
Key Issues Consultation Paper

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2 May 2017
Introduction

Directive EIA 2014/52/EU\(^1\) amends EIA law in a number of respects by amending Directive 2011/92/EU\(^2\). The Directive requires to be transposed by 16 May 2017, necessitating changes in laws, regulations and administrative provisions across a number of legislative codes.

This paper focuses on changes required in the planning code (Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2000-2015).

Similar changes to those provided for in the planning code are likely to be required in the other affected legislative codes, and it anticipated that the policy approaches identified in this paper will largely be incorporated into these other codes, subject to necessary adjustment required to conform to the specifics of the EIA processes in those codes.

In view of the need for timely transposition of the 2014 Directive, it is intended to adopt an approach requiring minimum regulatory changes consistent with full transposition and achievement of the aims of the Directive.

This paper sets out the significant provisions of the 2014 Directive which require consideration in regard as to how it is intended to transpose them in the planning code. For each issue,

- the relevant 2014 provision(s) is/are set out,
- the changes from the 2011 Directive are identified,
- the manner in which the existing provisions are transposed into the Irish planning code is identified,
- key considerations are discussed, and
- the proposed approach for transposition is set out.

It is intended to transpose those elements of the Directive where transposition is mandatory, and elements of the non-mandatory provisions where relevant to maintain existing Irish law provisions. Other than those optional elements identified in the paper, it is not proposed to transpose other optional elements.\(^3\)

The proposed approaches for transposition of the Directive are subject to approval by Government, as necessary.

Extent of consultations

This paper has been issued for comment to the bodies prescribed under Planning legislation as the key stakeholders for the transposition. It has also been sent to the Irish Environmental Pillar – Irish Environmental Network for comment.

The paper has been placed on the website of the Department of Housing, Planning, Community and Local Government to facilitate any wider public consultation arising.

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\(^3\) The European Commission has prepared an informal checklist to help Member States when transposing the Directive, which is available on DG Environment’s EIA webpage.
Key Changes introduced by the 2014 Directive

1. Reduce administrative burdens – joint or coordinated procedures when Appropriate Assessment also required.

2. Refinement of environmental factors to be considered in assessment – resource efficiency, climate change, biodiversity and disaster prevention.

3. Screening procedure strengthened. New information requirements for developer (Annex IIA) and new selection criteria to be used by the competent authority in making Determination (Annex III).

4. Information to be contained in Environmental Impact Assessment Report (EIAR) (Annex IV) is expanded.

5. Requirement for developer have competent experts to prepare EIAR and for competent authority to have, or have access to sufficient expertise to assess the EIAR.

6. Decisions must be reasoned.

7. Public access to information.

8. Monitoring requirements, where appropriate.

The implications of each of these key changes are discussed under the relevant Article of the 2014 Directive in the body of the paper.
Other Legislative Codes
Similar changes will be required to be made in the following legislative codes under the aegis of the relevant Departments:

Department of Agriculture, Food & the Marine
Agriculture
Aquaculture
Forestry

Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs
National Monuments
Wildlife

Department of Communications, Climate Action & Environment
Environmental Liability
Environmental Protection Agency (EPA)
Inland Fisheries
Integrated Pollution Prevention and Control
Petroleum, Gas, Mineral
Waste Management

Department of Justice and Equality
Prisons

Department of Public Expenditure & Reform (Office of Public Works)
Arterial Drainage
Coast Protection
Flood Management

Department of Transport, Tourism and Sport
Air Navigation
Harbours
Railways
Roads

Department of Housing, Planning, Community and Local Government
Dublin Docklands Development Authority
Foreshore
Urban Renewal
Water Services

Department of Jobs, Enterprise and Innovation
The Health and Safety Authority will require to be involved more closely in the EIA process, but this is not likely to require legislative change.
**Definition of EIA Process**

<table>
<thead>
<tr>
<th>Article 1(2)(g)(^4)</th>
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<tr>
<td>“environmental impact assessment” means a process consisting of:</td>
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<tr>
<td>(i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);</td>
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<tr>
<td>(ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;</td>
</tr>
<tr>
<td>(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 with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;</td>
</tr>
<tr>
<td>(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</td>
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<tr>
<td>(v) the integration of the competent authority’s reasoned conclusion into any of the decisions referred to in Article 8a.</td>
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1. This term was not defined in the 2011 Directive, and its inclusion addresses aspects of the judgment in ECJ Case C-50/09, clarifying that EIA is a process with shared responsibilities between the developer and the competent authority.

2. Section 171A of the Planning and Development Act 2000, as amended, defines EIA as “[including] an examination, analysis and evaluation by a planning authority or the Board, as the case may be ...”.

3. Section 171B specifies that the carrying out of an EIA is the responsibility of the planning authority or the Board, as the case may be.

