons with reference to Schedule 7 criteria and make reference to any mitigation features or design factors influential to the making of the determination. Particular attention should be given to potential significant impacts on sensitive areas (e.g. areas identified as important to nature conservation and/or areas of particular archaeological interest in the relevant Development Plan), and also to cumulative effects with relevant existing and/or approved projects.

³² Article 4(4) of the Directive. See also Article 103(1A)(a) of the Regulations.

³³ Article 4(4) of the Directive. See also article 103(1A)(b) of the Regulations.

³⁴ EC EIA Guidance – Screening, 2017, para 3.1 Step 3A.

³⁵ Annex III of the Directive “Criteria to determine whether the projects listed in Annex II should be subject to environmental impact assessment” and Schedule 7 to the Regulations.

- 3.13. The competent authority must make its determination available to the public and must state reasons³⁶. In the case of a determination relating to an application for development consent for sub-threshold development the determination should be placed on the competent authority's public file and their website at the same time as the development consent decision. The determination may form part of the decision or may be a separate document.
- 3.14. The screening determination must be made within 8 weeks from the date on which all the relevant information is submitted. In exceptional circumstances the period may be extended, in which case the developer must be informed and a revised date for determination given by the competent authority³⁷.
- 3.15. Any person may apply to the Board for a screening determination where a local authority proposes to carry out a development and he or she considers that the development would be likely to have significant effects on the environment³⁸. There are similar provisions for any person to seek a determination in respect of a proposed development by a State authority³⁹. The application may be made at any time before the expiration of 4 weeks of the date of publication of the newspaper notice by the local or State authority notifying the public of the proposed development⁴⁰. Where the Board makes a determination on foot of a request from a local or State authority, or on foot of an application for determination from any person made in respect of a local or State development, the determination, including reasons, must be made available to the public, including on the Board's website, in a timely manner.
- 3.16. Where a question arises as to what, in any particular case, is or is not development or is or is not exempted development, a request may be made by any person in writing to the planning authority or the Board under Section 5 of the Act for a declaration/decision on that question. In respect of EIA, under section 4(4) of the Act, development cannot be exempted development if an environmental impact assessment of the development is required. If the development is of a class but sub-threshold, a preliminary examination will be required and the question of a structured

³⁶ Article 4(5) of the Directive. See also Sns 38(1)(d) and 38(3)(b)(iii) of the Act.

³⁷ Article 4(6) of the Directive. See also article 103(1C)(a) of the Regulations.

³⁸ Article 120(3)(b) of the Regulations.

³⁹ Article 123A(3)(b) of the Regulations.

⁴⁰ Articles 120(3)(b) and 123A(3)(b) of the Regulations.

screening may arise before any declaration is made⁴¹. In cases where the planning authority or the Board decide that screening is necessary, the requester/referrer should be asked to provide the relevant information listed in Schedule 7 to the 2001 Regulations, as amended. It will be a matter for the owner/occupier (if s/he is not the person who made the request or referral) to describe features of the project and/or mitigation measures envisaged to avoid or prevent what might otherwise be significant adverse effects on the environment⁴². However, past experience indicates that many of the sub-threshold developments to which Section 5 questions relate, are small in scale and have no real risk of significant environmental impacts. In these cases, a brief preliminary examination should be undertaken and, where appropriate, a statement to the effect that the development is not likely to have significant effects on the environment recorded in the declaration. The issue of appropriate assessment should be addressed separately.

- 3.17. Section 7 of the Planning and Development (Housing) and Residential Tenancies Act 2016 and the Planning and Development (Strategic Housing Development) Regulations 2017 allow for a prospective applicant to make a request to An Bord Pleanála for an EIA screening determination in regard to a proposed Strategic Housing Development (SHD). Such requests are discretionary. The procedures for making such a request and the considerations for the Board in making a determination are set out in guidance issued by the Board⁴³.
- 3.18. The transposing Regulations amend sections 176A, 176B and 176C of the Act (inserted by Planning and Development (Housing) and Residential Tenancies Act 2016 (No. 17 of 2016)). These sections will come into force on 1st January 2019. Guidance on the operation of these enactments will issue later in 2018.
- 3.19. Detailed guidance on the meaning of certain project definitions in the Directive is provided in the 2015 Commission's Guidance document on the 'Interpretation of definitions of Project categories of Annex I and II of the EIA Directive'⁴⁴.

⁴¹ Article 132C(2) of the Regulations.

⁴² Article 132E of the Regulations.

⁴³ *Strategic Housing Development Section 7 Requests for Environmental Impact Assessment (EIA) and/or Appropriate Assessment (AA) screening determination and/or scoping opinion*. Guidance for Prospective Applicants. An Bord Pleanála, Version 1. 2017.

⁴⁴ *Interpretation of definitions of project categories of annex I and II of the EIA Directive*. European Commission. 2015.

Scoping

- 3.20. Scoping is an early stage in the EIA process. Formal scoping is mandatory upon a request by the person intending to apply for permission to the relevant competent authority for a written opinion on the scope and level of detail of the information which should be contained in an EIAR⁴⁵. Before making an application for approval to the Board, a local authority or State authority may apply to the Board for a written scoping opinion⁴⁶.
- 3.21. The purpose of scoping is to identify the information to be contained in an EIAR and the methodology to be used in gathering and assessing that information. It should provide focus for the EIAR and thus enable the environmental impact assessment to be appropriately tailored to the proposed development's likely significant impacts on the environmental factors set out in Article 3 of the Directive, avoid time and money being spent on unnecessary examinations, and reduce the likelihood of the competent authority having to seek the submission of additional information after the submission of the EIAR⁴⁷.
- 3.22. Scoping should be carried out by personnel with sufficient appropriate expertise, having regard to the nature of the development proposed and the environmental factors in the receiving environment likely to be affected. This expertise may be in-house but, in certain cases, there may be need to source external expertise to prepare part or all of the scoping opinion.
- 3.23. The Directive does not set out any formal requirements regarding the content of a request for a scoping opinion or the scoping opinion itself, and the format and detail of the request and/or opinion will vary from case to case. However, the competent authority must, in issuing an opinion, take into account the information provided by the requester in particular on the specific characteristics of the development, including its location and technical capacity, and its likely impact on the environment⁴⁸. Competent authorities should also consider the Directive's requirements regarding the information to be provided by the developer in the

⁴⁵ Article 5(2) of the Directive. See also Sn 173(2)(a) of the Act and articles 95(1)(b) and (c) of the Regulations.

⁴⁶ Article 117(1) of the Regulations 2001, and Sn 181C(3)(b) of the Act.

⁴⁷ EC EIA Guidance – Scoping, 2017, section 1.

⁴⁸ Article 5(2) of the Directive. See also Sn 173(2)(a) of the Act and articles 95(1)(b) and (c) of the Regulations.

EIAR, as set out in Article 94 of, and Schedule 6 to, the 2001 Regulations, as amended.

- 3.24. While not a requirement of the Directive or the transposing Regulations a scoping opinion could usefully recommend the inclusion of a summary table of features and/or measures envisaged to avoid, prevent or reduce and, if possible, offset likely significant adverse effects of the proposed development and a timescale for the implementation of proposed mitigation measures.
- 3.25. Scoping should consider information on “reasonable alternatives” provided by the developer. These may include options for project design, technology, locations, size and scale, etc. Alternatives may end up becoming part of the project’s final design, or its method of construction or operation, in order to avoid, reduce, prevent or remedy environmental effects. Any recommendation to study reasonable alternatives should focus on alternatives that are relevant to the specific development proposed and the likely effects of the development on the environment.
- 3.26. The potential for cumulative impacts with other existing or approved developments should be an important consideration in the preparation of a scoping opinion.
- 3.27. There is a mandatory obligation for a planning authority to consult with prescribed bodies and the Board, as appropriate, before issuing an opinion and this should be done at the outset, upon receiving a scoping request⁴⁹. Authorities to be consulted include those with specific environmental responsibilities or local and regional competences. It is essential that prescribed bodies are provided with adequate information and given sufficient response time in order to give a considered opinion. There are similar provisions in respect of An Bord Pleanála issuing a scoping opinion when requested by a person who is required to submit an EIAR to the Board .
- 3.28. The giving of a written opinion by a planning authority or the Board does not prejudice the planning authority or the Board, in their powers under the Act, to require the submission of further information in respect of any application or

⁴⁹ Sn 173(2)(a)(ii) of the Act.

appeal to which the EIAR relates⁵⁰. In the case of strategic housing development (SHD) applications made to the Board, there is no legislative provision for seeking further information during the consideration of an application.

3.29. Formal consultation with the public in respect of a scoping request is not a mandatory requirement of the Directive and is not provided for in Irish legislation. Developers may have engaged in informal public consultations in advance of making a request for a scoping opinion.

3.30. Where a competent authority issues a written scoping opinion at the request of the developer in relation to a proposed project, the EIAR submitted to the competent authority for that project must be based on that opinion and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment⁵¹.

3.31. The Directive does not make specific reference to a timescale for the production of a scoping opinion by the competent authority following a request by the developer, but procedures relating to scoping requests are detailed in the 2001 Regulations, as amended⁵². After receipt of a request for a scoping opinion, the planning authority or the Board is required to give notice to specified bodies, including appropriate prescribed bodies, as soon as may be, and request submissions or observations within 4 weeks of the date of the notice (the specified period). Subject to having sufficient information, the planning authority or the Board has a further 3 weeks from the expiry date of the specified period to give a written scoping opinion.

3.32. Section 7 of the Planning and Development (Housing) and Residential Tenancies Act 2016 and Planning and Development (Strategic Housing Development) Regulations 2017 allow for a prospective applicant to make a request to An Bord Pleanála for an EIA scoping opinion in regard to a proposed Strategic Housing Development (SHD). Such requests are discretionary. The procedures for making such a request and the

⁵⁰ Sn 173(2)(b) and 173(3)(b) of the Act.

⁵¹ Article 5(1) of the Directive. See also Sns 173(2)(aa) and 173(3)(aa) of the Act.

⁵² Article 95 of the Regulations.

considerations for the Board in issuing a scoping opinion are set out in guidance issued by the Board⁵³.

⁵³ *Strategic Housing Development Section 7 Requests for Environmental Impact Assessment (EIA) and/or Appropriate Assessment (AA) screening determination and/or scoping opinion*. Guidance for Prospective Applicants. An Bord Pleanála, Version 1. 2017.

4 Application Stage

The Environmental Impact Assessment Report

- 4.1. In the case of all applications for development consent, the application should initially be subject to a preliminary examination to see if the issue of EIA could arise. In most cases, it will be apparent that the issue does not arise because the proposed development is not of a class listed in Schedule 5 or is of a nature and scale that there is no real likelihood of significant effects on the environment arising from the proposed development. This should be a straightforward procedure based on professional judgment and expertise.
- 4.2. In cases where EIA is required the developer must prepare and submit an EIAR to the competent authority⁵⁴. The information to be provided by the developer must, at least, address the matters detailed in Article 5(1)(a) to (f) of the Directive as follows:
- (a) A description of the project comprising information on the site, design, size and any other relevant features of the project;
 - (b) A description of the likely significant effects of the project on the environment;
 - (c) A description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
 - (d) A description of the reasonable alternatives studied by the developer, 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;
 - (e) A non-technical summary of the information referred to in points (a) to (d)
 - (f) Any additional information specified in Annex IV of the Directive/Schedule 6 to the 2001 Regulations, as amended, relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected⁵⁵.

⁵⁴ Article 5(1) of the Directive. See also Sns 2(1) (definition of "EIAR") and 172(1B) of the Act and articles 99 and 103 of the Regulations.

⁵⁵ Article 5(1)(f) of the Directive. See also Article 94(b) and Schedule 6 to the Regulations.

- 4.3. It should be noted that the 2014 Directive contains significant changes to Annex IV of the 2011 Directive, including additional matters to be considered such as demolition works (where relevant), risks to human health, biodiversity, climate change and cumulative effects with other existing and/or approved projects⁵⁶.
- 4.4. An EIAR must include a list of the experts who have contributed to its preparation, identifying, for each expert, the part or parts of the report for which he or she is responsible/has contributed to, his or her competence and experience, including qualifications where relevant, and any other information demonstrating the contributor's competence⁵⁷.
- 4.5. While not a mandatory requirement an EIAR can very usefully include a summary table of features and/or measures envisaged to avoid, prevent or reduce and, if possible, offset likely significant adverse effects of the proposed development, and a timescale for the implementation of proposed mitigation measures.

The 2011 Directive, as amended, specifies that the EIAR must include information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment⁵⁸.

Non-Technical Summary

- 4.6. The developer must include a Non-Technical Summary in the EIA report⁵⁹. This should broadly include a description of the project, the baseline conditions, reasonable alternatives, and the likely significant effects, mitigation measures, monitoring measures, as well as the methods used for the assessment including explanations of any hurdles encountered during the analysis⁶⁰. The summary should be concise and comprehensive and should be written in language easily understood by a lay member of the public not having a background in environmental matters or an in-depth knowledge of the proposed project.

⁵⁶ See article 97 of the 2018 Regulations substituting a revised Schedule 6 in the 2001 Regulations.

⁵⁷ Article 94(e) of the Regulations

⁵⁸ Article 5(1) of Directive. Note that reference to "current knowledge" and "methods of assessment" should be taken as relating to the time of submission of the EIAR. These could change between the time of issuing of a scoping opinion and the submission of an EIAR.

⁵⁹ Article 5(1)(e) and Annex IV of the Directive. See article 94(c) of the Regulations 2001.

⁶⁰ EC EIA Guidance – EIAR, 2017, section 2.1.2.

- 4.7. The Non-Technical Summary should be easily identifiable and accessible within the EIAR. Typically it would be found at the beginning or end of the EIAR. Alternatively, for larger projects, it may be produced in the form of a separate document.

Competent experts

- 4.8. It is a requirement that the EIAR must be prepared by competent experts⁶¹. The Directive does not define the term ‘competent expert,’ although Recital 33 of the 2014 Directive states that experts involved in the preparation of EIARs should be ‘qualified and competent’⁶². The term ‘qualified expert’ is not interpreted as necessarily someone with a formal qualification but could also be a person with significant knowledge and experience in a particular field. The term ‘qualified’ is not used in the operative provisions of the 2014 Directive.
- 4.9. The 2001 Regulations require that an EIAR includes a list of names of all the experts contributing to the various sections of the report, together with details of their competency including, as appropriate, qualifications, experience and any additional information that demonstrates the required competency⁶³. This is to facilitate the competent authority and the public in coming to a conclusion in relation to the competency of experts.
- 4.10. The competent authority must ensure that it has, or has access as necessary to sufficient expertise to examine the EIAR in order to ensure the completeness and quality of the report⁶⁴. This expertise is required to check the structure and logic of the EIAR, as well as the overall quality of data used, judgements and conclusions presented⁶⁵.
- 4.11. The ‘sufficiency’ of expertise will depend on qualifications and/or experience in the examination of EIARs and will be a matter for each competent authority. This may include expertise that is in-house and/or access to relevant external expertise such as specialised consultants, Universities and Technical Institutes. Sufficient expertise in

⁶¹ Article 5(3)(a) of the Directive and Sn 172(1B) of the Act.

