



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

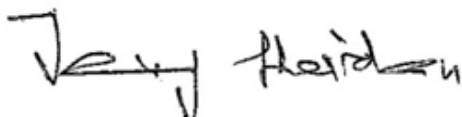
29. The public must be informed electronically and by public notices or by other appropriate means of matters set out in Article 6(2) of the 2014 Directive. Relevant environmental information should be made electronically accessible to the public by the Competent Authority.
30. The Competent Authority 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 EIATransposition@housing.gov.ie phone 01 8882873.



Terry Sheridan
Principal
Planning Policy

cc all Government Departments
Environmental Protection Agency