**Proposed Approach**

4. The definition of EIA in Sn 171A of the Planning and Development Act 2000, as amended, will be deleted and replaced with a definition conforming to the definition included in the 2014 Directive. This will clarify the limits of the responsibility of the competent authority.

5. Care will be needed to make any necessary consequential amendments to the Planning and Development Act 2000, as amended, to ensure that the remaining provisions of the Act, taken together with the new definition to be provided, remain in conformity with the Directive.

6. As the definition of EIA is of a process, it is noted that some elements of the process will be dealt with specifically elsewhere in the transposition, including the responsibility of the developer to prepare the Environmental Impact Assessment Report (EIAR) and the responsibility of the competent authority to provide reasoned conclusions (see discussion on Art 8a(2).

7. It is recognised that the structure and content of the orders containing the decisions of the competent authority may require to be changed.

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\(^4\) Except where otherwise indicated, references to Articles are to Articles of Directive 2011/92/EU as amended by Directive 2014/52/EU.

\(^5\) Text in *black italics* is text of the amended Directive which it is mandatory to transpose.
Exemption for Defence and Civil Emergency Projects

**Article I(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, having 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.

8. This provision is more restrictive in respect of defence projects than Art 1(3) in the 2011 Directive. The 2011 Directive referred to “projects serving national defence purposes”. It does not apply to “parts of projects”.


10. Section 181B(4) of the Planning and Development Act 2000, as amended, provides for the Minister for Defence to grant an exemption from the requirement to prepare an EIS or a Natura Impact Statement in accordance with Art 1(3) of the 2011 Directive.

11. Art 3(1)(a) of the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. No. 435/2004) excludes “plans or programmes the sole purpose of which is to serve national defence or civil emergency” from SEA.

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**Proposed Approach**

12. It will be necessary to update Sn 181B(4) of the Planning and Development Act 2000, as amended, in respect of defence projects, primarily to refer to “sole purpose” and to provide for “parts of projects”.

13. It is proposed to provide for the appropriate Minister, in response to a civil emergency, to similarly exempt projects having the response to civil emergencies as their sole purpose from the requirements to prepare an EIAR or a Natura Impact Statement.

14. There is no specific definition of “civil emergency” in Irish legislation (the closest is the definition in the Communications Regulation (Amendment) Act 2007 (“emergency service” means the Garda Síochána, a fire brigade, ambulance service, the Irish Coast Guard or a civil emergency service). It is not intended to provide a tailored definition in the transposition.

15. It is noted that the exemption from the requirements of EIA being provided for in respect of civil emergencies does not extend to exempting such projects from Appropriate Assessment (AA), where this would arise.

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6 Text in *grey italics* is text of the amended Directive which it is optional to transpose.
Joint/Coordinated Procedures

Article 2(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 Council Directive 92/43/EEC\(^7\) and/or Directive 2009/147/EC\(^8\) 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 sub-paragraph, 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\(^9\) 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\(^10\), 2009/147/EC or 2010/75/EU\(^11\).


17. In practice, there is a coordinated approach currently in place in cases of development requiring EIA and Appropriate Assessment (AA) under the Habitats Directive, as the competent authority for development consent applications is the same in both cases as set out in the Table following.

<table>
<thead>
<tr>
<th>Type of development</th>
<th>Competent authority</th>
<th>EIA provision</th>
<th>AA provision</th>
</tr>
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<tbody>
<tr>
<td>Private development</td>
<td>LA, and ABP on appeal</td>
<td>Sn 172(1) read with sn 172(1A)(a) of the P&amp;D Act 2000</td>
<td>Sn 177S(2)(f) of the P&amp;D Act 2000</td>
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<tr>
<td>Strategic infrastructure development</td>
<td>ABP</td>
<td>Sn 37A(1) of the P&amp;D Act 2000</td>
<td>Sn 177S(2)(g) of the P&amp;D Act 2000</td>
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<table>
<thead>
<tr>
<th>Type of development</th>
<th>Competent authority</th>
<th>EIA provision</th>
<th>AA provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development in Strategic Development Zones (SDZ)</td>
<td>Planning authority</td>
<td>Sn 172(1) of the P&amp;D Act 2000 by reference to sn 172(1A)(a)(i)(II) of the same Act</td>
<td>Sn 177S(2)(f) of the P&amp;D Act 2000</td>
</tr>
<tr>
<td>Development by LA requiring: EIA (Part X); AA (Part XAB); LA own development (Part XI)</td>
<td>ABP</td>
<td>Sn 172(1) read with sn 172(1A)(a) and sn 175(2) of the P&amp;D Act 2000</td>
<td>Sn 177S(2)(h) of the P&amp;D Act 2000</td>
</tr>
<tr>
<td>LA foreshore development</td>
<td>ABP</td>
<td>Sn 172(1) read with sn 172(1A)(a) and sn 226(1) of the P&amp;D Act 2000</td>
<td>Sn 177S(2)(h) of the P&amp;D Act 2000</td>
</tr>
<tr>
<td>Development by State authority (Part XI)</td>
<td>ABP</td>
<td>Sn 172(1) read with sn 172(1A)(a) of the P&amp;D Act 2000</td>
<td>Sn 177S(2)(h) of the P&amp;D Act 2000</td>
</tr>
<tr>
<td>Roads Development</td>
<td>ABP</td>
<td>Sn 51(2) of the Roads Act 1993, as amended by sn 9(1)(e) of the Roads Act 2007</td>
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<tr>
<td>Waste Licence</td>
<td>EPA</td>
<td>To be confirmed (TBC)</td>
<td>TBC</td>
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<tr>
<td>IPPC Licence</td>
<td>EPA</td>
<td>TBC</td>
<td>TBC</td>
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<tr>
<td>IED Licence</td>
<td>EPA</td>
<td>TBC</td>
<td>TBC</td>
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18. In the case of EIA and AA, ‘joint procedures’ would require a single assessment of the environmental impact of a project to be carried out.

