

DIRECTIVE 2014/52/EU: BIG STEP FORWARD OR MERELY MINIMUM CONSENSUS? - AN ATTEMPT TO EVALUATE THE NEW EU-REGULATIONS ON THE ASSESSMENT OF THE EFFECTS OF CERTAIN PUBLIC AND PRIVATE PROJECTS ON THE ENVIRONMENT

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Abstract

The Directive 2014/52/EU, which the EU Member States will have to implement by 16 May 2017 at the latest, amends the existing Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the so-called Environmental Impact Assessment Directive, in short: EIA Directive) to a considerable extent. Taking into account the amendments suggested by the Commission in its underlying proposal, this paper presents the main legal innovations caused by the EIA amending directive and on this basis attempts to evaluate the new provisions from an EU environmental law perspective. By this means, it will be shown that the Directive 2014/52/EU on the one hand does not represent the desired big step forward in creating a viable Union law regime of EIA, but on the other hand has to be seen as more than a mere minimum consensus of the Member States in this field, so that in the end the willingness of the Member States to ambitiously implement the EIA amending directive will be the critical factor for success for this EU legislative act.

Keywords: *Public Law, European Union Law, Environmental Impact Assessment Law.*

1. EU Environmental Law background²

On 15 May 2014, the Directive 2014/52/EU³ came into force. This first amending directive to the existing Directive 2011/92/EU on the assessment of the

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³ Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L 124, p. 1 (from now on: Directive 2014/52/EU).

effects of certain public and private projects on the environment (the so-called Environmental Impact Assessment Directive, in short: EIA Directive)⁴ has reshaped a large part of the provisions of the latter requiring national transposition partly to a considerable extent. It has its origins in the Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, issued by the Commission on 26 October 2012.⁵ By this means, the Commission aimed to “adjust the provisions of the codified EIA Directive, so as to correct shortcomings, reflect ongoing environmental and socio-economic changes and challenges, and align with the principles of smart regulation”⁶. However, the proposal did not find favour with either the Council or the European Parliament during the further legislative process: While the Member States represented in the Council especially criticized the ambiguity of numerous provisions, the excessive demands on the part of the authorities concerned as well as on the part of the developers by new examination and procedural requirements and the lacking adaptability to different legal systems and established practices in the Member States, the Members of the European Parliament in contrast primarily intended to reshape the proposal by additional examination and procedural requirements in an environmentally even more demanding way.⁷ In spite of these hardened fronts, the impression of the imminent end of the legislative period of the European Parliament in spring 2014 made the Commission, the Council and the European Parliament reach a breakthrough in the form of the present directive by an informal trialogue as of the late 2013. The Member States will have to transpose the legal changes caused by the Directive 2014/52/EU according to its Article 2(1) by 16 May 2017.

1.1 The legal innovations caused by the Directive 2014/52/EU in detail

Though the amending Directive 2014/52/EU has left the subject of the EIA Directive 2011 (see Art. 1(1) EIA Directive 2011/2014) as well as the previous system of EIA (see especially Art. 4(1) and (2) EIA Directive 2011/2014 in conjunction with their Annexes I and II) basically unchanged, it has apart from that caused partly far-reaching transformation in almost all provisions requiring

⁴ OJ 2012 L 26, p. 1 (from now on: EIA Directive 2011 respectively, if it is referred to this directive as amended by the directive 2014/52/EU, EIA Directive 2014).

⁵ COM(2012) 628 final.

⁶ See COM(2012) 628 final, p. 2.

