Implementation of Environmental Impact Assessments in Central and Eastern Europe

Case studies from Estonia, Bulgaria and Hungary
Implementation of Environmental Impact Assessments in Central and Eastern Europe. Lessons learnt from Estonia, Bulgaria and Hungary

2013

CEEweb for Biodiversity is an international network of NGOs in Central and Eastern Europe. The mission of CEEweb is the conservation of biodiversity through the promotion of sustainable development.

Published with the financial support of the European Commission, although its content does not necessarily reflect the donor position or views. The sole responsibility lies with the authors and the donors are not responsible for any use that may be made of the information contained therein. Please feel free to distribute the information contained in the publication acknowledging the source, and we encourage you to let us know about it. Please cite as: “CEEweb for Biodiversity. 2013. Implementation of Environmental Impact Assessments in Central and Eastern Europe. Lessons learnt from Estonia, Bulgaria and Hungary”.

Editors responsible: Agnes Zolyomi CEEweb for Biodiversity
Text: Sarolta Tripolszky, CEEweb for Biodiversity
Editing: Eduard Nedelciu, CEEweb for Biodiversity

We are grateful for the valuable contributions to the writing of this report to:

Silvia Lotman, Estonian Fund for Nature (Estonia)
Stefan Avramov, Bulgarian Biodiversity Foundation (Bulgaria)
Ivanyi Anna, Nimfea Environment and Nature Conservation Association and Rideg Dora (Hungary)

The study was generously funded by the European Commission, but does not necessarily reflect its views or opinions.
Context

In the European Union (EU), Environmental Impact Assessments (EIAs) are implemented through the EIA Directive (85/337/EEC), which entered into force in 1985. The Directive applies to public and private projects with evident or potential impact on the environment. Such projects are defined in Annex I and Annex II of the Directive: the first annex is a list of projects for which EIA is mandatory (e.g. long-distance motorways or installations for the disposal of hazardous waste), while the second comprises projects for which Member States (MSs) can choose if EIA is required (e.g. roads waste disposal installations, flood-relief works) following a process of ‘screening’ which takes into account criteria and thresholds set in Annex III.


In its current form the Directive is seen as “one of the most efficient horizontal measures of environmental protection in existence in Europe”\(^2\). Nevertheless, a number of problem areas were identified in previous studies:

- Consideration of all Annex III criteria in the screening procedure;
- The designation process of national thresholds for Annex III;
- Public participation in the screening and scoping procedures;
- The amount of time allowed for judicial review of screening and scoping decisions;
- Assessment of projects as a whole and not in sections (a technique known as ‘salami-slicing’);
- Consideration of all potential impacts of projects;
- Consideration of all alternatives and solid justification for the ultimate choice;
- Examination and approval of the EIA by an independent expert body;
- Implementation of EIA finding and recommendations throughout project development\(^3\).

In Central and Eastern European (CEE), the implementation of the Directive has been disputed. Concerns on its implementation are related to the subjectivity of experts, who

---

\(^{1}\) EIA. European Commission, 2014

\(^{2}\) Review of the EIA Directive. FOEE, Justice and Environment, EEB, Greenpeace

\(^{3}\) Ibid.
are allegedly more likely to provide a convenient assessment for the developer rather than an accurate description of environmental impacts. Also, contesting the EIA results and methodology within the national legal framework is seen as extremely difficult, if not impossible. Other inadequacies were linked to the inappropriate or lack of alternative choices and limited public participation, with public input being largely overlooked, public announcements scarcely visible and opportunities for participation restricted by short periods of time for comments and interventions. The following sections of this paper will look into performance of the Directive in three CEE countries and provide an update to the current status of EIAs implementation performance as well as add to the list of already discussed challenges.

**Estonia**

The EIA procedure is generally perceived as ineffective in Estonia. A research survey carried out on issued environmental and construction permits in the Harju County – Estonia’s most dynamically developing region – found that approximately half of the EIAs did not alter the decision of issuing bodies, a situation valid both for mandatory EIAs and EIAs initiated on judgment basis. Among the latter, there was a high proportion of EIAs that showed no post-project effect on the environment, which led to the conclusion that reconsideration of judgment practice should be taken into account.