⁶² Recital 33 of the Directive.

⁶³ Article 94(e) of the Regulations.

⁶⁴ Article 5(3)(a) of the Directive and Sn 172(1H) of the Act.

⁶⁵ EC EIA Guidance – EIAR, 2017, section 2.2.3.

the relevant field of the project concerned is required for the purpose of its examination by the competent authority in order to ensure that the information provided by the developer is complete and of high quality. It is considered that many planning authorities will have planners/Inspectors and/or other specialist personnel used to the concept of taking environmental information into account in the decision making process and with sufficient expertise to identify the environmental issues requiring advice from specialists.

Reasonable Alternatives

4.12. The Directive requires that information provided by the developer in an EIAR shall include a description of the reasonable alternatives studied by the developer. These are reasonable alternatives which are relevant to the project and its specific characteristics. The developer must also indicate the main reasons for the option chosen taking into account the effects of the project on the environment⁶⁶.

4.13. Reasonable alternatives may relate to matters such as project design, technology, location, size and scale⁶⁷. The type of alternatives will depend on the nature of the project proposed and the characteristics of the receiving environment. For example, some projects may be site specific so the consideration of alternative sites may not be relevant. It is generally sufficient for the developer to provide a broad description of each main alternative studied and the key environmental issues associated with each. A 'mini- EIA' is not required for each alternative studied⁶⁸.

Environmental Factors

Human Health

4.14. Recital 1 of Directive 2014/52/EU makes reference to the fact that the 2011 Directive contributes to a high level of protection of the environment and human health.

⁶⁶ See Article 5(1)(d) of Directive. See Schedule 6(1)(d) to the Regulations.

⁶⁷ See Annex IV (2) of Directive. See also Schedule 6(2)(b) to the Regulations.

⁶⁸ See 'draft 'Guidelines on the information to be contained in Environmental Impact Assessment Reports', EPA. 2017. Sn 3.4.1.

4.15. Article 3 of the 2014 Directive effectively defines the EIA process as identifying, describing and assessing in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on a series of specified environmental factors. The first of these is “population and human health” which replaces “human beings” in the 2011 Directive. The term “human health” is not defined in the 2014 Directive.

4.16. There is a close interrelationship between the SEA Directive and the 2014 EIA Directive. The term “human health” is contained in both the SEA and EIA Directives and a common interpretation should be given. Accordingly, consideration of human health effects resulting from the construction and operation of a project should focus on health issues arising in the context of the other environmental factors listed in Article 3 of the Directive/ Section 171A of the Act, namely:

- Population
- Biodiversity, with particular attention to protected species and habitats
- Land, soil, water, air and climate
- Material assets, cultural heritage and the landscape
- Interaction between the above factors

4.17. European Commission guidance relating to the implementation of the 2014 Directive, in reference to “human health” states *“Human health is a very broad factor that would be highly Project dependent. The notion of human health should be considered in the context of other factors in Article 3(1) of the EIA Directive and thus environmentally related health issues (such as health effects caused by the release of toxic substances to the environment, health risks arising from major hazards associated with the Project, effects caused by changes in disease vectors caused by the Project, changes in living conditions, effects on vulnerable groups, exposure to traffic noise or air pollutants) are obvious aspects to study. In addition, these would concern the commissioning, operation, and decommissioning of a Project in relation to workers on the Project and surrounding population⁶⁹”*.

⁶⁹ *Environmental Impact Assessment of Projects: Guidance on the preparation of the Environmental Impact Assessment Report*, European Commission, 2017 <http://ec.europa.eu/environment/eia/eia-support.htm>

4.18. Draft Guidelines produced by the Environmental Protection Agency⁷⁰ (which also refer to the Commission's SEA Implementation Guidance) advise that *"in an EIAR, the assessment of impacts on population & human health should refer to the assessments of those factors under which human health effects might occur, as addressed elsewhere in the EIAR e.g. under the environmental factors of air, water, soil etc."*

Biodiversity

4.19. The Directive refers to biodiversity, with particular attention to species and habitats protected under the Habitats and Birds Directives, as a factor which must be identified, described and assessed in the EIA process⁷¹. Biodiversity replaces the factor "flora and fauna" listed in the 2011 Directive.

4.20. Biodiversity is a natural resource which includes flora and fauna. However, Recitals to the 2014 Directive point to the consideration of a wider perspective than the study of animal and plant life in a particular zone or time⁷². This is further reflected in Annex III (EIA Screening selection criteria for EIA) and Annex IV (information to be contained in an EIAR) of the Directive, (transposed as Schedule 7 and Schedule 6 respectively to the 2001 Regulations)⁷³.

4.21. Biodiversity refers to the interactions and variety of, and variability within, species, between species and between ecosystems. The assessment must consider both the direct and indirect effects, with particular attention paid to species and habitats protected under the Habitats and Birds Directives.

4.22. In many cases an application for development consent will involve both environmental impact assessment under the EIA Directive and an Appropriate Assessment carried out under Article 6(3) of the Habitats Directive. There may be significant overlap but also significant differences between these two assessments. The Appropriate Assessment considers the implications for a designated conservation site in view of the conservation objectives set for that site. These conservation objectives are likely to be specific and narrower in focus than the requirement of the EIA Directive to

⁷⁰ Draft 'Guidelines on the information to be contained in Environmental Impact Assessment Reports', EPA, May 2017.

⁷¹ Article 3(1)(b) of the 2014 Directive. See also Sn 171A(b)(i)(II) of the Act.

⁷² Recitals 7, 10, 11 and 12 of Directive 2014/52/EU and 14 of 2011/52/EU.

⁷³ Annex III 2(b) & (c) and paragraphs 1(c), 4 and 5(b) of Annex IV of the Directive.

consider the broader topic of biodiversity. It is likely that there will be elements of biodiversity that are common to both assessments and, where this occurs, the conclusions of the Appropriate Assessment should be incorporated into the EIA. The EIA should also address residual issues in respect of biodiversity where these are not addressed in the Appropriate Assessment.

4.23. The 2014 Directive requires that the assessments under the EIA Directive and the Habitats Directive be carried out in a joint and/or coordinated manner in order to streamline the overall assessment process⁷⁴. This requirement is in practice, already being met in the Irish planning system in a coordinated way. In cases where there is no impact on a Natura 2000 site and thus no Appropriate Assessment undertaken, the EIA must assess the impacts on biodiversity.

4.24. For public or private projects in marine locations that are likely to have a significant effect on the environment, the impacts on the marine environment must be considered in an EIA.

Land

4.25. Land is introduced as a factor to be identified, described and assessed in an EIA. The 2014 Directive refers to the importance of the sustainable use of soil and the need to address the unsustainable increase of settlement areas over time. The economic and social significance of good land management, including soil, and the need for urgent action to reverse land degradation is recognised⁷⁵.

4.26. Information to be submitted and assessed in respect of land should include details of 'land take' and land use requirements of the whole project during the construction and operational phases.

⁷⁴ Article 2(3) of the Directive. See also Sn 172(1GA) of the Act.

⁷⁵ Recital 9 of the 2014 Directive.

Climate

4.27. The 2014 Directive requires the assessment of the impact on climate (e.g. greenhouse emissions) and the vulnerability of the project to climate change. In respect of a project, there are two key aspects to be addressed:

- Climate change mitigation – impact of the project on climate change, primarily through greenhouse gas emissions (direct and indirect);
- Climate change adaptation – vulnerability of the project to future changes in climate and its capacity to adapt to the impacts of climate change.

Risk of major accidents and disasters

4.28. The EIA must include the expected effects arising from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project⁷⁶. Where appropriate, the description of expected significant effects should include details of the preparedness for and proposed response to such emergencies⁷⁷.

4.29. There are two key considerations, namely:

- The potential of the project to cause accidents and/or disasters, including implications for human health, cultural heritage, and the environment⁷⁸;
- The vulnerability of the project to potential disasters/accidents, including the risk to the project of both natural disasters (e.g. flooding) and man-made disasters (e.g. technological disasters).

4.30. These considerations are separate to any assessment of the project required under the Seveso III Directive, which is likely to include a detailed risk assessment.

⁷⁶ Article 3(2) of the Directive. See also Sn 171A(b)(ii) of the Act.

⁷⁷ Annex IV point 8 of the Directive. See also Schedule 6(2)(h) to the Regulations.

⁷⁸ Annex IV(5)(d) of the Directive. See also Schedule 6(2)(e)(i)(IV) to the Regulations.

Baseline Scenario

- 4.31. The starting point for EIA is an assessment of the current state of the environment and how this is likely to evolve without the proposed project but having regard to existing and approved projects and likely significant cumulative effects – in other words the ‘do nothing’ scenario. It is a requirement of the 2014 Directive that a ‘baseline scenario’ must be included in the EIAR⁷⁹.
- 4.32. A baseline assessment requires the collection and examination of relevant data on the environment. As only relevant aspects of the environment need to be investigated, these should be identified at an early stage and this may require the input of a qualified expert(s).
- 4.33. Much relevant data is likely to be publicly available and accessible e.g. through other relevant environmental assessments, databases, relevant websites etc., but other data may require elements of research and surveying to facilitate an understanding of the extent of environmental impacts. The baseline assessment must be conducted within a reasonable time and with a reasonable amount of effort on the part of the developer.

⁷⁹ Annex IV (3) of the Directive. See also Schedule 6(2)(c) to the Regulations.

5 Consultations and EIA Portal

Consultation with prescribed bodies

- 5.1. Upon receipt of an EIA application, there is a requirement for competent authorities to consult with authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences and to give them an opportunity to make submissions/observations on the information supplied by the developer and on the request for development consent⁸⁰. The list of prescribed bodies remains as set out in the 2001 Regulations, as amended.
- 5.2. Prescribed bodies have a period of 5 weeks beginning on the date of receipt of the planning application by the competent authority to make their submission or observation to the competent authority⁸¹. Otherwise the competent authority may determine the application without further notice to the prescribed body⁸².

Informing and consulting the public electronically

- 5.3. The 2014 Directive places strong emphasis on effective public participation in the decision-making procedures for EIA cases. It refers to the need to strengthen public access to information and increased transparency, and to ensure that timely environmental information with regard to the implementation of the Directive is accessible in various formats, including electronic format⁸³.
- 5.4. To this end the applicant is required, in electronic form that is electronically searchable to the extent possible, to submit an EIAR accompanying any application for development consent, any revised EIAR requested by the competent authority and any remedial EIAR. Normally all text should be searchable by key words.

⁸⁰ Article 6(1) of the Directive. See also articles 28 and 107(2)(a) of the Regulations.

⁸¹ The Directive requires that the period for public participation must not be less than 30 days.

⁸² Article 28(6) of the 2001 Regulations 2001.

⁸³ Recital 18 of the 2014 Directive.

EIA Portal and Competent Authority websites

5.5. The Department of Housing, Planning and Local Government (DHPLG) hosts the EIA Portal for all EIA applications to competent authorities in Ireland. The overall approach to electronically accessible information on consent applications involving EIA is two pronged as follows:

- A central EIA Portal managed by DHPLG (Section 172A to 172C of the Act, as inserted by article 18 to the 2018 Transposing Regulations); and
- Accessible websites at competent authority level.

5.6. The EIA Portal is designed as an additional tool to inform the public, in a timely manner, of all EIA applications made countrywide and offshore across all legislative codes, and to provide a URL link to the relevant competent authority's website where detailed information pertaining to the application is to be contained. The EIA Portal lists all new EIA applications and the competent authority(ies) to which they are submitted, indicates the nature of the application, shows the application on a GIS map and provides a URL link to the detailed information on the website(s) of the relevant competent authority(ies). The EIA Portal is restricted to recording summary information in respect of EIA development consent applications and providing a point of access to the substantive applications and associated information. It does not record information on screening or scoping, and is not updated as the application proceeds through the decision making process e.g. further information, appeals, oral hearings, etc.

5.7. The Portal provides a single national access point for all EIA applications but is not a replacement or alternative source of information to the competent authority's website. The requirements of the Directive to inform the public in a timely manner, and to make relevant information on EIA applications electronically accessible to the public is the responsibility of the relevant competent authority and should be met by the timely publication of all relevant information on the competent authority's website.

5.8. The information on the Portal will accumulate over time and will be searchable by users of the Portal. The relevant information relating to EIA development consent

applications and decisions is to remain on the websites of competent authority(ies) website.

5.9. The information contained on the EIA Portal is limited in extent. It is to be provided to the Department by the developer in the first instance⁸⁴. Within 2 weeks prior to making an EIA application,⁸⁵ the applicant must submit the following information:

- A completed form (downloaded from the EIA Portal), with the applicant's name, location of the development (limited to 256 characters), a brief description of the development (limited to 256 characters) and the name(s) of the competent authority(s) to whom the application will be made,
- Copy of the public newspaper notice in electronically searchable format,
- Electronic copy of the site location map (to assist the Department correctly identify the site, but not to be made publicly available through the EIA Portal⁸⁶).

5.10. Upon satisfying itself of the adequacy of the information submitted by or on behalf of the applicant the DHPLG will issue a 'Confirmation Notice' to the applicant acknowledging uploading of the required information on to the Portal. This must be submitted to the competent authority with the application documents⁸⁷. Otherwise, the competent authority should not accept the application as valid. The competent authority, within 3 working days of registering an EIA application, is required to provide the DHPLG with the case file reference number and the URL link to the file containing the relevant detailed information relating to the application⁸⁸.

5.11. Upon receipt of the necessary information submitted to the Portal, the EIA development consent application will be allocated a 'Portal ID Number'. In cases where there are multiple applications for the same development e.g. planning consent and licensing consent, these will all appear under the same 'Portal ID Number' to assist members of the public identify related applications.

⁸⁴ Circular Letter PL 8/2017 as amended by Circular Letter PL 5/2018

⁸⁵ Sn 172B of the Act.

⁸⁶ Article 97A of the Regulations.

⁸⁷ Article 22(2)(ga) of the Regulations.

⁸⁸ Article 26(2) of the Regulations.