⁷ See on this issue and on the further legislative process Sangenstedt, *Die Reform der UVP-Richtlinie 2014: Herausforderungen für das deutsche Recht*, *Zeitschrift für Umweltrecht (ZUR)* 2014, pp. 526-535 (pp. 527, 528).

implementation by the Member States.⁸ The subsequent presentation of the significant new provisions follows the structure of the (unwritten) outline of the EIA Directive 2014, which distinguishes between introducing provisions (Articles 1 and 2 EIA Directive 2014), EIA-related provisions (Articles 3-7 EIA Directive 2014), provisions related to the development consent (Articles 8-9 EIA Directive 2014) and other provisions (Articles 9a-16 EIA Directive 2014).⁹

1.2 Introducing provisions (Articles 1 und 2 EIA Directive 2014)

Significant changes of the introducing provisions mainly consist in the new creation of a definition of the term EIA, in the transformation of the exceptions to the scope of the EIA Directive as well as in an increased bundling of EIA and other environmental assessment procedures.

1.2.1 Definition of the term EIA

Article 1 point (1) lit. a) Directive 2014/52/EU has complemented the definitions of Article 1(2) EIA Directive 2011 with a definition of the term EIA (Article 1(2) lit. g) EIA Directive 2014). According to this definition even specifying the respective Commission's proposal¹⁰ an EIA means a process consisting of: the preparation of an EIA report by the developer, as referred to in Article 5(1) and (2) (point (i)); the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7 (point (ii)); the examination by the competent authority of the information presented in the EIA report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7 (point (iii)); 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 (point (iv)); the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a (point (v)).

1.2.2 Exceptions to the scope of the EIA Directive

On the one hand, according to the Commission's proposal¹¹, the optional sectoral exception to the scope of the EIA Directive laid down in Article 1(3) EIA

⁸ The only provisions left completely unchanged are: Article 11 (legal remedies), Article 13 (reporting obligation regarding national implementing provisions), Article 14 (transitional provisions), Article 15 (entry into force), Article 16 (addressing the Member States) EIA Directive 2011 as well as its Annexes I, II, V and VI.

⁹ Amendments to the Annexes of the EIA Directive 2014 are dealt with in the context of the provision the respective Annex refers to.

¹⁰ Article 1(1) lit. b) COM(2012) 628 final.

¹¹ Article 1(1) lit. c) COM(2012) 628 final.

Directive 2011 is extended to projects having as their sole purpose the response to cases of civil emergency (Article 1(3) EIA Directive 2014).¹² This change takes into account the experience gained from the implementation of the EIA Directive 2011 that compliance with the EIA Directive regarding such projects could have adverse effects, *inter alia*, on the environment.¹³ On the other hand, contrary to the Commission's proposal¹⁴, the mandatory sectoral exemption to the scope of the EIA Directive regarding legislative development consents is removed from Article 1(4) EIA Directive 2011 by the means of its systematically inconsistent separation from the optional sectoral exemption contained in Article 1(3) EIA Directive 2014 and now forms Article 2(5) EIA Directive 2014 complemented with a reporting obligation of the Member States to the Commission concerning the application of this exemption.¹⁵ Finally, Article 1 point (2) lit. b) Directive 2014/52/EU adds a double limitation to the possibility of individual exceptions to the scope of the EIA Directive as still set out in Article 2(4) EIA Directive 2014: In future a project will only qualify for an individual exception if the application of the provisions of the EIA Directive 2014 result in adversely affecting the purpose of the project and if the objectives of this Directive are met in spite of the dispensation.

1.2.3 Bundling of EIA and other environmental assessment procedures

Article 2(3) EIA Directive 2011 already provided for the opportunity to concentrate the environmental assessment procedures of the EIA Directive 2011 and the Directive 2008/1/EC¹⁶ (nowadays Directive 2010/75/EU¹⁷) by the means of a single procedure. By its proposal for the EIA amending Directive the Commission aimed to fully extend this approach of procedural simplification so that projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from the EIA Directive to be amended and other Union legislation should be subject to coordinated or joint procedures fulfilling the requirements of the relevant Union legislation.¹⁸ In spite of its benefits with respect to the economy of procedure and thus ultimately to cost and acceptance considerations, such a far-reaching harmonization of procedures, however, met with resistance from quite a number of Member States in the Council

¹² Article 1 point (1) lit. b) Directive 2014/52/EU.