An EIA may be initiated if:

- license for an activity that would presumably lead to material environmental impact is sought for;
- license for an amendment of an activity that would presumably lead to material environmental impact is sought for;
- an activity is planned, that would either by itself or in conjunction with other activities presumably lead to material impacts of the Natura 2000 network area.

Activity licenses include building permit; permit for use of construction works; integrated environmental permit; permit for the special use of water; ambient air pollution permit; waste permit; hazardous waste handling license; radiation practice permit; natural resource extraction permit; prospecting permit; geological investigation

---

5 Ibid.
6 Ibid., Review of the EIA Directive. FOEE, Justice and Environment, EEB, Greenpeace
7 Heinma and Poder 2010
8 State Information Portal 2011
permit; other document permitting planned activity in relation to a presumably material environmental impact⁹.

**Saaremaa connection link**

A fixed transportation link (Saaremaa) between mainland and Muhu Island has been in the planning since 1997. The first works in this sense were executed by a committee responsible for carrying out scientific and feasibility research and informing the public with regard to both positive and negative impacts of the proposed project. This included performing geological and environmental protection surveys and identifying possible utility lines. By spring 2002, 85% of a public opinion poll respondents from the country where the link was planned were in favour of the project construction, while only 9% were against it. At a national level, 66% of respondents agreed with the construction and 13% opposed it¹⁰.

At the beginning of 2005, the Ministry of Economic Affairs and Communications contracted a Danish company – Ramboll Danmark A/S. The company had to carry out a financial activities' analysis and feasibility studies of the environmental impact of the project on Saaremaa fixed link. On the basis of the surveys the Government of Estonia was not able to make the decision of principle. The problems arose from complaints from environmental organizations and non-compliance with European Union legislation – the surveys did not include Natura 2000 assessment, although the fixed link is planned to be built on the Väinamere Natura site (see Fig.1). The Estonian Council of Environmental NGOs (EKO) has been involved in the work of expert committee lead by the Ministry since 2003. On numerous meetings the sustainable transport experts from EKO argued that the project is not part of the sustainable economy.

Since 2005 when Ramboll Danmark A/S started the financial activities' analysis and feasibility studies of the environmental impact of the project EKO members have commented on various public reports and statements in media and in personal letters. WSP Finland OY, the contractor body for EIA released the final report in November 2010. However, Estonian environmental NGOs did not agree with the EIA conclusions and found that the assessment did not take into account the actual impact to mammals (seals) and birds. In 2010 EKO, Estonian Ornithological Society and Estonian Teriological Society sent their comments to the EIA and Natura 2000 assessment report stating that the bridge would harm marine and coastal ecosystems.

⁹ Ibid.
¹⁰ CEEweb, 2010
Fig. 1) Planned routes of Saaremaa fixed link (top. Source: WSP 2009) and coverage of Natura 2000 site in the project area (in stripes, bottom. Source: EEA 2014)
An expert study on seals concluded that “significant negative impacts of the bridge on ringed seal migration cannot be ruled out and therefore no infrastructure that can harm ringed seal including bridges over their migration routes should be built”\(^{11}\). The same study found that the impact of the project would not only have local impacts, but it could affect the ringed seal subpopulation from the Gulf of Riga, in the territorial waters of both Latvia and Estonia\(^{12}\).

In March 2012 NGOs compiled a complaint with two international experts but the State Environmental Board did not take the complaint into consideration as this was not their legal obligation. Accordingly, NGOs agreed to send an official note to the government with the complaint materials and a common statement that if the government will decide to start building the fixed link and will rely on the current EIA, then environmental NGOs are ready to challenge the decision in court. While no answer has yet been received, the government has also not yet embarked in taking any decision.

Following a meeting of expert commission on the Saaremaa link in December 2012, the Ministry of Finance announced that the project is too expensive if it was to be funded from the Estonian state budget and there were no possibilities to finance the bridge from EU finances. Therefore, the Road administration concluded that the project is currently too costly and a reassessment of the building costs should be carried out in 5 years to see what are the new financial possibilities. Consequently, the project will be discussed again in 2018-2020 and if it passes the cost-benefit analysis, then the construction time is expected to be between 2025-2030. Nevertheless, as all counties in Estonia started the spatial planning process in 2013, it became clear that Saare and Lääne counties are planning by allocating room for the possible future link into their planning documents. However, the ferry service has improved significantly and the proportion of people in Saaremaa who are interested in the fixed link has dropped to half of the population.