5.12. In cases where a planning authority's decision is appealed to An Bord Pleanála and the Board decide that an EIAR is necessary, the same requirements for the developer and the Board (as competent authority) to inform the EIA Portal apply. In such cases, an EIA Portal Confirmation Notice acknowledging the receipt of the relevant information by the Portal will be issued to the developer and this forms part of the mandatory information to be submitted to the Board along with the EIAR and revised public notice.

5.13. The information to be contained on the competent authority's website must be placed at 3 stages as follows:

- Upon receipt of the EIA application
- During the processing of the EIA application
- Following the decision to grant or refuse development consent

The information to be placed at each of these three stages is detailed in the 2001 Regulations⁸⁹ and set out in Circular letter PL 8/2017, as revised by Circular PL 5/2018 (see Appendix III).

⁸⁹ Sn 38 of the Act.

6 The Assessment

Examination/Assessment/Reasoned Conclusion

- 6.1. The competent authority is responsible for carrying out the environmental impact assessment. The competent authority is defined as the authority which Member States designate as responsible for performing the duties arising from the EIA Directive. In the Irish planning system the authorities designated are the planning authorities and An Bord Pleanála.
- 6.2. The initial consideration of the EIAR should include examining the completeness and quality of the report, in light of the requirement of the Directive that the EIAR is prepared by competent experts⁹⁰. The EIAR must include a list of the contributors to each section of the report, together with their qualifications and expertise⁹¹. This is addressed in more detail at subsections 4.8 and 4.9 of these Guidelines.
- 6.3. In order to carry out the examination of the EIAR it is a requirement that the competent authority has, or has access as necessary to, sufficient expertise⁹². The ‘sufficiency’ of expertise will depend on qualifications and/or experience in the examination of EIARs and will be a matter for each competent authority. This is addressed in more detail at paragraph 4.10 and 4.11 of these Guidelines.
- 6.4. The assessment by the competent authority involves the identification, description and assessment of the direct and indirect effects of the proposed project on specified environmental factors⁹³. It is not sufficient for the competent authority to adopt any assessment carried out by the developer in the EIAR as it must undertake its own assessment. The competent authority must undertake both an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effects on the environmental factors⁹⁴. The assessment must be carried out before the decision making process is completed⁹⁵.

⁹⁰ Article 5(3)(a) of the Directive. See also Sn 172(1B) of the Act.

⁹¹ Article 94(e) of the Regulations.

⁹² Article 5(3)(b) of the Directive. See also Sn 172(1H) of the Act.

⁹³ Article 3 of the Directive. See also paragraph (b)(i) of definition of ‘Environmental Impact Assessment’ in Sn 171A of the Act.

⁹⁴ C-50/09, Commission v. Ireland.

⁹⁵ Case C-508/03 Commission v UK (2006) ECR I-3969, paragraph 103.

6.5. The EIA process requires the competent authority to come to a reasoned conclusion on the significant effects of the project on the environment. The reasoned conclusion must take into account the results of its examination of the EIAR and, any supplementary information requested by the competent authority and provided by the developer and any relevant information received through consultations, or otherwise available to the competent authority and the competent authority's own supplementary examination, where appropriate⁹⁶. The reasoned conclusion must be incorporated into any decision to grant development consent⁹⁷. Where the decision is made to grant permission this must be accompanied by a statement that the planning authority or the Board is satisfied that the reasoned conclusion is up to date at the time of making the decision⁹⁸.

Likely significant effects

6.6. Before development consent is given, projects likely to have significant effects on the environment by reason of their nature, size or location must be subject to an assessment with regard to their effects on the environment. To enable the carrying out of the assessment by the competent authority the developer must submit an EIAR identifying, describing and assessing the direct and indirect likely significant effects of the project on the environment. The competent authority must come to a reasoned conclusion on the significant likely effects of the project on the environment.⁹⁹ The term 'significant effect' is used throughout the 2014 Directive but is not defined in it.

6.7. There are three aspects to be considered:

- Are the effects identified likely to occur?
- Are effects, which are likely to occur, significant?
- Will identified likely significant effects impact on the environment?

⁹⁶ Paragraph (iv) of definition of 'Environmental Impact Assessment' in article 1(2)(g) of the Directive. See also paragraph (a)(iv) of definition of 'Environmental Impact Assessment' in Sn 171A of the Act.

⁹⁷ Article 8a.1(a) of the Directive. See also Sns 34(10)(a),(b)&(c),171A(a) of the Act and article 31(m) of the Regulations.

⁹⁸ Article 8a.6 of the Directive. See also paragraph (a)(iv)&(v) of the definition of 'Environmental Impact Assessment' in Sn 34(10)(c)(ii) of the Act.

⁹⁹ Article 1 of the Directive. See also Sn 171A(a)(iv) of the Act.

The 'likelihood' of effects refers to the effects that are planned to take place and those that can be reasonably foreseen to be consequences of normal construction and operation of the project¹⁰⁰.

- 6.8. 'Significance' is a core concept of the EIA Directive and is project-specific. Common criteria used to evaluate significance include the magnitude of the predicted effect and the sensitivity of the receiving environment. 'Significance' considers whether or not a project's impact can be determined to be unacceptable in its environmental and social contexts¹⁰¹. EPA draft Guidelines define 'significant effect' as an effect which, by its character, magnitude, duration or intensity alters a sensitive aspect of the environment. The same draft Guidelines provide useful definitions in relation to quality of effects, significance of effects, context of effects, probability of effects and duration and frequency of effects.
- 6.9. EIA focuses on the likely significant effects on the environment. Effects which fall outside of this description need not be assessed as part of the EIA process. Likely significant effects should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project¹⁰².
- 6.10. 'The environment' in this context refers to the environmental factors listed in Article 3 of the Directive:
- (a) Population and human health
 - (b) Biodiversity, with particular attention to species and habitats protected under the Habitats and Birds Directives
 - (c) Land, soil, water, air and climate
 - (d) Material assets, cultural heritage and the landscape
 - (e) The interaction between the factors referred to in points (a) to (d).

¹⁰⁰ *Draft Guidelines on the information to be contained in Environmental Impact Assessment Reports*, EPA, May 2017, Sn 3.7.3.

¹⁰¹ EC EIA Guidance – EIAR, April 2017, Sn. 1.4.1.

¹⁰² Annex IV.5 of Directive. See also Schedule 6(2)(e) to the Regulations.

The effects on these environmental factors must include expected effects arising from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project¹⁰³.

Cumulative Effects

6.11. Effects are not to be considered in isolation but cumulatively i.e. when they are added to other effects. A single effect on its own may not be significant in terms of impact on the environment but, when considered together with other effects, may have a significant impact on the environment. Also, a single effect which may, on its own, have a significant effect, may have a reduced and insignificant impact when combined with other effects.

6.12. The Directive requires that the EIAR describes the cumulation of effects¹⁰⁴. Cumulative effects may arise from:

- The interaction between the various impacts within a single project;
- The interaction between all of the different existing and/or approved projects in the same area as the proposed project.

¹⁰³ Article 3(2) of the Directive. See also Sn 171A(1)(b)(i)&(ii) of the Act.

¹⁰⁴ Annex IV, point 5(e) of the Directive. See also Schedule 6(2)(e)(i)(V) to the Regulations.

7 The Decision

- 7.1. Planning authorities/the Board must not grant planning permission for EIA development unless an EIA has been carried out and taken into consideration. The likely significant effects of a project on the environment must be identified before any decision is made to grant development consent.
- 7.2. The 2014 Directive introduces a new provision regarding the information to be incorporated into a grant of development consent as follows:
- The reasoned conclusion of the competent authority on the significant effects on the environment
 - Any environmental conditions attached
 - A description of any features and measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment
 - Monitoring measures, where appropriate¹⁰⁵.
- 7.3. When taking a decision to grant development consent, the competent authority must be satisfied that the reasoned conclusion is up to date¹⁰⁶. The 2001 Regulations do not stipulate a specific timeframe for the validity of the reasoned conclusion, as this may vary from project to project, but competent authorities are advised to have regard to the thrust of the Directive that the environmental impact assessment of projects should be carried out within a reasonable period of time¹⁰⁷.
- 7.4. Any decision to refuse development consent must state the main reasons for refusal¹⁰⁸.
- 7.5. EIA is one input into development consent decision-making but a negative assessment does not necessarily dictate that a proposed project must be refused consent. In this regard, EIA is significantly different from the Appropriate Assessment process carried out under the Habitats and Birds Directives whereby a negative assessment will dictate refusal of development consent, except in exceptional circumstances.

¹⁰⁵ Article 8a(1) of the Directive. See also Sns 34(10)(a),(b)&(c), 171A(a)(iv)&(v) and 172(11)(a)(i)&(iii) of the Act and articles 31(m), 103(3A) and 109(5) of the Regulations.

¹⁰⁶ Article 8a(6) of the Directive. See also Sn 34(10)(c)(ii) of the Act.

¹⁰⁷ Recital 36 of the 2014 Directive.

¹⁰⁸ Article 8a(2) of the Directive. See also Sn 34(10)(a)&(b) of the Act and article 122(a)&(b) of the Regulations.

Similarly, a positive assessment does not necessarily dictate that development consent will be granted as there may be other issues relating to proper planning and sustainable development which will give rise to refusal.

- 7.6. Where the decision of the planning authority or the Board to grant or refuse consent varies from the recommendation made in reports submitted to the Chief Executive (or other person delegated to make the decision) in the case of the planning authority or a person assigned to report on an application or appeal in the case of the Board, or where a decision by a planning authority or the Board is to impose environmental conditions which are materially different from conditions recommended in such reports, a statement must be included in the notification of the decision indicating the main reasons for varying the recommendation in the report(s) submitted.
- 7.7. The 2014 Directive requires that the competent authority's reasoned conclusion in respect of the EIA process is integrated into all development consent decisions¹⁰⁹. In the case of all development consent applications requiring EIA, the EIA process should lead to a reasoned conclusion in respect of significant environmental impacts. Where development consent is being refused on grounds including environmental grounds, the main reasons in the decision should include reference to likely significant negative environmental impacts identified during the EIA process. Where, despite a positive reasoned conclusion development consent is being refused for other reasons relating to proper planning and sustainable development, the decision should briefly make reference to the competent authority's reasoned conclusion arising from the EIA process. This may be a broad and brief statement that the competent authority is of the view that the proposed development is not likely to have significant effects on the environment and/or there are features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible offset significant adverse effects on the environment. Where appropriate, the decision may include a cross-reference to the conclusion reached in the planner's/inspector's report. It is important that the decision is clear as to all the reasons a proposed development is being refused so that the applicant can decide if these reasons can be overcome in a fresh application. In the case of a grant of development consent there is a requirement to incorporate the reasoned conclusion into the decision¹¹⁰.

¹⁰⁹ Articles 1(2)(g)(v) of the Directive. See also paragraph (a)(v) of the definition of 'Environmental Impact Assessment' in Sn 171A(a)(v).

¹¹⁰ Article 8a(1) of the Directive. See also paragraph (a)(iv) of the definition of 'Environmental Impact Assessment' in Sn 171A of the Act.

7.8. When a decision to grant or refuse development has been made by the competent authority, it must promptly inform the public and prescribed bodies of the content of the decision and any conditions attached¹¹¹. The competent authority must also ensure that the following information is available to the public and prescribed bodies:

- Content of the decision and any environmental conditions;
- A description of any features or measures of the project envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment;
- Where appropriate, monitoring measures;
- The main reasons and considerations on which the decision was based;
- Summary of the results of consultations and the information gathered during the consultation process, and how the results are incorporated or otherwise addressed, in particular (any) comments received from an affected transboundary State¹¹².

Section 34 of the Act requires that, in the case of an application for planning permission accompanied by an EIAR, a decision by the competent authority to grant permission shall include or refer to a statement that the competent authority is satisfied that the reasoned conclusion on the significant effects on the environment of the development was up to date at the time of the taking of the decision, and shall include a summary of the results of the consultations that have taken place and information gathered in the course of the environmental impact assessment, including comments from an affected Member State of the European Union or other party to the Transboundary Convention¹¹³. These are matters that would normally be addressed in the planner's/inspector's report. Where the competent authority is in agreement with the report this requirement would be met by the inclusion of a statement in the decision adopting the report in relation to these matters.

Circular letter PL 8/2017, as revised by Circular letter PL 5/2018, details the information which the competent authority is required to place on its website and the

¹¹¹ Article 9(1) of the Directive. See also Sns 34(1A), 38(3)(b) and 146(7)(a) of the Act and articles 31 and 72(1) of the Regulations.

¹¹² Article 9.1 of the Directive.

¹¹³ Section 34(10)(c)(iii) of the Act.

timescale for posting the information following the making of a decision in respect of development consent (see Appendix III).

Monitoring Conditions

7.9. Under the Directive a decision to grant development consent must incorporate, where appropriate, monitoring measures¹¹⁴. In practice, monitoring conditions are frequently attached to permissions/approvals by planning authorities and/or the Board. There is now a requirement for the competent authority to determine procedures for monitoring of significant adverse effects on the environment and this may require careful consideration in the wording of monitoring conditions. The planning authority is responsible for ensuring that monitoring conditions are implemented.

7.10. The type of parameters to be monitored and the period over which monitoring should be required must be proportionate to the nature, location and size of the project and the significance of its effects on the environment¹¹⁵; this will be a matter for professional judgement within each competent authority. As such, monitoring should be focused, have a clear and specific purpose and should not be used as a general means of gathering environmental information.

7.11. Where existing and identified monitoring is being carried out under other national or European Union legislation (other than the EIA Directive) this may be used, if appropriate, in order to avoid duplication of monitoring¹¹⁶.

¹¹⁴ Article 8a(1)(b) of the Directive. See also Sn 172(11)(a)(i)&(iii) of the Act.

¹¹⁵ Article 8a(4) of the Directive. See also Sn 172(11)(a)(ii)&(iii) of the Act.

¹¹⁶ Article 8a(4) of the Directive. See also Sn 172(11)(b) of the Act.

8 Outline of and guide to key sections of the Act

8.1. Section 171A of the Act defines 'environmental impact assessment'. It is a process consisting of –

- The preparation of an EIAR by the applicant;
- The carrying out of consultations in accordance with the Act and associated Regulations;
- Examination by the competent authority of the EIAR, any supplementary information provided by the applicant in accordance with sections 172(1D) and (1E), and any relevant information received through consultations;
- The reasoned conclusion by the competent authority on the significant effects on the environment of the proposed development;
- The integration of the reasoned conclusion of the competent authority into the development consent decision.