¹³ See recital (20) of the Directive 2014/52/EU.

¹⁴ Article 1(1) lit. c) COM(2012) 628 final.

¹⁵ Article 1 point (1) lit. c), Article 1 point (2) lit. c) Directive 2014/52/EU.

¹⁶ Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control, OJ L 24, p. 8 (the so-called IP[P]C Directive).

¹⁷ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), OJ L 334, p. 17 (the so-called IE Directive).

¹⁸ Article 1(2) COM(2012) 628 final.

that considered the introduction of such an "EIA one-stop shop" to be incompatible with the organizational and procedural structures of their national legal system.¹⁹ As a compromise Article 2(3) subparagraph 1 EIA Directive 2014 now lays down a mandatory bundling of procedures by the means of introducing coordinated and/or joint procedures²⁰ only for environmental assessment requirements of the EIA Directive 2014 and the Directives 92/43/EEC²¹ and 2009/147/EU²²; for all other forms of environmental impact assessment of projects required by Union law Article 2(3) subparagraph 2 EIA Directive 2014 provides an optional procedural harmonization by the means of coordinated and/or joint procedures.²³

1.3 EIA-related provisions (Articles 3-7 EIA Directive 2014)

Important innovations in the field of the EIA-related provisions can first of all be found in the provisions on the list of EIA-protected assets, the screening, the scoping, the EIA report and the participation.

1.3.1 List of EIA-protected assets

The two paragraphs of Article 3 EIA Directive 2014 contain the list of EIA-protected assets redrafted by Article 1 point (3) Directive 2014/52/EU.

Paragraph 1, which has emerged from Article 3 EIA Directive 2011, provides besides a purely formal factual regrouping of the single protected assets three substantive changes. Firstly, the protected asset "human beings" is replaced by the protected assets "population and human health". This clarifies that the object of an EIA is constituted not only by health-related, but also by other – especially social – consequences of the project for the hereby affected people.²⁴ Secondly, the protected assets "fauna and flora" are novated by the protected asset "biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC". As the mention of "fauna and flora" as an example of the protected asset "biodiversity" in Annex IV point (4) shows, this modification does not mean any substantive change, but rather only aims at adjusting the EIA Directive 2014 to the terminology of the United Nations

¹⁹ See Sangenstedt (above, footnote 6), p. 528.

²⁰ The legal definition of the coordinated procedure can be found in Article 2(3) subparagraph 3 EIA Directive 2014, the legal definition of the joint procedure in Article 2(3) subparagraph 4 EIA Directive 2014. Additionally, Article 2(3) subparagraph 5 lays down the Commission's obligation to provide guidance regarding the setting up of any coordinated or joint procedure for projects that are simultaneously subject to assessment under certain EU Directives.

²¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, p. 7 (the so-called Habitats Directive).

²² Directive 2009/147/EU of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, p. 7 (the so-called Birds Directive).

²³ Article 1 point (2) lit. a) Directive 2014/52/EU.

²⁴ See Bunge, Neue Anforderungen an die Umweltverträglichkeitsprüfung: die UVP-Änderungsrichtlinie 2014, Neue Zeitschrift für Verwaltungsrecht (NVwZ), pp. 1257-1263 (p. 1258).

Convention on Biological Diversity.²⁵ Finally, Article 3(1) lit. c) EIA Directive 2014 now also quotes "land" as a protected asset. Consequently, an EIA from now on gives focus to increasing land use and landscape fragmentation in connection with the implementation of projects.²⁶ Insofar as the previous EIA-practice has already considered land-related impacts of projects in connection with the protected asset "soil", there will be, however, no additional testing requirements in future. By contrast and contrary to the Commission's proposal²⁷, the protected asset "climate change" has not been included in the list of EIA-protected assets in Article 3(1) EIA Directive 2014 so that insofar it remains with the protected asset "climate" already provided for to date.