**Bulgaria**

In Bulgaria, the Environmental Protection Act (ZOOS) regulates the implementation of procedures for environmental impact assessments for investment proposals. EIAs are required before the construction of nuclear or thermal powers stations, and any

\(^{11}\) Expert opinion of Mr. Valdis Pilats 2012. Mr. Valdis Pilats is a member of HELCOM ad hoc Seal Expert Group and a Latvian mammal expert

\(^{12}\) Ibid.
manufacturing facilities, slaughterhouses, large farms, roads, hotels, resorts, sports facilities, etc\textsuperscript{13}. Conducting an EIA goes through several stages, which include:

- notifying the relevant environmental protection body and the affected local inhabitants;
- preparing a report;
- public consultations;
- issuing an EIA decision;
- control over the implementation of the terms and conditions of the EIA decision, carried out by the Regional Inspectorates on Environment and Water (RIEW), Water Basin Directorates and National Park Directorates\textsuperscript{14}.

However, although EIA legislation seems to have been transposed into national law, the EU Commission has recently decided to take Bulgaria to Court over its failure to protect unique habitats and important species. The infringement decision (IP/13/966) is related to authorization of a number of wind turbine and other development projects in the Kaliakra region, a migratory route and resting place for highly endangered species\textsuperscript{15}.

**Kamchya Development Project**

In Bulgaria, a large tourist resort is planned to be built on a significant part of the grey dunes at the Natura 2000 sites Kamchya and Complex Kamchya. The sites protect the biggest and most biodiversity rich Bulgarian dunes, which are habitats for a number of rare or endangered species and priority habitat. The dune complex is more than 6 km long and between 100 and 500 meters wide. Currently, the project concerns three Natura 2000 sites (see Fig.2 below). The only step that the investor needs to take before starting the construction on terrain is the handling of the building permit according to the Spatial Planning Act. According to experts\textsuperscript{16}, the possible start of the construction works on the project covering in total 310 ha would not only significantly affect the integrity of the concerned Natura 2000 sites, but would lead to the significant deterioration of the natural habitats 1130, 2110, *2130, 2180, 2190 and 91F0 (App. 8), total destruction of the populations of Testudo graeca, Testudo hermanni and Emys orbicularis in the Kamchis SCI, as well as disturbance of the bird species in Complex Kamchia SPA (BG0002045, area 10 075 ha) (App. 9).

\textsuperscript{13} EU Commission 2012
\textsuperscript{14} Ibid., Grigorova 2008
\textsuperscript{15} Press release of the European Commission 17 October 2013. Environment: Commission takes Bulgaria to Court for failing to protect endangered species
\textsuperscript{16} Irina Mateeva, Birdlife Bulgaria and Alexander Dountchev, APB
A number of legal breaches were identified during the expert analysis, all of which are detailed in table 1 below. It was concluded that due to the purposeful denial of access to public information regarding the environmental authorisation of the DSP-BP by RIEW Varna (4 court cases started against denials of the RIEW Varna what is direct violation of Art. 3 (7) of the Directive 2001/42/EEC) the NGOs have missed all terms for appeals and all terms according to art. 102 of the Administrative-procedural Code, which would give them the possibility to request the Municipal council, the Dolni chiflik Municipality and MOEW, to cancel its decisions listed above.

**Decision**

<table>
<thead>
<tr>
<th>Decision</th>
<th>Expert analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>By <strong>Decision № BH-320-EO/06.08.2007 of RIEW Varna (App. 1)</strong> regarding a SEA screening the actualisation of the General Spatial Plan (GSP) of the Municipality of</td>
<td>The actualisation of the GSP designated the territory of the ex-protected area for “Forest territories with allowable change of the land use”. The actualisation of the GSP concerns at least 4 designated then N2000 sites. However, the decision of the RIEW Varna is issued before coming into</td>
</tr>
</tbody>
</table>
Dolni Chiflik was given consent. The decision authorising the GSP states that no environmental assessment is necessary. The GSP of the municipality was adopted finally by Decision № 739/24.08.2007 of the Municipal council.