The assessment is to be carried out by the competent authority and this includes an examination, analysis and evaluation that identifies, describes and assesses the direct and indirect significant effects of the proposed development on the following environmental factors –

- Population and human health;
- Biodiversity, with particular attention to species and habitats protected under the Habitats and Birds Directives;
- Land, soil, water, air and climate;
- Material assets, cultural heritage and the landscape;
- The interaction between the above listed environmental factors.

The assessment of direct and indirect effects is to include those derived from the vulnerability of the proposed development to risks of major accidents and disasters that are relevant to that development.

8.2. Section 172(1) requires that an EIA must be carried out by the planning authority or the Board, as the case may be, in respect of an application for consent for:

- (a) Proposed development of a class specified in Schedule 5 to the 2001 Regulations that equals or exceeds, as the case may be, a quantity, area or other limit specified in that schedule, or where no quantity or other limit is specified in respect of a class, or
- (b) Proposed development of a class specified in Part 2 of Schedule 5 which does not equal or exceed, as the case may be, the specified quantity, area or limit but which the planning authority or the Board determines is likely to have significant effects on the environment.

8.3. The developments and consents to which section 172 applies are set out in subsection (1A). The relevant developments are –

- Development requiring planning permission under Part III of the Act;
- Development in a Strategic Development Zone under Part IX;
- Strategic housing developments under Chapter 1 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016;
- Certain development by local authorities under Part X and by State authorities and statutory undertakers under Part XI;
- Development on the foreshore under Part XV;
- Development requiring consent under section 43 of the Transport (Railway Infrastructure) Act, 2001;
- Development requiring consent under section 51 of the Roads Act 1993;
- Development the subject of an application for substitute consent under Part XA.

8.4. Section 172(1B) requires an applicant for consent for proposed development of a class specified in Schedule 5 to the 2001 Regulations which equals or exceeds a quantity, area, or other limit specified in that Schedule or where no quantity or other limit is specified in respect of that class, to submit an EIAR to the planning authority or to the Board as the case may be. The EIAR must be prepared by experts with the competence to ensure its completeness and quality.

Consent should accordingly never be granted for a proposed development falling into that category in circumstances where an EIAR has not been submitted as required. In the case of a planning application to a planning authority, article 99 of the 2001

Regulations provides that the application shall be invalid and the planning authority is required under article 26(5) to inform the applicant of this and that the application cannot be considered by the planning authority. Article 109, however, allows the Board to require the submission of an EIAR in a situation where an appeal relates to such a development and an EIAR was not submitted to the planning authority.

- 8.5. Section 172(1C) specifies that where an application for consent for proposed development of a class specified in Part 2 of Schedule 5 to the 2001 Regulations, which does not equal or exceed a quantity, area or other limit specified in that Schedule, as the case may be, is not accompanied by an EIAR, but where the planning authority or the Board determine that the proposed development would be likely to have significant effects on the environment, the authority or the Board, as the case may be, must require the applicant to submit an EIAR. In the event of this requirement not being met by the applicant within the specified period, or any further specified period as may be allowed by the authority or the Board, the application for consent shall be deemed to be withdrawn. In the interests of openness and transparency it is desirable that the applicant and any persons who have made submissions/observations should be informed that the application has been deemed to be withdrawn in these circumstances. This should be done immediately after the expiration of the specified period unless an application to extend the period has been made prior to that date. If an application to extend the period is refused, the parties should be informed immediately after the expiry of the specified period or the date of refusal – whichever is the later.
- 8.6. Section 172(1D) requires the planning authority or the Board, as the case may be, to consider the adequacy of the EIAR. Where the planning authority or the Board considers the EIAR to be inadequate in identifying or describing significant effects on the environment arising from the proposed development it must require the applicant to submit further information within a specified period to ensure the completeness and quality of the EIAR and to facilitate the reaching of a reasoned conclusion of the significant effects on the environment of the proposed development. It should be noted that further information submitted on foot of a request by the competent authority in order to make the EIAR adequate is likely to be considered significant and, as such, require the publication of a new newspaper notice.

- 8.7. Section 172(1E) provides that the competent authority must require the applicant to submit any further information considered necessary to enable it to carry out an environmental impact assessment.
- 8.8. Section 172(1F) provides that where information required under section 172(1D) or section 172(1E) is not submitted within the period specified, or any further period that the competent authority may specify, the application shall be deemed to be withdrawn. It should be noted that this allows the competent authority to specify a further period for the submission of the information.
- 8.9. Section 172(1G) lists matters which the competent authority must consider in carrying out EIA as follows –
- The EIAR;
 - Any further information furnished under subsections (1D) or (1E);
 - Any submissions or observations validly made in relation to the environmental effects of the proposed development;
 - Any views provided by any other Member State submitted under section 174 or Regulations made under that section.
- 8.10. Section 172(1GA) requires that where an EIA and an appropriate assessment are required to be carried out simultaneously in respect of a proposed development, the planning authority or the Board, as the case may be, shall coordinate the two assessments.
- 8.11. Section 172(1H) provides that in carrying out an EIA a competent authority shall ensure it has, or has access as necessary to, sufficient expertise to examine the EIAR to ensure its completeness and quality. It should be noted that the necessary expertise required may be in-house or may entail engaging outside expertise. The competent authority may have regard to and adopt in whole or in part any reports prepared by its officials or by consultants, experts or other advisers.
- 8.12. Under section 172(1I) where the planning authority or the Board, as the case may be, decides to grant consent for a proposed development it shall attach conditions considered necessary to avoid, prevent and reduce and, if possible, offset significant

adverse effects on the environment arising from the proposal. It shall also specify any features and measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment. Where appropriate, the competent authority shall specify monitoring conditions proportionate to the nature, location and size of the proposed development and, where existing monitoring conditions are in place under other national or European legislation, the competent authority may identify these arrangements in its decision in order to avoid duplication of monitoring.

8.13. Section 172(1J) specifies information that must be made available to the applicant for consent and the public by the planning authority or the Board when it has decided to grant or refuse consent. Most of the information referred to is already made available to the applicant and the public under various other provisions in the Act and 2001 Regulations –

- The content of the decision and any conditions attached, and the main reasons and considerations on which the decision is based and the conditions are attached;
- An evaluation of the direct and indirect effects on the environmental factors listed in section 171A(b);
- A copy of all documents relating to the application including any report or study;
- Information on procedures available to review the substantive and procedural legality of the decision;
- The views of any other Member State submitted under section 174 of the Planning Act.

At the request of an applicant intending to apply for permission, the Board may grant in respect of a proposed development an exemption from the requirement to prepare an EIAR. Before granting an exemption, the Board must afford the relevant planning authority an opportunity to furnish observations on the request. The Board must be satisfied that there are exceptional circumstances, that the objectives of the EIA Directive are otherwise met and that the requirement to prepare an EIAR would adversely affect the purpose of the proposed development. The Board is prohibited from granting any such exemption if another Member State or other state party to the Transboundary Convention has indicated that, having been informed about the

proposed development and its likely significant effects on the environment in that State or state, it intends to furnish views on those effects.

- 8.14. A new section 172A is inserted into the Act. This provides for the Minister to provide, operate and maintain a website to which the public has access, and which contains summary information on all EIA development consent applications and provides a point of access to the details of such applications and associated information, assessments and decisions held by the competent authorities to which the applications have been made. The website is known as the EIA Portal.
- 8.15. A new section 172B details the information to be provided by applicants to the EIA Portal in advance of the making of the application for development consent, or the submission of an EIAR when required by the planning authority or the Board, as the case may be. The information is to be provided in electronic form and in the manner set out on the portal and the information to be provided is set out in Article 97A of the 2001 Regulations.
- 8.16. A new section 172C requires the Minister, on receipt of the required information, to issue a Confirmation Notice to the applicant within 3 working days. It should be noted that the Confirmation Notice must be submitted to the relevant competent authority with the application in order for it to be considered.

It should be noted that Article 26(2) of the 2001 Regulations requires the planning authority, and Article 112(5)(d) requires the Board, as soon as may be, to send to the EIA Portal the URL to the file on its website and the file reference number in order for this information to be entered onto the Portal.

- 8.17. Section 2(8) states that a word or expression used in the Act and also in the EIA Directive has the same meaning in the Act as in the Directive unless the context requires otherwise.

Appendix I - Codified Directive

The following text is a copy of the European Commission's informal consolidation of the EIA Directive¹¹⁷

DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2011

on the assessment of the effects of certain public and private projects on the environment

(codification)

(OJ L 26, 28.1.2012, p. 1)

As amended by:

Directive 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16

April 2014

(OJ L 124, 25.4.2014, p. 1)

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents.

¹¹⁷ <http://ec.europa.eu/environment/eia/review.htm>



THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,


Having regard to the opinion of the European Economic and Social Committee,


After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment has been substantially amended several times. In the interests of clarity and rationality the said Directive should be codified.
- (2) Pursuant to Article 191 of the Treaty on the Functioning of the European Union, Union policy on the environment is based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes.
- (3) 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.


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- (1) Directive 2011/92/EU of the European Parliament and of the Council⁽⁴⁾ has harmonised the principles for the environmental impact assessment of projects by introducing minimum requirements, with regard to the type of projects subject to assessment, the main obligations of developers, the content of the assessment and the participation of the competent authorities and the public, and it contributes to a high level of protection of the environment and human health. Member States are free to lay down more stringent protective measures in accordance with the Treaty on the Functioning of the European Union (TFEU).
 - (4) In addition, it is necessary to achieve one of the objectives of the Union in the sphere of the protection of the environment and the quality of life.
 - (2) The Commission Communication of 30 April 2007, entitled ‘The mid-term review of the sixth Community Environment Action Programme’ and the Report from the Commission of 23 July 2009 on the application and effectiveness of Council Directive 85/337/EEC⁽⁵⁾, the predecessor to Directive 2011/92/EU, stressed the need to improve the principles of environmental impact assessment of projects, and to adapt Directive 85/337/EEC to the policy, legal and technical context, which has evolved considerably.
 - (3) It is necessary to amend Directive 2011/92/EU in order to strengthen the quality of the environmental impact assessment procedure, align that procedure with the principles of smart regulation and enhance coherence and synergies with other Union legislation and policies, as well as strategies and policies developed by Member States in areas of national competence.
 - (6) Directive 2011/92/EU should also be revised in a way that ensures that environmental protection is improved, resource efficiency increased and sustainable growth supported in the Union. To this end, the procedures it lays down should be simplified and harmonised.
 - (5) The environmental legislation of the Union includes provisions enabling public authorities and other bodies to take decisions which may have a significant effect on the environment as well as on personal health and well-being.

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- (21) Member States have several options for implementing Directive 2011/92/EU as regards the integration of environmental impact assessments into national procedures. Accordingly, the elements of those national procedures can vary. Due to this fact, the reasoned conclusion by which the competent authority finalises its examination of the environmental impact of the project may be part of an integrated development consent procedure or may be incorporated in another binding decision required in order to comply with the aims of this Directive.
- (6) General principles for the assessment of environmental effects should be laid down with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment.
- (25) The objectivity of the competent authorities should be ensured. Conflicts of interest could be prevented by, inter alia, a functional separation of the competent authority from the developer. In cases where the competent authority is also the developer, Member States should at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions of those authorities performing the duties arising from Directive 2011/92/EU.
- (7) Development consent for public and private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out. That assessment should be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the public likely to be concerned by the project in question.
- (22) In order to ensure a high level of protection of the environment and human health, screening procedures and environmental impact assessments should take account of the impact of the whole project in question, including, where relevant, its subsurface and underground, during the construction, operational and, where relevant, demolition phases.
- (23) With a view to reaching a complete assessment of the direct and indirect effects of a project on the environment, the competent authority should undertake an analysis by examining the substance of the information provided by the developer and received




through consultations, as well as considering any supplementary information, where appropriate.


- (8) Projects belonging to certain types have significant effects on the environment and those projects should, as a rule, be subject to a systematic assessment.
- (9) Projects of other types may not have significant effects on the environment in every case and those projects should be assessed where the Member States consider that they are likely to have significant effects on the environment.
- (26) In order to enable the competent authority to determine whether projects listed in Annex II to Directive 2011/92/EU, their changes or extensions, are to be subject to an environmental impact assessment (screening procedure), the information which the developer is required to supply should be specified, focussing on the key aspects that allow the competent authority to make its determination. That determination should be made available to the public.
- (27) The screening procedure should ensure that an environmental impact assessment is only required for projects likely to have significant effects on the environment.
- (10) Member States may set thresholds or criteria for the purpose of determining which of such projects should be subject to assessment on the basis of the significance of their environmental effects. Member States should not be required to examine projects below those thresholds or outside those criteria on a case-by-case basis.
- (11) When setting such thresholds or criteria or examining projects on a case-by-case basis, for the purpose of determining which projects should be subject to assessment on the basis of their significant environmental effects, Member States should take account of the relevant selection criteria set out in this Directive. In accordance with the subsidiarity principle, the Member States are in the best position to apply those criteria in specific instances.
- (28) The selection criteria laid down in Annex III to Directive 2011/92/EU, which are to be taken into account by the Member States in order to determine which projects are to be subject to environmental impact assessment on the basis of their significant effects on the environment, should be adapted and clarified. For instance, experience has



shown that projects using or affecting valuable resources, projects proposed for environmentally sensitive locations, or projects with potentially hazardous or irreversible effects are often likely to have significant effects on the environment.