According to Article 3(2) EIA Directive 2014 – similar to the Commission's proposal for the EIA amending Directive²⁸ – the effects referred to in Article 3(1) EIA Directive 2014 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.²⁹ By this means, the EIA Directive 2014 is adopted, inter alia, to the requirements of the United Nations Hyogo Framework for Action Programme.³⁰

1.3.2 Screening

Under the EIA Directive 2014 the term "screening" still means that the competent authority or authorities³¹ determine(s) whether or not the project has to be made subject to an EIA by the means of a case-by-case examination³² (Article 4(2) subparagraph 1 lit. a) EIA Directive 2014). While this procedural step has so far been limited to the regulatory review taking into account the relevant selection criteria set out in Annex III and the public disclosure of the decision taken by the competent authority or authorities (Article 4(3) and (4) EIA Directive 2011), Article 1 point (4) Directive 2014/52/EU has transformed the case-by-case examination – in substantial conformity with the Commission's proposal³³ – into a "small EIA".³⁴

In accordance with Article 4(4) EIA Directive 2014 the developer shall, first of all, provide information on the characteristics of the project and its likely

²⁵ See recitals (10) and (11) of the Directive 2014/52/EU.

²⁶ See recital (9) of the Directive 2014/52/EU.

²⁷ Article 1(3) COM(2012) 628 final.

²⁸ Article 1(3) COM(2012) 628 final.

²⁹ Article 1 point (3) Directive 2014/52EU.

³⁰ See recitals (14) and (15) of the Directive 2014/52/EU.

³¹ See for the legal definition of this term Article 1(2) lit. f) EIA Directive 2014.

³² In the terminology of Article 4(3)-(5) EIA Directive 2014 latterly also only "determination". This is a rather misleading choice of terminology with respect to the use of this term in Article 4(2) EIA Directive 2014, where "determination" forms a generic term for the case-by-case examination (lit. a)) as well as for the determination through thresholds or criteria set by the Member States (lit b)).

³³ Article 1(4) COM(2012) 628 final.

³⁴ See Schink, Änderung der UVP-Richtlinie und Auswirkungen auf das nationale Recht, Deutsches Verwaltungsblatt (DVBl) 2014, pp. 877-886 (p. 882).

significant effects on the environment according to the new Annex II.A. In doing this 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 the EIA Directive 2014 and 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. Thereafter, the case-by-case examination of whether or not the project has to be made subject to an EIA is carried out by the competent authority on the basis of the mentioned information provided by the developer (Article 4(5) EIA Directive 2014), taking into account the relevant selection criteria of Annex III³⁵ (Article 4(3) EIA Directive 2014). Finally, according to Article 4(5) EIA Directive 2014, the result of the case-by-case examination shall be made available to the public. This determination shall state - with reference to the relevant criteria of Annex III - the main reasons for requiring or not an EIA.³⁶

To increase the efficiency of the regulatory decision-making in the context of the screening, Article 4(6) EIA Directive 2014 for the first time sets a time limit for carrying out the case-by-case examination: It amounts to 90 days from receipt of the complete dossier of information according to Article 4(4) EIA Directive 2014, but may be extended by way of exception by the competent authority by the means of a written statement of reasons giving the officially targeted decision date.³⁷

1.3.3 Scoping

Under the EIA Directive 2014 scoping, the procedural step following the findings that the project requires an EIA³⁸, consists of the issuing of an opinion on the scope and level of detail of the information to be included by the developer in the EIA report in accordance with Article 5(1) EIA Directive 2014³⁹ by the competent authority after consulting the authorities mentioned in Article 6(1) EIA Directive 2014 (Article 5(2) subparagraph 1 EIA Directive 2014) and thus

³⁵ Pursuant to Article 1 point (15) Directive 2014/52/EU in conjunction with point (2) of the Annex of this Directive Annex III has - only partially in accordance with the Commission's proposal for the EIA amending Directive (Article 1(12) COM(2012) 628 final in conjunction with paragraph 2 of the accompanying Annex) - also been transformed with regard to single points which cannot be discussed in detail here. The aim of this legal innovation is to adjust the selection criteria of Annex III due to the experience of the previous implementation of the Directive and to define them in detail, see recital (28) of the Directive 2014/52/EU.