Decision №BH-34-IIP-OC/22.01.2008 of the RIEW Varna (App.2) regarding an AA screening the competent authority decided that an AA is necessary for the designation of the forested parcels within the Detailed Spatial Plan – Building Plan (DSP-BP) for building construction.

Letter № 26-00-241/6/28.01.2009 of the RIEW Varna (App. 3) was given a positive quality evaluation of the AA report of the DSP-BP of MET Real Estate JSC.

By Decision № BA-35-EO/04.03.2008 of the RIEW Varna (App. 4) regarding SEA screening the DSP-BP of the MET Real Estate JSC project is given final consent by the Environmental authorities.

force of the Appropriate assessment Regulation of 11.09.2007 and this allows the ignorance of the assessment of the impact of the plan on the N2000 network. As a result, on this stage we have violation of Art. 6 (3) of Directive 92/43/EEC and violation of Art. 3 in conj. with preamble (10) of Directive 2001/42/EEC.

This decision makes clear that the DSP-BP includes parcels owned by three daughter companies of MET Real Estate: Beta Forest, Mirta Engineering and Ries International.

In this letter RIEW Varna planned a public discussion, of which the NGOs never learnt about.

By this decision the private project covering 310 ha of protected forest and dune habitats was given a consent only acc. to Chapter Six, Div. II of the Environment Protection Act. The adoption of such a large plan covering priority protected habitats simply after a SEA screening is thanks to an administrative misuse of the SEA Directive by presenting the investment project listed in Annex I to Directive 85/337/EEC as a plan of small area at local level. So the compulsory EIA procedure is replaced by a light SEA screening procedure. This is a common practice in the Bulgarian RIEW. Despite this fact, the content of the decision is rather incomplete and in clear violation of of Art. 3 in conj.
Attached to the decision is a warning protocol confirming the high risk of significant impact on the protected habitats and species:
- “there is a necessity of compensatory measures for preserving the integrity of the national N2000 network” (p. 4.3)
- “there is a lack of detailed mapping of the Annex II of Directive 92/43/EEC and the habitats of Annex I species of Directive 79/409/EEC” (p. 4.2)

The orders are the development consent for the project. However, these orders are issued without being subjected to finalized appropriate assessment, which led to violation of Art. 6 (3) of Directive 92/43/EEC.

Acc. to the Reports of the CM regarding the two Decisions of the CM it is clearly seen that these Decisions are only based on the Municipal Orders №643/25.03.2008 and №644/25.03.2008 and the Decision №BA-35-EO/2008 of RIEW Varna. As a result, the two ministerial acts are issued without a final Decision on the AA, leading once again to violation of Art. 6(3) of Directive 92/43/EEC. As a matter of fact, these two decisions of the CM form an illegal state aid acc. to Art. 87 of the European Community treaty that is brought to the attention of DG Competition with complaint Ref. No. CP176/2008.

**Table 1) Detailed legal development and breaches for the Kamchia Park development**

---

17 Data from the expert analysis of Mateeva and Dountchev 2009
Nevertheless, the Ministry of Environment and Waters issued on 31.08.2010 a one year ban on building activities in the dune part of the Natura 2000 site BG0000116 and No further development has been registered since.

**Hungary**

In Hungary, the Directive is implemented through:

- Act LIII of 1995 on the General Rules of Environmental Protection
- Government Decree No. 314/2005. (XII. 25.) on environmental impact assessment and the uniform environmental use permits\(^ {18}\).

The assessment is structured into two phases: screening/scoping and a detailed impact assessment. In both phases, public can participate by commenting on the documents submitted by the project developer. Public comments can be made for 21 days after the release of the screening documentation and 30 days for the EIA report after this has been released. However, it is considered that for complex cases involving many pages of documentation, the timeframe set for public participation is not enough\(^ {19}\). For such complex cases the time frame should be wider so that the public would have a real opportunity to express well informed comments in the EIA procedure. Nevertheless, in 2012, the EU Commission expressed its concern that the Directive was incorrectly transposed into national law, in particular in relation to the project the screening process, which determines whether certain projects listed in Annex II to the Directive require an EIA. The Commission further claimed that Hungarian law established exclusion thresholds and criteria which did not take account of all the relevant selection criteria set out in Annex III to the Directive. This resulted in a restrictive application of the Directive\(^ {20}\).