- (29) When determining whether significant effects on the environment are likely to be caused by a project, the competent authorities should identify the most relevant criteria to be considered and should take into account information that could be available following other assessments required by Union legislation in order to apply the screening procedure effectively and transparently. In this regard, it is appropriate to specify the content of the screening determination, in particular where no environmental impact assessment is required. Moreover, taking into account unsolicited comments that might have been received from other sources, such as members of the public or public authorities, even though no formal consultation is required at the screening stage, constitutes good administrative practice.
- (12) For projects which are subject to assessment, a certain minimal amount of information should be supplied, concerning the project and its effects.
- (31) The environmental impact assessment report to be provided by the developer for a project should include a description of reasonable alternatives studied by the developer which are relevant to that project, including, as appropriate, an outline of the likely evolution of the current state of the environment without implementation of the project (baseline scenario), as a means of improving the quality of the environmental impact assessment process and of allowing environmental considerations to be integrated at an early stage in the project's design.
- (32) Data and information included by the developer in the environmental impact assessment report, in accordance with Annex IV to Directive 2011/92/EU, should be complete and of sufficiently high quality. With a view to avoiding duplication of assessments, the results of other assessments under Union legislation, such as Directive 2001/42/EC of the European Parliament and the Council (15) or Directive 2009/71/Euratom, or national legislation should, where relevant and available, be taken into account.
- (33) Experts involved in the preparation of environmental impact assessment reports should be qualified and competent. Sufficient expertise, in the relevant field of the

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- project concerned, is required for the purpose of its examination by the competent authorities in order to ensure that the information provided by the developer is complete and of a high level of quality.
- (13) It is appropriate to lay down a procedure in order to enable the developer to obtain an opinion from the competent authorities on the content and extent of the information to be elaborated and supplied for the assessment. Member States, in the framework of this procedure, may require the developer to provide, inter alia, alternatives for the projects for which it intends to submit an application.
- (30) In order to improve the quality of an environmental impact assessment, to simplify the procedures and to streamline the decision-making process, the competent authority should, where requested by the developer, issue an opinion on the scope and level of detail of the environmental information to be submitted in the form of an environmental impact assessment report ('scoping').
- (14) The effects of a project on the environment should be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life.
- (7) Over the last decade, environmental issues, such as resource efficiency and sustainability, biodiversity protection, climate change, and risks of accidents and disasters, have become more important in policy making. They should therefore also constitute important elements in assessment and decision-making processes.
- (8) In its Communication of 20 September 2011 entitled 'Roadmap to a Resource Efficient Europe', the Commission committed itself to including broader resource efficiency and sustainability considerations in the context of the revision of Directive 2011/92/EU.
- (9) The Commission Communication of 22 September 2006 entitled 'Thematic Strategy for Soil Protection' and the Roadmap to a Resource-Efficient Europe underline the importance of the sustainable use of soil and the need to address the unsustainable increase of settlement areas over time ('land take'). Furthermore, the final document of the United Nations Conference on Sustainable Development held in Rio de Janeiro on 20-22 June 2012 recognises the economic and social significance of good land




management, including soil, and the need for urgent action to reverse land degradation. Public and private projects should therefore consider and limit their impact on land, particularly as regards land take, and on soil, including as regards organic matter, erosion, compaction and sealing; appropriate land use plans and policies at national, regional and local level are also relevant in this regard.

- (10) The United Nations Convention on Biological Diversity ('the Convention'), to which the Union is party pursuant to Council Decision 93/626/EEC(9), requires assessment, as far as possible and as appropriate, of the significant adverse effects of projects on biological diversity, which is defined in Article 2 of the Convention, with a view to avoiding or minimising such effects. Such prior assessment of those effects should contribute to attaining the Union headline target adopted by the European Council in its conclusions of 25-26 March 2010 of halting biodiversity loss and the degradation of ecosystem services by 2020 and restoring them where feasible.
- (11) The measures taken to avoid, prevent, reduce and, if possible, offset significant adverse effects on the environment, in particular on species and habitats protected under Council Directive 92/43/EEC and Directive 2009/147/EC of the European Parliament and of the Council, should contribute to avoiding any deterioration in the quality of the environment and any net loss of biodiversity, in accordance with the Union's commitments in the context of the Convention and the objectives and actions of the Union Biodiversity Strategy up to 2020 laid down in the Commission Communication of 3 May 2011 entitled 'Our life insurance, our natural capital: an EU biodiversity strategy to 2020'.
- (12) With a view to ensuring a high level of protection of the marine environment, especially species and habitats, environmental impact assessment and screening procedures for projects in the marine environment should take into account the characteristics of those projects with particular regard to the technologies used (for example seismic surveys using active sonars). For this purpose, the requirements of Directive 2013/30/EU of the European Parliament and of the Council could also facilitate the implementation of the requirements of this Directive.
- (13) Climate change will continue to cause damage to the environment and compromise economic development. In this regard, it is appropriate to assess the impact of projects




on climate (for example greenhouse gas emissions) and their vulnerability to climate change.


- (14) Following the Commission Communication of 23 February 2009 entitled 'A Community approach on the prevention of natural and man-made disasters', the Council, in its conclusions of 30 November 2009, invited the Commission to ensure that the implementation, review and further development of Union initiatives, take into consideration disaster risk prevention and management concerns as well as the United Nations Hyogo Framework for Action Programme (2005-2015) adopted on 22 January 2005, which stresses the need to put in place procedures for assessment of the disaster risk implications of major infrastructure projects.
- (15) In order to ensure a high level of protection of the environment, precautionary actions need to be taken for certain projects which, because of their vulnerability to major accidents, and/or natural disasters (such as flooding, sea level rise, or earthquakes) are likely to have significant adverse effects on the environment. For such projects, it is important to consider their vulnerability (exposure and resilience) to major accidents and/or disasters, the risk of those accidents and/or disasters occurring and the implications for the likelihood of significant adverse effects on the environment. In order to avoid duplications, it should be possible to use any relevant information available and obtained through risk assessments carried out pursuant to Union legislation, such as Directive 2012/18/EU of the European Parliament and the Council and Council Directive 2009/71/Euratom, or through relevant assessments carried out pursuant to national legislation provided that the requirements of this Directive are met.
- (16) For the protection and promotion of cultural heritage comprising urban historical sites and landscapes, which are an integral part of the cultural diversity that the Union is committed to respecting and promoting in accordance with Article 167(4) TFEU, the definitions and principles developed in relevant Council of Europe Conventions, in particular the European Convention for the Protection of the Archaeological Heritage of 6 May 1969, the Convention for the Protection of the Architectural Heritage of Europe of 3 October 1985, the European Landscape Convention of 20 October 2000, the Framework Convention on the Value of Cultural Heritage for Society of 27 October 2005 can be useful. In order to better preserve historical and cultural heritage and the landscape, it is important to address the visual impact of projects, namely the change



in the appearance or view of the built or natural landscape and urban areas, in environmental impact assessments.


- (17) When applying Directive 2011/92/EU, it is necessary to ensure smart, sustainable and inclusive growth, in line with the objectives set out in the Commission's Communication of 3 March 2010 entitled 'Europe 2020 – A strategy for smart, sustainable and inclusive growth'.
- (15) It is desirable to lay down strengthened provisions concerning environmental impact assessment in a transboundary context to take account of developments at international level. The European Community signed the Convention on Environmental Impact Assessment in a Transboundary Context on 25 February 1991, and ratified it on 24 June 1997.
- (4) In order to coordinate and facilitate the assessment procedures for cross-border projects, and, in particular, to conduct consultations in accordance with the Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991 (Espoo-Convention), the Member States concerned may set up, on the basis of equal representation, a joint body.
- (5) The mechanisms set out in Regulations (EU) No 347/2013, (EU) No 1315/2013 and (EU) No 1316/2013 of the European Parliament and of the Council, which are relevant for Union co-financed infrastructure projects, may also facilitate the implementation of the requirements of Directive 2011/92/EU.
- (16) Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.
- (17) Participation, including participation by associations, organisations and groups, in particular non-governmental organisations promoting environmental protection, should accordingly be fostered, including, inter alia, by promoting environmental education of the public.


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- (18) The European Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) on 25 June 1998 and ratified it on 17 February 2005.
- (19) Among the objectives of the Aarhus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.
- (20) Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not so listed which may have a significant effect on the environment.
- (18) With a view to strengthening public access to information and transparency, timely environmental information with regard to the implementation of this Directive should also be accessible in electronic format. Member States should therefore establish at least a central portal or points of access, at the appropriate administrative level, that allow the public to access that information easily and effectively.
- (21) Article 9(2) and (4) of the Aarhus Convention provides for access to judicial or other procedures for challenging the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of Article 6 of that Convention.
- (22) However, this Directive should not be applied to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.
- (24) In the case of projects adopted by a specific act of national legislation, Member States should ensure that the objectives of this Directive relating to public consultation are achieved through the legislative process.
- (19) Experience has shown that in cases of projects, or parts of projects, serving defence purposes, including projects related to activities by allied forces on the territory of Member States in accordance with international obligations, the application of Directive 2011/92/EU could result in the disclosure of relevant confidential information which



would undermine defence purposes. Provision should therefore be made to authorise Member States not to apply that Directive in such cases, where appropriate.

- (20) Experience has shown that, as regards projects having as their sole purpose the response to cases of civil emergency, compliance with Directive 2011/92/EU could have adverse effects *inter alia* on the environment, and provision should therefore be made to authorise Member States not to apply that Directive in such cases, where appropriate.
- (23) Furthermore, it may be appropriate in exceptional cases to exempt a specific project from the assessment procedures laid down by this Directive, subject to appropriate information being supplied to the Commission and to the public concerned.
- (34) With a view to ensuring transparency and accountability, the competent authority should be required to substantiate its decision to grant development consent in respect of a project, indicating that it has taken into consideration the results of the consultations carried out and the relevant information gathered.
- (35) Member States should ensure that mitigation and compensation measures are implemented, and that appropriate procedures are determined regarding the monitoring of significant adverse effects on the environment resulting from the construction and operation of a project, *inter alia*, to identify unforeseen significant adverse effects, in order to be able to undertake appropriate remedial action. Such monitoring should not duplicate or add to monitoring required pursuant to Union legislation other than this Directive and to national legislation.
- (36) In order to stimulate more efficient decision-making and increase legal certainty, Member States should ensure that the various steps of the environmental impact assessment of projects are carried out within a reasonable period of time, depending on the nature, complexity, location and size of the project. Such time-frames should, under no circumstances, compromise the achievement of high standards for the protection of the environment, particularly those resulting from Union legislation on the environment other than this Directive, and effective public participation and access to justice.

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- (37) In order to improve the effectiveness of the assessments, reduce administrative complexity and increase economic efficiency, where the obligation to carry out assessments related to environmental issues arises simultaneously from this Directive and Directive 92/43/EEC and/or Directive 2009/147/EC, Member States should ensure that coordinated and/ or joint procedures fulfilling the requirements of these Directives are provided, where appropriate and taking into account their specific organisational characteristics. Where the obligation to carry out assessments related to environmental issues arises simultaneously from this Directive and from other Union legislation, such as Directive 2000/60/EC of the European Parliament and of the Council (16), Directive 2001/42/EC, Directive 2008/98/EC of the European Parliament and of the Council (17), Directive 2010/75/EU of the European Parliament and of the Council (18) and Directive 2012/18/EU, Member States should be able to provide for coordinated and/ or joint procedures fulfilling the requirements of the relevant Union legislation. Where coordinated or joint procedures are set up, Member States should designate an authority responsible for performing the corresponding duties. Taking into account institutional structures, Member States should be able to, where they deem it necessary, designate more than one authority.
- (38) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. Member States should be free to decide the kind or form of those penalties. The penalties thus provided for should be effective, proportionate and dissuasive.
- (24) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (41) Since the objective of this Directive, namely to ensure a high level of protection of the environment and of human health, through the establishment of minimum requirements for the environmental impact assessment of projects, cannot be sufficiently achieved by the Member States but can rather, by reason of the scope, seriousness and transboundary nature of the environmental issues to be addressed, be better achieved at Union level, the Union may adopt measures, in accordance with



the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(25) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex V, Part B,

(39) In accordance with the principles of legal certainty and proportionality and in order to ensure that the transition from the existing regime, laid down in Directive 2011/92/EU, to the new regime that will result from the amendments contained in this Directive is as smooth as possible, it is appropriate to lay down transitional measures. Those measures should ensure that the regulatory environment in relation to an environmental impact assessment is not altered, with regard to a particular developer, where any procedural steps have already been initiated under the existing regime and a development consent or another binding decision required in order to comply with the aims of this Directive has not yet been granted to the project. Accordingly, the related provisions of Directive 2011/92/EU prior to its amendment by this Directive should apply to projects for which the screening procedure has been initiated, the scoping procedure has been initiated, (where scoping was requested by the developer or required by the competent authority) or the environmental impact assessment report is submitted before the time-limit for transposition.

(40) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents⁽¹⁹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(42) Directive 2011/92/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive, the following definitions shall apply:
 - (a) "project" means:
 - the execution of construction works or of other installations or schemes,
 - other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

 - (b) "developer" means the applicant for authorisation for a private project or the public authority which initiates a project;


 - (c) "development consent" means the decision of the competent authority or authorities which entitles the developer to proceed with the project;

 - (d) "public" means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

 - (e) "public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;


 - (f) "competent authority or authorities" means that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive.

 - (g) "environmental impact assessment" means a process consisting of:
 - (i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);
 - (ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;
 - (iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance

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- with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;
- (iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and
 - (v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.
3. Member States may decide, on a case-by-case basis **and** if so provided under national law, not to apply this Directive to projects, **or parts of projects, serving having national defence as their sole purpose, or to projects having the response to civil emergencies as their sole purpose,** if they deem that such application would have an adverse effect on those purposes.
- ~~4. This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.~~

Article 2

1. Member States shall adopt all measures necessary to ensure that, before **development** consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects **on the environment.** Those projects are defined in Article 4.
2. The environmental impact assessment may be integrated into the existing procedures for **development** consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.
- ~~3. Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (1).~~

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3. In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC and/or Directive 2009/147/EC of the European Parliament and the Council, Member States shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for.

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union legislation other than the Directives listed in the first subparagraph, Member States may provide for coordinated and/or joint procedures.

Under the coordinated procedure referred to in the first and second subparagraphs, Member States shall endeavour to coordinate the various individual assessments of the environmental impact of a particular project, required by the relevant Union legislation, by designating an authority for this purpose, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

Under the joint procedure referred to in the first and second subparagraphs, Member States shall endeavour to provide for a single assessment of the environmental impact of a particular project required by the relevant Union legislation, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

The Commission shall provide guidance regarding the setting up of any coordinated or joint procedures for projects that are simultaneously subject to assessments under this Directive and Directives 92/43/EEC, 2000/60/EC, 2009/147/EC or 2010/75/EU.

4. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project ~~in whole or in part~~ from the provisions laid down in this Directive, where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met.

In that event, the Member States shall:

- (a) consider whether another form of assessment would be appropriate;

- (b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the decision granting exemption and the reasons for granting it;
- (c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.

The Commission shall immediately forward the documents received to the other Member States.

The Commission shall report annually to the European Parliament and to the Council on the application of this paragraph.

5. Without prejudice to Article 7, in cases where a project is adopted by a specific act of national legislation, Member States may exempt that project from the provisions relating to public consultation laid down in this Directive, provided the objectives of this Directive are met.

Member States shall inform the Commission of any application of the exemption referred to in the first subparagraph every two years from 16 May 2017.