³⁶ If the competent authority decides that an EIA is not required, it shall additionally state, where proposed by the developer, any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

³⁷ See recital (36) of the Directive 2014/52/EU.

³⁸ As a mandatorily EIA-requiring project according to Article 4(1) EIA Directive 2014, due to a screening pursuant to Article 4(2) subparagraph 1 lit. a) EIA Directive 2014, hereto above 2.2.2, or as a result of the exceedance of thresholds or of the fulfillment of other criteria set by the Member States in accordance with Article 4(2) subparagraph 1 lit. b) EIA Directive 2014.

³⁹ To this below 2.2.4.

corresponds entirely with the definition of scoping pursuant to Article 5(2) subparagraph 1 EIA Directive 2011. In this context the Commission was not able to prevail with its proposal of a mandatory scoping process⁴⁰, instead according to Article 1 point (5) Directive 2014/52/EU the previous regime of an optional scoping at the request of the developer remains (Article 5(2) subparagraph 1 EIA Directive 2014). However, pursuant to Article 5(2) subparagraph 2 EIA Directive 2014 the Member States are explicitly allowed to prescribe a mandatory scoping.

1.3.4 EIA report

In accordance with Article 5(1) subparagraph 1 EIA Directive 2014, where an EIA is required, the developer shall prepare and submit to the competent authority an EIA report containing at least the following information: a description of the project comprising information on the site, design, size and other relevant features of the project (lit. a)), a description of the likely significant effects of the project on the environment (lit. b)), 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 (lit. c)), 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 (lit. d)), a non-technical summary of the information referred to in points (a) to (d) (lit. e)) and any additional information specified in Annex IV⁴¹ relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected (lit. f)). In addition to these substantive requirements Article 5(1) subparagraph 2 EIA Directive 2014 lays down formal requirements for the drafting of the EIA report, after all, in Article 5(3) EIA Directive 2014 measures are found to ensure the quality of the EIA report, especially in the form of the participation of competent specialists at the drafting of the EIA report by the developer as well as at its regulatory verification.

⁴⁰ Article 1(5) COM(2012) 628 final.

⁴¹ Pursuant to Article 1 point (15) Directive 2014/52/EU in conjunction with point (2) of the Annex of this Directive Annex IV has – only partially in accordance with the Commission’s proposal for the EIA amending Directive (Article 1(12) COM(2012) 628 final in conjunction with paragraph 2 of the accompanying Annex) – also been reshaped and extended regarding numerous points which cannot be discussed in detail here. The most significant legal innovations in so far are, among others: the introduction of a description of the relevant aspects of the current state of the environment (the so-called baseline scenario) and of an outline of the likely evolution thereof without implementation of the project (the so-called zero alternative) within the limits of reasonable efforts (point (3)), the introduction of a description of the factors specified in Article 3(1) EIA Directive 2014 likely to be significantly affected by the project (point (4)) and the specification of the requirements with regard to the description of the likely significant effects of the project on the environment (point (5)) as well as of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment (point (7)).