**Mura river case study**

In Hungary, a site area was selected in 2010 for a project aimed at exploiting gravel reefs of the Mura River. In the same year, the site received national protection under the name of Mura river Landscape Protection Area, part of the Natura 2000 network (see Fig.3). According to the research work carried out by Nimfea Association, a environmental NGO, a number of nationally protected and of Community importance fish species are present in the river: Danubian gudgeon (*Gobio uranoscopus*), Kessler’s gudgeon (*Gobio kessleri*), Streber (*Zingel streber*), Golden spined loach (*Sabanejewia aurata*), Zingel (*Zingel zingel*). The reef is also a habitat for the Little Ringed Plover

\(^ {18}\) Environment and Justice report 2012

\(^ {19}\) Ibid.

\(^ {20}\) Press release of the European Commission 21 June 2012. Environment: Commission asks Hungary to comply with EU legislation on environmental impact assessments
(Charadrius dubius). Gravel reefs are important breeding areas for fishes, and as such they play an essential role in the life-cycle of Natura 2000 fish species. Based on the above scientific facts, the Association submitted a legally grounded request not to issue the permission for exploitation. Another NGO, Dráva Alliance reached the same conclusion. Both organizations made use of their legal standing in the case.

Despite expert opinions and statements, the authorities gave the permission for gravel exploitation. Both NGOs made an appeal to change this decision, arguing that the reefs would partly or entirely disappear, regardless of the fact that the planned exploitation would be authorized out of the breeding season of the fish. The surveys conducted by the Association in 2007 confirmed that the gravel reefs are living, resting and breeding areas for the above listed fish species under national and EU-level protection. The surveys found that out of the 14 species occurring during breeding season, 8 species (57%) are under protection on national or Community level. All of the listed protected species were represented by young specimens, evidencing that the site is also a breeding area. Out of 149, 130 of the caught fish (87%) belonged to species under national or EU-level protection.

These facts highlighted that the gravel reef is a habitat for a high number of protected species. Exploiting and destroying the reef would, without any doubt, have made irreversible damage in the valuable fish fauna of the river. As opposed to the findings of the Association, the authority referred to a preliminary impact assessment, in which a researcher of a renamed university had not found any fish at all on the reef. In the
second instance procedure, the authority found the concerns of the two NGOs substantiated, so obliged the first instance to carry out the permission procedure again. In the repeated procedure, the authority examined the impacts of gravel exploitation again, and concluded that such activities do not endanger natural values. Both NGOs made an appeal again, then the second instance – after “thorough reconsideration” – obliged again the first instance to start a new procedure. The arguments of the first instance authority presented in the permission decision were apparently lacking solid evidence, that the NGOs requested the state secretary for nature conservation to revise the objectivity of the authority’s procedure.

**Conclusion:**

The Environmental Impact Assessment can be a useful tool for biodiversity. In all three case studies, infrastructure projects were eventually stopped or postponed. In Estonia, the transportation link was delayed for 2018-2020, in Bulgaria the tourist development project was halted and in Hungary the exploitation works were stopped. Nevertheless, while these case studies provide an encouraging view on the implementation of the Directive in the CEE region, it should be noted that in some cases the decision of halting environment-harmful infrastructure projects was taken mostly by taking into consideration economic rather than environmental factors – e.g. in Estonia the project was seen as unfeasible at present but potentially realizable in the future. Also, it should not be forgotten that in all cases an important cause for action was the involvement of experts and environmental NGOs and the role of authorities themselves was not well-defined. The cases also show that the EIA procedure itself present a series of inconsistencies and gaps in implementation, among which it is worth mentioning:

- Consideration of all Annex III criteria in the screening procedure;
- The designation process of national thresholds for Annex III;
- Public participation in the screening and scoping procedures;
- The amount of time allowed for judicial review of screening and scoping decisions;
- Assessment of projects as a whole and not in sections (a technique known as ‘salami-slicing’);
- Consideration of all potential impacts of projects;
- Consideration of all alternatives and solid justification for the ultimate choice;
- Examination and approval of the EIA by an independent expert body;
- Implementation of EIA finding and recommendations throughout project development.

Overall, using EIAs as tools for nature protection in CEE is possible but there is a need for institutional strengthening and active involvement of public, experts and NGOs.
Further reading