Article 3


1. The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case ~~and in accordance with Articles 4 to 12,~~ the direct and indirect **significant** effects of a project on the following factors:
 - (a) ~~human beings, fauna and flora~~ **population and human health;**
 - (b) **biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;**
 - ~~(b)~~(c) **land, soil, water, air and climate and landscape;**
 - ~~(c)~~(d) **material assets, cultural heritage and the landscape;**
 - (e) **the interaction between the factors referred to in points (a) to (d).**
2. The effects referred to in paragraph 1 on the factors set out therein shall include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

Article 4

1. Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.
2. Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:
 - (a) a case-by-case examination;
 - or
 - (b) thresholds or criteria set by the Member State.

Member States may decide to apply both procedures referred to in points (a) and (b).

3. Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. **Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.**
- ~~4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.~~
4. **Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.**

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5. The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:
 - (a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or
 - (b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.
 6. Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required pursuant to paragraph 4. In exceptional cases, for instance relating to the nature, complexity, location or size of the project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected.

Article 5

- ~~1. In the case of projects which, pursuant to Article 4, are to be made subject to an environmental impact assessment in accordance with this Article and Articles 6 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:
 - ~~(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;~~~~


~~(b) the Member States consider that a developer may reasonably be required to compile this information having regard, inter alia, to current knowledge and methods of assessment.~~

1. Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report. The information to be provided by the developer shall include at least:

- (a) a description of the project comprising information on the site, design, size and other relevant features of the project;
- (b) a description of the likely significant effects of the project on the environment;
- (c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the developer, 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;
- (e) a non-technical summary of the information referred to in points (a) to (d); and
- (f) any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.

Where an opinion is issued pursuant to paragraph 2, the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. The developer shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report.

~~2. Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1.~~ Where requested by the developer, the competent



authority, taking into account the information provided by the developer in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment, shall issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report in accordance with paragraph 1 of this Article. The competent authority shall consult the developer and authorities referred to in Article 6(1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.

Member States may also require the competent authorities to give such an opinion **as referred to in the first subparagraph**, irrespective of whether the developer so requests.

~~3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:~~

- ~~(a) a description of the project comprising information on the site, design and size of the project;~~
- ~~(b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;~~
- ~~(c) the data required to identify and assess the main effects which the project is likely to have on the environment;~~
- ~~(d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects;~~
- ~~(e) a non-technical summary of the information referred to in points (a) to (d).~~

3. In order to ensure the completeness and quality of the environmental impact assessment report:


- (a) the developer shall ensure that the environmental impact assessment report is prepared by competent experts;**
- (b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report; and**
- (c) where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly**


relevant to reaching the reasoned conclusion on the significant effects of the project on the environment.

4. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, make this information available to the developer.

Article 6

1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities **or local and regional competences** are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent, **taking into account, where appropriate, the cases referred to in Article 8a(3)**. To that end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.
2. **In order to ensure the effective participation of the public concerned in the decision-making procedures**, the public shall be informed ~~whether by public notices or by other appropriate means such as electronic media where available,~~ **electronically and by public notices or by other appropriate means**, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:
 - (a) the request for development consent;
 - (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
 - (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
 - (d) the nature of possible decisions or, where there is one, the draft decision;
 - (e) an indication of the availability of the information gathered pursuant to Article 5;
 - (f) an indication of the times and places at which, and the means by which, the relevant information will be made available;

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- (g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.
3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:
- (a) any information gathered pursuant to Article 5;
 - (b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;
 - (c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.
4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.
5. The detailed arrangements for informing the public, (for example by bill posting within a certain radius or publication in local newspapers), and for consulting the public concerned, (for example by written submissions or by way of a public inquiry), shall be determined by the Member States. **Member States shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.**
6. Reasonable time-frames for the different phases shall be provided **for**, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.:


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- (a) informing the authorities referred to in paragraph 1 and the public; and
 - (b) the authorities referred to in paragraph 1 and the public concerned to prepare and participate effectively in the environmental decision-making, subject to the provisions of this Article.
7. The time-frames for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) shall not be shorter than 30 days.

Article 7

1. Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:
 - (a) a description of the project, together with any available information on its possible transboundary impact;
 - (b) information on the nature of the decision which may be taken.

The Member State in whose territory the project is intended to be carried out shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information required to be given pursuant to Article 6(2) and made available pursuant to points (a) and (b) of Article 6(3).
3. The Member States concerned, each insofar as it is concerned, shall also:

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- (a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6(1) and the public concerned in the territory of the Member State likely to be significantly affected; and
 - (b) ensure that the authorities referred to in Article 6(1) and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.
 4. The Member States concerned shall enter into consultations regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time- frame for the duration of the consultation period.

Such consultations may be conducted through an appropriate joint body.


5. The detailed arrangements for implementing paragraphs 1 to 4 of this Article, including the establishment of time-frames for consultations, ~~may~~ shall be determined by the Member States concerned, on the basis of the arrangements and time-frames referred to in Article 6(5) to (7), and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.

Article 8

The results of consultations and the information gathered pursuant to Articles 5 to 7 shall be ~~consideration~~ **duly** taken into **account** in the development consent procedure.

Article 8a

1. The decision to grant development consent shall incorporate at least the following information:
 - (a) the reasoned conclusion referred to in Article 1(2)(g)(iv);

- 
- (b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.
2. The decision to refuse development consent shall state the main reasons for the refusal.
 3. In the event Member States make use of the procedures referred to in Article 2(2) other than the procedures for development consent, the requirements of paragraphs 1 and 2 of this Article, as appropriate, shall be deemed to be fulfilled when any decision issued in the context of those procedures contains the information referred to in those paragraphs and there are mechanisms in place which enable the fulfillment of the requirements of paragraph 6 of this Article.
 4. In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.

The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment.

Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.

5. Member States shall ensure that the competent authority takes any of the decisions referred to in paragraphs 1 to 3 within a reasonable period of time.
6. The competent authority shall be satisfied that the reasoned conclusion referred to in Article 1(2)(g)(iv), or any of the decisions referred to in paragraph 3 of this Article, is still up to date when taking a decision to grant development consent. To that effect, Member States may set time-frames for the validity of the reasoned conclusion

referred to in Article 1(2)(g)(iv) or any of the decisions referred to in paragraph 3 of this Article.


Article 9

1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall promptly inform the public and the authorities referred to in Article 6(1) thereof, in accordance with the appropriate national procedures, and shall make ensure that the following information is available to the public the following information and to the authorities referred to in Article 6(1), taking into account, where appropriate, the cases referred to in Article 8a(3):
 - (a) the content of the decision and any conditions attached thereto as referred to in Article 8a(1) and (2);
 - (b) ~~having examined the concerns and opinions expressed by the public concerned,~~ the main reasons and considerations on which the decision is based, including information about the public participation process. This also includes the summary of the results of the consultations and the information gathered pursuant to Articles 5 to 7 and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Member State referred to in Article 7.
 - (c) ~~a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.~~
2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article.

The consulted Member States shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory.

Article 9a

Member States shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.



Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.

Article 10

Without prejudice to Directive 2003/4/EC, the provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national laws, regulations and administrative provisions, and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.

Article 10a

Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.


Article 11

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

- (a) having a sufficient interest, or alternatively;
- (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.


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3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.
 4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

Article 12

1. The Member States and the Commission shall exchange information on the experience gained in applying this Directive.
- ~~2. In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4(2).~~
2. In particular, every six years from 16 May 2017 Member States shall inform the Commission, where such data are available, of:
 - (a) the number of projects referred to in Annexes I and II made subject to an environmental impact assessment in accordance with Articles 5 to 10;
 - (b) the breakdown of environmental impact assessments according to the project categories set out in Annexes I and II;

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- (c) the number of projects referred to in Annex II made subject to a determination in accordance with Article 4(2);
 - (d) the average duration of the environmental impact assessment process;
 - (e) general estimates on the average direct costs of environmental impact assessments, including the impact from the application of this Directive to SMEs.
3. On the basis of that exchange of information, the Commission shall if necessary submit additional proposals to the European Parliament and to the Council, with a view to ensuring that this Directive is applied in a sufficiently coordinated manner.

Article 13

Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 2


1. Without prejudice to Article 3, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 May 2017.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

1. Projects in respect of which the determination referred to in Article 4(2) of Directive 2011/92/EU was initiated before 16 May 2017 shall be subject to the obligations referred to in Article 4 of Directive 2011/92/EU prior to its amendment by this Directive.
2. Projects shall be subject to the obligations referred to in Article 3 and Articles 5 to 11 of Directive 2011/92/EU prior to its amendment by this Directive where, before 16 May 2017:

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- (a) the procedure regarding the opinion referred to in Article 5(2) of Directive 2011/92/EU was initiated; or
 - (b) the information referred to in Article 5(1) of Directive 2011/92/EU was provided.

Article 14

Directive 85/337/EEC, as amended by the Directives listed in Annex V, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex V, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

Article 15

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 4

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 16

This Directive is addressed to the Member States.

Article 5

This Directive is addressed to the Member States.

Annex I

PROJECTS REFERRED TO IN ARTICLE 4(1)


1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.
2.
 - (a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more;
 - (b) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors¹¹⁸ (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).
3.
 - (a) Installations for the reprocessing of irradiated nuclear fuel;
 - (b) Installations designed:
 - (i) for the production or enrichment of nuclear fuel;
 - (ii) for the processing of irradiated nuclear fuel or high-level radioactive waste;
 - (iii) for the final disposal of irradiated nuclear fuel;
 - (iv) solely for the final disposal of radioactive waste;
 - (v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.
4.
 - (a) Integrated works for the initial smelting of cast iron and steel;
 - (b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction

¹¹⁸ Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

- material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilisation of more than 200 tonnes per year.
6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:
 - (a) for the production of basic organic chemicals;
 - (b) for the production of basic inorganic chemicals;
 - (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
 - (d) for the production of basic plant health products and of biocides;
 - (e) for the production of basic pharmaceutical products using a chemical or biological process;
 - (f) for the production of explosives.
 7.
 - (a) Construction of lines for long-distance railway traffic and of airports⁽¹¹⁹⁾ with a basic runway length of 2 100 m or more;
 - (b) Construction of motorways and express roads⁽¹²⁰⁾;
 - (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road or realigned and/or widened section of road would be 10 km or more in a continuous length.
 8.
 - (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes;
 - (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.
 9. Waste disposal installations for the incineration, chemical treatment as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste under heading D9, or landfill of hazardous waste, as defined in point 2 of Article 3 of that Directive.

¹¹⁹ For the purposes of this Directive, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.


¹²⁰ For the purposes of this Directive, 'airport' means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14).

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10. Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.
 11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.
 12. (a) Works for the transfer of water resources between river basins where that transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;

(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 % of that flow.

In both cases transfers of piped drinking water are excluded.

13. Waste water treatment plants with a capacity exceeding 150 000 population equivalent as defined in point 6 of Article 2 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.
14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.
15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
16. Pipelines with a diameter of more than 800 mm and a length of more than 40 km:
 - (a) for the transport of gas, oil, chemicals;
 - (b) for the transport of carbon dioxide (CO₂) streams for the purposes of geological storage, including associated booster stations.

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17. Installations for the intensive rearing of poultry or pigs with more than:
 - (a) 85 000 places for broilers, 60 000 places for hens;
 - (b) 3 000 places for production pigs (over 30 kg); or
 - (c) 900 places for sows.

 18. Industrial plants for the production of:
 - (a) pulp from timber or similar fibrous materials;
 - (b) paper and board with a production capacity exceeding 200 tonnes per day.

 19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.

 20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

 21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.

 22. Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide.

 23. Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Annex, or where the total yearly capture of CO₂ is 1,5 megatonnes or more.

 24. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.

Annex II

PROJECTS REFERRED TO IN ARTICLE 4(2)

1. AGRICULTURE, SILVICULTURE AND AQUACULTURE

- (a) Projects for the restructuring of rural land holdings;
- (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural
- (c) Water management projects for agriculture, including irrigation and land drainage projects;
- (d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;
- (e) Intensive livestock installations (projects not included in Annex I);
- (d) Intensive fish farming;
- (g) Reclamation of land from the sea.

2. EXTRACTIVE INDUSTRY

- (a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);
- (b) Underground mining;
- (c) Extraction of minerals by marine or fluvial dredging;
- (d) Deep drillings, in particular:
 - (i) geothermal drilling;
 - (ii) drilling for the storage of nuclear waste material;
 - (iii) drilling for water supplies;with the exception of drillings for investigating the stability of the soil;
- (e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

3. ENERGY INDUSTRY

- (a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);
- (b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);
- (c) Surface storage of natural gas;
- (d) Underground storage of combustible gases;


- (e) Surface storage of fossil fuels;
- (f) Industrial briquetting of coal and lignite;
- (g) Installations for the processing and storage of radioactive waste (unless included in Annex I);
- (h) Installations for hydroelectric energy production;
- (i) Installations for the harnessing of wind power for energy production (wind farms);
- (j) Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Annex I to this Directive.

4. PRODUCTION AND PROCESSING OF METALS


- (a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;
- (b) Installations for the processing of ferrous metals:
 - (i) hot-rolling mills;
 - (ii) smitheries with hammers;
 - (iii) application of protective fused metal coats;
- (c) Ferrous metal foundries;
- (d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);
- (e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
- (f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;
- (g) Shipyards;
- (h) Installations for the construction and repair of aircraft;
- (i) Manufacture of railway equipment;
- (j) Swaging by explosives;
- (k) Installations for the roasting and sintering of metallic ores.

5. MINERAL INDUSTRY

- (a) Coke ovens (dry coal distillation);
- (b) Installations for the manufacture of cement;
- (c) Installations for the production of asbestos and the manufacture of asbestos products (projects not included in Annex I);

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- (d) Installations for the manufacture of glass including glass fibre;
 - (e) Installations for smelting mineral substances including the production of mineral fibres;
 - (f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.
6. CHEMICAL INDUSTRY (PROJECTS NOT INCLUDED IN ANNEX I)
- (a) Treatment of intermediate products and production of chemicals;
 - (b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;

 - (c) Storage facilities for petroleum, petrochemical and chemical products.
7. FOOD INDUSTRY
- (a) Manufacture of vegetable and animal oils and fats;
 - (b) Packing and canning of animal and vegetable products;
 - (c) Manufacture of dairy products;
 - (d) Brewing and malting;
 - (e) Confectionery and syrup manufacture;
 - (f) Installations for the slaughter of animals;
 - (g) Industrial starch manufacturing installations;
 - (h) Fish-meal and fish-oil factories;
 - (i) Sugar factories.
8. TEXTILE, LEATHER, WOOD AND PAPER INDUSTRIES
- (a) Industrial plants for the production of paper and board (projects not included in Annex I);
 - (b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;
 - (c) Plants for the tanning of hides and skins;
 - (d) Cellulose-processing and production installations.
9. RUBBER INDUSTRY
- Manufacture and treatment of elastomer-based products.
10. INFRASTRUCTURE PROJECTS

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- (a) Industrial estate development projects;
 - (b) Urban development projects, including the construction of shopping centres and car parks;
 - (c) Construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I);
 - (d) Construction of airfields (projects not included in Annex I);
 - (e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);
 - (f) Inland-waterway construction not included in Annex I, canalisation and flood-relief works;
 - (g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);
 - (h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;
 - (i) Oil and gas pipeline installations and pipelines for the transport of CO₂ streams for the purposes of geological storage (projects not included in Annex I);
 - (j) Installations of long-distance aqueducts;
 - (k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
 - (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;
 - (m) Works for the transfer of water resources between river basins not included in Annex I.