In the light of the above, the EIA report introduced by Article 1 point (5) Directive 2014/52/EU does not only mean a terminological innovation compared to the “information” the developer had to supply “in an appropriate form” already under Article 5(1) EIA Directive 2011. As the choice of the term “EIA report” – a harmonization with the term “environmental report” laid down by the Directive 2001/42/EC⁴² and also provided for by the Commission’s proposal for the EIA amending Directive⁴³ – namely suggests the EIA report, in contrast to the information the developer had to supply previously, needs to be a self-contained document that may, where appropriate, contain attachments.⁴⁴ In this context, the Commission was not able to prevail with its proposal of a mandatory examination of alternative project solutions.⁴⁵ According to Article 5(1) subparagraph 1 lit. d) EIA Directive 2014 the alternative project solutions that have to be included in the EIA report are limited to reasonable alternatives studied by the developer (e. g. due to requirements under specific legislation), which are relevant to the project and its specific characteristics. Where such alternatives do not exist, Article 5(1) subparagraph 1 lit. d) thus does not create an original obligation to examine alternative project solutions.⁴⁶

1.3.5 Participation

Regarding the EIA-related provisions the EIA amending Directive has not least also modified the provisions on the participation. Firstly, Article 1 point (6) lit. a) Directive 2014/52/EU expands – devoid of any basis in the Commission’s proposal – the group of authorities entitled to give an opinion on the information supplied by the developer and on the request for development consent beyond the authorities likely to be concerned by the project by reasons of their specific environmental responsibilities by also entitling authorities concerned due to their local and regional competences (Article 6(1) EIA Directive 2014); furthermore, according to the Commission’s proposal for the EIA amending Directive⁴⁷, Article 6(6) EIA Directive 2014 now explicitly lays down for the participation of the authorities – by analogy of the public participation – the requirement of a reasonable time framework for information as well as effective preparation and participation, without stating, however, a specific minimum time limit.⁴⁸ Secondly and again devoid of any basis in the Commission’s proposal, Article 1 point (6) lit. b) and c) Directive 2014/52/EU provide for the electronic information of the public as one

⁴² Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, p. 30.

⁴³ Article 1(5) COM(2012) 628 final.

⁴⁴ See Bunge (above, footnote 23), p. 1259.

⁴⁵ Article 1(5) COM(2012) 628 final.

⁴⁶ See Sangenstedt (above, footnote 6), p. 532.

⁴⁷ Article 1(6) lit. a) COM(2012) 628 final.

⁴⁸ Article 1 point (6) lit. d) Directive 2014/52/EU.

procedural modality of such information in a binding way in Article 6(2) and (5) EIA Directive 2014. In addition to that, Article 6(7) EIA Directive 2014 states a minimum time limit of 30 days without a maximum time limit for public participation.⁴⁹ Finally, and in accordance with the Commission's proposal for the EIA amending Directive⁵⁰, Article 1 point (7) lit. b) Directive 2014/52/EU adjusts the time limits for the transboundary participation in Article 7(5) EIA Directive 2014 to the respective new requirements for the national participation.

1.4 Provisions related to the development consent (Articles 8-9 EIA Directive 2014)

With regard to the provisions related to the development consent significant changes can be found in the provisions on the obligation of taking into account the EIA results in the development consent procedure as well as the formal and timeliness requirements for the development consent itself.

1.4.1 Obligation of taking into account the EIA results in the development consent procedure

According to Article 8 EIA Directive 2014 the results of consultations and the information gathered pursuant to Articles 5-7 EIA Directive 2014 shall no longer – as yet stated under Article 8 EIA Directive 2011 and in the Commission's proposal⁵¹ – be only simply, but “duly” taken into account in the development consent procedure.⁵² Neither Article 8 EIA Directive 2014 nor the recitals of this Directive, however, provide any information on what is meant by this increased obligation. Therefore, this question will finally have to be answered case-by-case by the Court of Justice of the European Union.

1.4.2 Formal and timeliness requirements for the development consent itself

Article 8a EIA Directive 2014, newly introduced by Article 1 point (9) Directive 2014/52/EU, contains numerous formal and timeliness requirements for the development consent.⁵³ These concern the content (paragraphs 1-4, inter alia: the reasoned conclusion; any environmental conditions attached to the decision; a

⁴⁹ Article 1 point (6) lit. e) RL 2014/52/EU; in contrast to that, the Commission's proposal for the EIA amending Directive states in Article 1(6) lit. b) a maximum time limit of 60 days for the participation which can exceptionally be extended by 30 more days.