11. OTHER PROJECTS

- (a) Permanent racing and test tracks for motorised vehicles;
- (b) Installations for the disposal of waste (projects not included in Annex I);
- (c) Waste-water treatment plants (projects not included in Annex I);
- (d) Sludge-deposition sites;
- (e) Storage of scrap iron, including scrap vehicles;
- (f) Test benches for engines, turbines or reactors;
- (g) Installations for the manufacture of artificial mineral fibres;
- (h) Installations for the recovery or destruction of explosive substances;
- (i) Knackers' yards.



12. TOURISM AND LEISURE

- (a) Ski runs, ski lifts and cable cars and associated developments;
- (b) Marinas;
- (c) Holiday villages and hotel complexes outside urban areas and associated developments;
- (d) Permanent campsites and caravan sites;
- (e) Theme parks.

13. (a) Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);
- (b) Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.



Annex II A

INFORMATION REFERRED TO IN ARTICLE 4(4)

(INFORMATION TO BE PROVIDED BY THE DEVELOPER ON THE PROJECTS LISTED IN ANNEX II)

1. A description of the project, including in particular:
 - (a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;
 - (b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.

2. A description of the aspects of the environment likely to be significantly affected by the project.

3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:
 - (a) the expected residues and emissions and the production of waste, where relevant;
 - (b) the use of natural resources, in particular soil, land, water and biodiversity.

The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.

ANNEX III

SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3)

(CRITERIA TO DETERMINE WHETHER THE PROJECTS LISTED IN ANNEX II SHOULD BE SUBJECT TO AN ENVIRONMENTAL IMPACT ASSESSMENT)

1. Characteristics of projects

The characteristics of projects must be considered, with particular regard to:

- (a) the size **and design** of the **whole** project;
- (b) ~~the~~ cumulation with other **existing and/or approved** projects;
- (c) the use of natural resources, **in particular land, soil, water and biodiversity**;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of **major** accidents ~~having regard in particular to substances or technologies used~~ **and/ or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge**;
- (g) the risks to human health (for example due to water contamination or air pollution).

2. Location of projects

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, ~~having regard in~~, **with** particular **regard** to:

- (a) the existing **and approved** land use;
- (b) the relative abundance, **availability**, quality and regenerative capacity of natural resources **(including soil, land, water and biodiversity)** in the area **and its underground**;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands, **riparian areas, river mouths**;
 - (ii) coastal zones **and the marine environment**;
 - (iii) mountain and forest areas;

- (iv) nature reserves and parks;
- (v) areas classified or protected under ~~Member States'~~ **national** legislation; ~~special protection~~ **Natura 2000** areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;
- (vi) areas in which **there has already been a failure to meet** the environmental quality standards, laid down in Union legislation ~~have already been exceeded~~ **and relevant to the project, or in which it is considered that there is such a failure;**
- (vii) densely populated areas;
- (viii) landscapes **and sites** of historical, cultural or archaeological significance.

3. **Type and characteristics of the potential impact**

The ~~potential~~ **likely** significant effects of projects **on the environment** must be considered in relation to criteria set out in points 1 and 2 **of this Annex, and having with** regard ~~in particular to~~ **the impact of the project on the factors specified in Article 3(1), taking into account:**

- (a) the **magnitude and spatial** extent of the impact **(for example** geographical area and size of the ~~affected~~ population **likely to be affected)**;
- (b) **the nature of the impact;**
- ~~(b)~~(c) **the transfrontier transboundary nature of the impact;**
- ~~(c)~~(d) **the magnitude intensity** and complexity of the impact;
- ~~(d)~~(e) **the probability of the impact;**
- (f) **the expected onset, duration, frequency and reversibility of the impact;**
- (g) **the cumulation of the impact with the impact of other existing and/or approved projects;**
- (h) **the possibility of effectively reducing the impact.**

ANNEX IV

INFORMATION REFERRED TO IN ARTICLE 5(1)

(INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT)

1. A Description of the project, including in particular:
 - (a) a description of the location of the project;
 - ~~(a)~~(b) a description of the physical characteristics of the whole project, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
 - ~~(b)~~(c) a description of the main characteristics of the ~~production processes~~, operational phase of the project (in particular any production process), for instance, energy demand and energy used, the nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
 - ~~(c)~~(d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, and soil and subsoil pollution, noise, vibration, light, heat, radiation, etc.) and quantities and types of waste produced ~~resulting from the operation of the proposed project~~ during the construction and operation phases.
2. ~~An outline of the main~~ A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for ~~this choice~~ selecting the chosen option, taking into account including a comparison of the environmental effects.
3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.
3. 4. A description of the ~~aspects of the environment~~ factors specified in Article 3(1) likely to be significantly affected by the proposed project, including in particular: population, human health, flora, fauna biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, ~~climatic factors~~

climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological heritage aspects, and landscape and the interrelationship between the above factors.


4. 5. A description of the likely significant effects of the proposed project on the environment resulting from, *inter alia*:

- (a) the construction and existence of the project, including, where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the elimination disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.

5. 6. The A description by the developer of the forecasting methods or evidence, used to identify and assess the significant effects on the environment referred to in point 4., including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

6. 7. A description of the measures envisaged to avoid, prevent, reduce and where or, if possible, offset any identified significant adverse effects on the environment and,



where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

~~7. 9.~~ A non-technical summary of the information provided under points 1 to ~~6~~ 8.

~~8.~~ An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

10. A reference list detailing the sources used for the descriptions and assessments included in the report.

ANNEX V

PART B

List of time limits for transposition into national law
(referred to in Article 14)

| Directive | Time limit for transposition |
|------------------|-------------------------------------|
| 85/337/EEC | 3 July 1988 |
| 97/11/EC | 14 March 1999 |
| 2003/35/EC | 25 June 2005 |
| 2009/31/EC | 25 June 2011 |

Appendix II – Text of Circular Letter PL 1/2017



An Roinn Tithíochta, Pleanála,
Pobail agus Rialtais Áitiúil
Department of Housing, Planning,
Community and Local Government



To: Chief Executives, City and County Councils
Directors of Planning Services, City and County Councils
Senior Planners, City and County Councils
An Bord Pleanála

Circular letter PL 1/2017

15 May 2017

Implementation of Directive 2014/52/EU on the effects of certain public and private projects on the environment (EIA Directive)

Advice on Administrative Provisions in Advance of Transposition

I have been asked by Mr. Simon Coveney, T.D., Minister for Housing, Planning, Community and Local Government to refer to key changes to the environmental impact assessment (EIA) procedures set out in the above Directive, which amends Directive 2011/92/EU. In its Article 2, Directive 2014/52/EU provides that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 16 May 2017.

This circular sets out procedures:

- to be followed in the case of applications falling within the scope of EIA on hands on or before 15 May 2017; and

- that may be followed in the case of such applications received on or after 16 May 2017, by planning authorities and An Bord Pleanála (Competent Authorities).

Applications on hands on or before 15 May 2017


Article 3 of Directive 2014/52/EU provides that where, before 16 May 2017, the following circumstances apply, the relevant provisions of Directive 2011/92/EU must be applied:

- An application for planning permission or other development consent with an Environmental Impact Statement has been submitted;
- An application for planning permission or other development consent has been submitted and the screening to determine whether EIA applies under Article 4(2) of Directive 2011/92/EU has commenced by this date;
- In the case of projects requiring assessment and a request has been made, providing the information specified in Annex IV in an adequate and appropriate form, for an opinion under Article 5(2) of Directive 2011/92/EU as to the information to be provided by the developer and to be contained in an Environmental Impact Statement (request for scoping opinion).

It will be noted that where the screening for EIA has commenced prior to 16 May 2017 and is carried out in accordance with Directive 2011/92/EU, but the application for planning permission or other development consent and accompanying EIS, where EIA is determined to be required, is submitted on or after 16 May 2017, the application will fall to be dealt with in accordance with Directive 2014/52/EU.

Applications made on or after 16 May 2017

An outline of the key amendments required on foot of Directive 2014/52/EU is identified in the public consultation document issued by the Department on 2 May 2017 (copy attached for ease of reference).



In respect of applications for planning permission or other development consent received on or after 16 May 2017 falling within the scope of Directive 2011/92/EU, or within the scope of Directive 2014/52/EU, competent authorities are advised to consider applying the requirements of Directive 2014/52/EU by way of administrative provisions in advance of the transposition of Directive 2014/52/EU into Irish law.


To assist competent authorities for planning consent, where they decide such applications will be dealt with under Directive 2014/52/EU, particular attention is drawn to the following key provisions of that Directive (referred to as the 2014 Directive).

Environmental Impact Assessment

1. This is redefined in the 2014 Directive as a process, which includes the responsibility of the developer to prepare an Environmental Impact Assessment Report (EIAR), and the responsibility of the Competent Authority to provide reasoned conclusions following the examination of the EIAR and other relevant information.

Environmental Impact Assessment Report (EIAR)

2. Where EIA is required the developer must prepare an EIAR (previously EIS).
3. The information to be provided by the developer is set out in Article 5(1)(a) to (e) of the 2014 Directive. This is the least information which should be provided.
4. The developer is required also to submit any additional information specified in a new Annex IV in the 2014 Directive where this information is relevant to the specific characteristics of the project, or type of project, and to the environmental features likely to be affected. This may include relevant demolition works.
5. The EIAR must include a description of the reasonable relevant alternatives studied by the developer and an indication of the main reasons for the option chosen.


- 
6. The EIAR must be prepared by “competent experts”. The competency of experts will be a matter for the Competent Authority.
 7. Where the Competent Authority has issued a scoping opinion, the EIAR must be based on that opinion.
 8. The EIAR must take into account “current knowledge” and “methods of assessment”.

Competent Authority Environmental Impact Assessment

9. The assessment must identify, describe and assess appropriately the direct and indirect significant effects on the project on the factors set out in Article 3(1)(a) to (e) of the 2014 Directive.
10. Article 3(1)(a) to (e) contains significant amendments to the 2011 Directive. New factors in the 2014 Directive include “population and human health” (replacing “human beings”), “biodiversity” with particular attention to species and habitats protected under the Habitats and Birds Directives (replacing “flora and fauna”), and “land”. It should be noted that consideration of “climate” should include “climate change”.
11. Consideration of significant effects must include expected effects deriving from vulnerability of the project to risks of major accidents and/or disasters, where relevant to the project.
12. The Competent Authority must have, or have access, as necessary, to sufficient expertise to examine the EIAR. This will be a matter for each Competent Authority.
13. The Competent Authority may seek supplementary information in order to reach a reasoned conclusion on the significant effects on the environment.

Competent Authority decision

14. A decision to grant development consent must incorporate, at least, the reasoned conclusion in relation to the significant effects on the environment.
15. The reasoned conclusion must take into account results of the examination of the EIAR and any supplementary information received through consultations with Prescribed Bodies and the public, and any transboundary consultations.

- 
16. A decision to grant must incorporate a description of any features of the project envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment.
 17. Where appropriate, a decision to grant must include monitoring measures.
 18. Monitoring conditions must be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Monitoring conditions should not be used as a general means of gathering environmental information.
 19. A decision to refuse must state reasons for refusal.

Screening for EIA

20. Where a developer makes a screening determination request, he or she must provide the Competent Authority with the information listed in Annex IIA (new to the 2014 Directive).
21. A screening determination must be based on the information provided by the developer.
22. The reasons for the determination must be given with reference to the criteria set out in Annex III (amended from the 2011 Directive).
23. If mitigation measures are influential to a screening determination, these must be stated by the Competent Authority in the screening determination.
24. A screening determination must be given within a period not exceeding 90 days from the date the developer submits the required information, except in exceptional cases where the period may be extended.
25. Screening relates only to Annex II projects where significant effects on the environment cannot be discounted.

Scoping

26. When requested by the developer, the Competent Authority must give an opinion on the scope and level of information to be included in an EIAR.
27. Scoping of an EIAR is voluntary for developers.
28. There is a mandatory obligation for the Competent Authority to consult with the appropriate Prescribed Bodies before giving an opinion.

Information to be made available to the public


29. The public must be informed electronically and by public notices or by other appropriate means of matters set out in Article 6(2) of the 2014 Directive. Relevant environmental information should be made electronically accessible to the public by the Competent Authority.
30. The Competent Authority must inform the public and Prescribed Bodies of its decision.
31. The information to be made available must include the content of the decision and any conditions attached.
32. The information to be made available must include the main reasons and considerations on which the decision is based, including information about the public participation process, including a summary of results of consultations and information gathered during the EIA process. It must include a statement as to how the results gathered have been incorporated or otherwise addressed.

Legislative Transposition

The Department is in the process of urgently drafting the required amendments to the Planning and Development Act 2000 as amended and the Planning and Development Regulations 2001-2015 to provide for the transposition of the Directive into the Irish planning code. The Department is also in the process of updating the March 2013 “Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment” to provide practical guidance on legal and procedural issues arising from the requirement to undertake EIA in accordance with Directive 2014/52/EU.

You will be advised when the amendments to the legislation are made and the draft Guidelines are issued for consultation.

In advance of transposition of Directive 2014/52/EU into Irish law, it is a matter for each Competent Authority to apply this Circular Letter, taking such advices as the Competent Authority considers appropriate. Any requests for clarifications that the Department may be able to provide with regard to the contents of this Circular letter



should be addressed to Aisling Holohan at ElAtransposition@housing.gov.ie phone 01 8882873.

Terry Sheridan
Principal
Planning Policy

cc all Government Departments
Environmental Protection Agency

Appendix III – Text of Circular letter PL 8/2017 as revised by Circular letter PL 5/2018¹²¹



An Roinn Tithíochta, Pleanála agus Rialtais Áitiúil
Department of Housing, Planning and Local Government



Circular letter PL 8/2017

6 September 2017

To: Directors of Planning Services, City and County Councils
Senior Planners, City and County Councils
An Bord Pleanála


Cc: Chief Executives, City and County Councils

Implementation of Directive 2014/52/EU on the effects of certain public and private projects on the environment (EIA Directive) – Advice on electronic notification requirements

I have been asked by Mr. Eoghan Murphy, T.D., Minister for Housing, Planning and Local Government to refer to key provisions set out in Directive 2014/52/EU in respect of electronic notification of the public, and the making of relevant information electronically accessible to the public, for all development consent applications requiring environmental impact assessment. The transposition of these provisions into Irish planning legislation gives rise to implications for planning authorities and An Bord Pleanála and the information which must be provided in a timely manner on their respective websites.

Key requirements introduced in the 2014 Directive relate to electronic notification of the public generally and those concerned with specific development proposals. In particular, Article 6 requires that the public shall be informed electronically (as well as by public notices or by other appropriate means) of specified details pertaining to a request for development

¹²¹ Revised text in red



consent requiring Environmental Impact Assessment (EIA). It further requires that relevant information in respect of such cases is electronically accessible to the public, through at least a “central portal” facility or easily accessible points of access at the appropriate administrative level. The purpose of these requirements is to inform the public in a timely manner of applications for development consent accompanied by an Environmental Impact Assessment Report (EIA applications) and to provide early and effective opportunities to participate in environmental decision-making procedures.

This Circular Letter informs planning authorities and An Bord Pleanála of the overall approach to be taken to meeting the requirements of Article 6 of the 2014 Directive, and of the provisions planned to be contained in forthcoming transposing regulations. As it is intended to implement the changes arising from the 2014 Directive with immediate effect in the transposing regulations, advance notice is being provided of the measures which need to be implemented by planning authorities and An Bord Pleanála in order to be prepared to meet the requirements arising from Article 6 of the Directive. The transposing Regulations will be accompanied by guidance on the other changes being brought in by the 2014 Directive.


Overall Approach

The transposing regulations will provide for a single two pronged approach to meeting the Directive’s public participation requirements:

1. A Central Portal managed by the Department of Housing, Planning and Local Government, and
2. Accessible websites at competent authority level.

Central Portal

A central portal is to be set up and managed by the Department of Housing, Planning and Local Government. It will be an additional tool to inform the public, in a timely manner, of all EIA applications made countrywide and offshore across all legislative codes, and to provide a URL link to the relevant competent authority(s) website where detailed information pertaining to the application will be contained. In this regard, it should be clear that the portal will not be a replacement or alternative source of information to the competent authority(s) website. It will contain only the information necessary to function as a single national access point to the detailed information held on the relevant competent authority’s website. The requirements to inform the public in a timely manner, and to make relevant



information electronically accessible to the public in all EIA related applications is the responsibility of the relevant competent authority(s) and should be met by the publication of all relevant information on the competent authority(s) website. In EIA cases, the applicant will be required to provide relevant information to the Department to populate the central portal initially, and for the competent authority to provide the file case reference number and a URL link to their website to the Department as soon as the application has been registered and allocated a file case reference number. The information to be provided by the applicant will include brief details of the proposed project, together with a copy of the public newspaper notice and site location map. The central portal will contain a downloadable form which must be completed and submitted to the Department by the applicant before an application for development consent is made, and a notification of receipt of the completed form, issued by the Department to the applicant, must be included with the planning application documents. (Details in respect of the practical operation of the central portal are contained in Appendix 1 to this letter).

Content of Planning Authority/An Bord Pleanála Website (Development Consent Applications¹²²)

Currently, there are requirements to make available for inspection a copy of the file (the 'public file') in the offices of the local authority or An Bord Pleanála, as appropriate. Many planning authorities and An Bord Pleanála place the public file on their website as a matter of course, and this will now become a statutory requirement for all EIA related cases.

The planning authority/An Bord Pleanála will be required to place the following information for all EIA related applications made to them on their website within 3 working days of a registered application:

- The request for development consent.
- The fact that the project is subject to an EIA procedure.

¹²² Applies in the case of planning applications made to the planning authority or direct applications made to An Bord Pleanála. Where an application is made to the planning authority or An Bord Pleanála, it is the responsibility of that body to provide the detailed information on its websites. Where an application is made to the planning authority, there is no requirement in respect of the Board's website until such time as a valid appeal is lodged.


- Where appropriate, the fact that the project is likely to have significant transboundary effects on the environment of another Member State.
- Confirmation that the planning authority/An Bord Pleanála is responsible for making the decision on the application.
- Details of the time schedule for transmitting comments or questions.
- The nature of possible decisions.
- The Environmental Impact Assessment Report (EIAR) and any scoping opinion on which the EIAR is based (*The applicant must submit a copy of the EIAR in an electronically searchable format to the competent authority*).
- Details of the times and places at which, and the means by which, the relevant information will be made available (normally, the offices of the authority for hard copies and the website for soft copies of the relevant information).
- Details of the arrangements for public participation in the decision-making procedures.

The planning authority/An Bord Pleanála will be required to place the following information for all EIA related applications on their website within 3 working days of creation/receipt:

- The bodies notified of the application and informed that any submissions or observations made (within the specified time schedule for such submissions or observations) will (where relevant) be taken into account in the decision making procedure.
- A copy of all submissions or observations received from the prescribed bodies and from another Member State (received within the specified time schedule for such submissions or observations¹²³).
- Additional information on the environment relevant to the proposed project that becomes available after the commencement of the public consultation process.^{124,125}

¹²³ The current arrangements for returning late submissions and observations, and accompanying fee, will remain unchanged.

¹²⁴ Article 6(3)(c) of the 2011 Directive, as amended.



The planning authority/An Bord Pleanála will be required to place the following information on their website within 3 working days of a formal decision being made in respect of an EIA application:

- Content of the decision and any environmental conditions attached (see *Notes 1 and 2 below*).
- Main reasons and considerations on which the decision is based.
- Main reports and advice provided to the competent authority and relevant to the application at the time of informing the public of the application¹²⁶.
- Information about the public participation process including a summary of the results of consultations and information gathered through consultations with the public and Prescribed Bodies, and affected Member States, if appropriate (see *Note 3*).
- How results of consultations and information gathered has been incorporated or otherwise addressed, in particular comments received from an affected Member State (if any) (see *Note 3*).

Note 1: In the case of a GRANT of permission, the decision must include at least the following¹²⁷:

- the ‘reasoned conclusion’ reached in respect of EIA,
- the environmental conditions attached to the decision and a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment,
- where appropriate, monitoring measures.

Note 2: In the case of REFUSAL – the main reasons for the refusal¹²⁸.

¹²⁵ This list may need to be extended.

¹²⁶ Article 6(3)(b) of the 2011 Directive, as amended.

¹²⁷ Article 8a(1) of the 2011 Directive, as amended.

¹²⁸ Article 8a(2) of the 2011 Directive, as amended.

Note 3: Information about public participation and consultations carried out may be provided through cross-referencing/adopting findings and conclusions in the Planner's/Inspector's report. Where such an approach is to be adopted, a comprehensive Planner's/Inspector's report detailing the public participation process and consultations carried out would be a necessity in respect of all EIA related applications¹²⁹.

In the event of the planning authority's decision being appealed, the planning authority's website will be required to record this fact within 3 working days of receipt of notification of the appeal from An Bord Pleanála and provide a URL link to the page on An Bord Pleanála's website where further relevant information should be provided.

An Bord Pleanála's Website (Appeal)


This following information should be placed on the website within 3 working days of the receipt of an appeal:

- Description of the development.
- Applicant's name.
- Planning Authority, Planning Authority file reference and URL link to planning authority file.
- Date appeal received.
- Details of any further opportunities for public participation, if any.¹³⁰

An Bord Pleanála will be required to place details of the formal decision in respect of an EIA related application within 3 working days of the decision being taken. The information to be provided is the same as detailed in the previous section of this Circular letter.

¹²⁹ Article 9(1)(b) of the 2011 Directive, as amended.

¹³⁰ The information on the website should be updated as the appeal progresses, e.g. holding of an oral hearing.



The above requirements will apply to all cases where the Board requests an EIAR or a revised EIAR to be submitted. They will also apply to requests made under Section 146B of the Planning & Development Act 2000, as amended, where it is decided that material alterations should be the subject of EIA. They will further apply to all other applications for 'consent for proposed development' within the meaning of Section 172(1A)(b) of the Planning and Development Act 2000.

Any enquires in relation to this Circular can be emailed to planning@housing.gov.ie or EIATransposition@housing.gov.ie

Terry Sheridan
Principal
Planning Policy

Cc All Government Departments
Environmental Protection Agency

Appendix 1

Operation of the EIA Portal

The EIA Portal will host access details to all EIA cases nationally, including offshore projects, across all legislative codes.

Colour coding will be used to identify the type of competent authority (a single colour for all planning authorities, and a different colour for An Bord Pleanála), and different colours again for each of the other competent authorities (e.g. EPA, Minister for Agriculture, Food and the Marine).

EIA cases will be identified by single points (not polygons), and linear projects by points at each end and significant waypoints and, where it crosses a local authority boundary, at the boundary.

The EIA Portal will be operated in 2 stages:

- The applicant will provide sufficient information to identify the location and type of development, together with a copy of the newspaper notice, and the Department will upload this to the Portal within 3 working days of the receipt of satisfactory information. The EIA Portal will show details of EIA cases before the application is lodged with the competent authority.
- Once the application is registered by the planning authority/An Bord Pleanála, the planning authority/An Bord Pleanála will forward the file case reference number and a unique URL link to the page of their website where the application may be accessed (not to the general Planning or Development Control page on the website), and the Department will add this information to the information provided by the developer.


Applicant's¹³¹ Role

1. Within 2 weeks prior to making an EIA application to the planning authority/An Bord Pleanála, submit the following to the Department of Housing, Planning and Local Government, contact email address is EIAPortal@housing.gov.ie, (also accessible at the EIA Portal page on the Department's website):
 - A downloadable form, with the applicant's name and a brief description of the location (limited to 256 characters) and the development (limited to 256 characters), whether the development is a linear development, and the name(s) of the competent authority(s) to whom the application will be made;
 - Contact details for the applicant/agent (not to be published);
 - Electronic copy of the public newspaper notice in electronically searchable format, which will be hosted on the Portal to enable interested persons to access the full public notice;
 - Electronic copy of the site location map (to assist the Department correctly identify the site, but not to be made publicly available through the Portal).
2. On submitting application documents to the planning authority/An Bord Pleanála, enclose a copy of the Confirmation Notice issued by the DHPLG to the applicant acknowledging uploading of the information detailed in paragraph 1 to the Portal. (Note: the Confirmation Notice issued by the Department is an essential part of the required application documentation, without which the application cannot be validated).

Department's Role

3. Within 3 working days of receipt of sufficient information, create a point on a GIS map showing the location of the development and incorporating the details provided by the applicant, and as the point on map will be associated with the brief description only of the development, include a URL link to the copy of the newspaper notice (to be hosted on the Department's website).

¹³¹ Applicant includes a local authority and State authority in respect of an application under Part XI of the 2000 Act.


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4. The Department will include an EIA Portal reference to identify each project on the EIA Portal. The assignment of the same code to related applications (e.g. for planning permission and a licence from the EPA) will allow all EIAs arising for a particular project to be found through a filter function.
 5. Issue to the applicant a Confirmation Notice to the effect that the information on the proposed development is uploaded to the Portal.
 6. Associate the file reference and URL link, within 3 working days of receipt from the planning authority /An Bord Pleanála, with the information provided by the applicant.

Competent Authority's Role

7. Before registering an EIA application, ensure that a copy of the Confirmation Notice issued by the DHPLG is included with the application documents.
8. Upon registering the EIA application, within 3 working days inform the DHPLG (contact email address is EIAPortal@housing.gov.ie), (also accessible at the EIA Portal page on the Department's website) of the file reference number and the URL link to the file containing the relevant detailed information relating to the application. The competent authority should also include a copy of the Confirmation Notice received from the applicant to assist the Department associate the URL and file register reference number with the application information.

Public's Role

9. Access the EIA Portal to be informed of EIA applications, since 16 May 2017, for development consent throughout the country and offshore, and across all legislative codes.
10. Use the EIA Portal to obtain the URL link to the website(s) of the relevant competent authority(ies), giving access to detailed information in respect of the



application and to timelines and procedures for public participation during the decision making process.

11. Use the URL link website(s) of the relevant competent authority(ies) to access details of the decision made to grant or refuse development consent, and the matters taken into consideration in making the decision.
12. A filter function will enable applications to be located by date (e.g. most recent), by area or by type.

Appendix IV - Glossary of Terms

Competent Authority

The authority designated as responsible for performing the duties arising from the Directive. In this guidance competent authorities are planning authorities and An Bord Pleanála.

Development consent

The decision of the competent authority or authorities which entitles the developer to commence the project.

EIA

The process of carrying out environmental impact assessment as required by the EIA Directive.

EIA Directive

Directive 2011/92/EU, as amended by Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment.

EIA Report (EIAR)

The report prepared by the developer in accordance with the requirements of article 5 of the EIA Directive and submitted to the competent authority, together with the application documentation, for development consent.

Environmental Factors

The factors set out in Article 3 of the Directive and paragraph (b) of the definition of environmental impact assessment in section 171A(b) of the Act, on which the direct and indirect significant effects of a project are to be identified, described and assessed in the environmental impact assessment process.

Project

The execution of construction works, or of other installations or schemes, including demolition works directly linked to the execution of construction works, and other interventions in the natural surroundings and landscape, including those involving the research and extraction of mineral resources.

Reasoned Conclusion

The statement made by the Competent Authority on the significant effects of the project on the environment, based on an examination of the EIA report and, where appropriate, the results of its own supplementary examination.

Scoping

The process of providing an opinion on the scope and extent of information that should be contained in the EIA report relating to a proposed project.

Screening

The process of determining if development of a class prescribed in Part 2 of Schedule 5 to the 2001 Regulations that does not equal or exceed a threshold specified in that Schedule in respect of that class is likely to have significant effects on the environment and should be made the subject of EIA.

Source-Pathway-Target Model

A model identifying the source of likely significant impacts, if any, the environmental factors which will potentially be affected and the route along which those impacts may be transferred from the source to the receiving environmental factors.

The Act

The Planning and Development Acts 2001 – 2018 (as amended by the Transposing Regulations, S.I. No. 296 of 2018).

2001 Regulations

The Planning and Development Regulations 2001 – 2018 (as amended by the Transposing Regulations, S.I. No. 296 of 2018).



Transposing Regulations

European Union (Planning and Development)(Environmental Impact Assessment)
Regulations 2018 (S.I. No. 296 of 2018).

housing.gov.ie