⁵⁰ Article 1(7) COM(2012) 628 final.

⁵¹ Article 1(8) COM(2012) 628 final.

⁵² Article 1 point (8) Directive 2014/52/EU.

⁵³ In Article 1(8) COM(2012) 628 final the Commission's proposal for the EIA amending Directive provides for significantly stricter formal and timeliness requirements (especially a basic time limit of three months for the carrying out of an EIA after having gathered all necessary information for this purpose). However, these requirements are not stated in a separate article but following immediately the obligation of consideration in the redrafted Article 8 EIA Directive 2011.

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; in the case of the decision to refuse the development consent the main reasons for the refusal), the time limit for the granting (paragraph 5: reasonable period of time) and the topicality of the development consent (paragraph 6).

1.5 Other provisions (Articles 9a-16 EIA Directive 2014)

Regarding the other provisions besides the anchoring of the regulatory obligation of neutrality in Article 9a EIA Directive 2014⁵⁴ it especially has to be mentioned the introduction of the obligation of the Member States to lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to the EIA Directive 2014 (Article 10a EIA Directive 2014⁵⁵). Not included in this context is finally the Commission's proposal to be empowered to adopt delegated acts concerning the selection criteria listed in Annex III and the information referred to in Annexes II.A and IV, in order to adapt them to scientific and technical progress.⁵⁶

2. Evaluation of the new provisions from an EU environmental law perspective

The above presentation of the several significant changes of the EIA Directive 2011 by the Directive 2014/52/EU, taking into account the amendments provided for in the underlying Commission's proposal, illustrates the EU's characteristic nature of compromise with regards to this amending Directive. On the one hand, quite a number of important reform approaches, such as the comprehensive bundling of the environmental assessment procedures required by EU environmental law, the inclusion of hydraulic fracturing (in short: fracking) in the list of Annex I-projects mandatorily requiring an EIA or the introduction of a mandatory scoping process were not taken up. On the other hand, the Directive 2014/52/EU also manages to include numerous new aspects in the EIA Directive 2014 that develop the EU EIA legislation in a consolidating way. In this respect, it is worth highlighting inter alia the introduction of a preliminary EIA definition, the expansion of the list of EIA-protected assets by the protected asset "land", the expansion and specification of the requirements for the screening and for the supply with information by the developer in the (for the first time so-called) EIA report, the emphasis of the obligation of taking into account the EIA results in the development consent procedure, the newly introduced inclusion of a description

⁵⁴ Article 1 point (11) Directive 2014/52/EU; the Commission's proposal for the EIA amending Directive does not contain such a provision.

⁵⁵ Article 1 point (13) Directive 2014/52/EU; the Commission's proposal does not provide for such a provision.

⁵⁶ Article 1(11) COM(2012) 628 final.

of monitoring measures in the development consent as well as the streamlining of the entire EIA procedure by the means of the introduction of maximum time limits, while ensuring sufficient participation opportunities by respective minimum time limits. Given this conflicting outcome, it is now all the more up to the Member States to give future-oriented impetus to the EIA by the means of a committed implementation of the legal innovations taking inspiration from the objectives of the Directive 2014/52/EU in order to offset the lack of enforcement in this field initiating the Commission's proposal for the EIA amending Directive at all.

3. Conclusion

The Directive 2014/52/EU has reshaped a large part of the provisions of the EIA Directive 2011 requiring national transposition partly to a considerable extent. The evaluation of these new regulations turns out to be ambivalent: Neither a big step forward nor a mere minimum consensus of the Member States. Therefore, these are responsible to make the EIA – just over 30 years after its visionary introduction in 1985 – fit for the future by ambitiously implementing the EIA amending Directive 2014/52/EU.

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