19. ‘Coordinated procedures’ would require coordination of the EIA and AA by a single competent authority, but would allow for flexibility for the developer and the competent authority in regard to phasing of processes. The assessments under AA and EIA, as these serve different purposes under the Birds and Habitats Directive on the one hand and EIA on the other, would remain separate.

20. Both joint and coordinated procedures would apply to all elements of the EIA and AA processes, from scoping onwards.

21. The other Directives envisaged where a joint or coordinated approach could be provided for are:

Water Framework Directive: 2000/60/EC
SEA Directive: Directive 2001/42/EC\(^{12}\)
Waste Framework Directive: 2008/98/EC\(^{13}\)
Industrial Emissions: Directive 2010/75/EU (IPPC)
Seveso-III Directive 2012/18/EU\(^{14}\)


22. Not all of these Directives are transposed into Irish law via the planning system.

**Proposed approach**

23. It will be made mandatory for the relevant competent authority to carry out coordinated procedures in cases where EIA and AA are both required, from the scoping stages onwards.

24. It is not intended, at this time, to provide for either a joint or coordinated approach with EIA in respect of legislation relating to Directives other than the Habitats and Birds Directives.

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## Exemptions

**Article 2(4)**

Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project 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.

**Article 2(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.

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25. Art 2(4) is a restatement of the exemption provided for in the 2011 Directive, with the inclusion of a basis for the exemption (“adversely affecting on the purpose of the project”).

26. This provision has not been included in the Planning Code to date.

27. Art 2(5) is new, and exempts (from the public consultation process only) developments approved by specific legislation passed by the Oireachtas.

28. While it would possible to approve a project by way of an Act of the Oireachtas, such as via a Private Act, and this mechanism has been used in the past, this is not a mechanism currently used or contemplated.

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**Proposed approach**

29. It is not intended to transpose either of these provisions at this time.
Population and Human Health

Article 3(1)
The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:

(a) population and human health;
...

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:
...
(g) the risks to human health (for example due to water contamination or air pollution).
...

ANNEX IV

INFORMATION REFERRED TO IN ARTICLE 5(1) (INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT)

...
4. A description of the factors specified in Article 3(1) likely to be significantly affected by the project: population, human health, 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, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.
...
5. A description of the likely significant effects of the project on the environment resulting from, inter alia:
...
(d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
...
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.


31. The recitals to the 1985 and 2011 Directives refer to “human health” and include “human beings” as the corresponding environmental factor. The 2014 Directive changes the title of this factor to “population and human health”.

32. The background documents to the revision of the EIA Directive\(^{15}\) make it clear that the Commission’s intentions in changing the reference to “human health” is to improve consistency between the EIA Directive and sectoral assessment obligations deriving from other Directives (e.g. SEA Directive, Industrial Emissions Directive, Habitats and Birds Directives, Water and Marine Framework Directives, etc) or international conventions (e.g. Aarhus and Espoo). Consistency with the SEA and Industrial Emissions Directives was sought in particular.

33. As yet, there is no guidance from the EU Commission on the 2014 EIA Directive to indicate how the new term ‘human health’ should be addressed. However, the EU Commission’s SEA Implementation Guidance from 2003\(^{16}\) does give an indication of how ‘human health’ should be considered in terms of environmental assessment.

> “The notion of human health should be considered in the context of the other issues mentioned [in the list of factors to be identified, described and assessed] and thus environmentally related health issues such as exposure to traffic noise or air pollutants are obvious aspects to study.” (para 5.26).

### Proposed approach

34. It is considered that the change from “human beings” to “population and human health” in relation to EIA is primarily clarificatory and to ensure consistency with, in particular, the SEA Directive.

35. It is intended that the consideration of the effects on populations and on human health should focus on health issues and environmental hazards arising from the other environmental factors, for example water contamination, air pollution, noise, accidents, disasters, and not requiring a wider consideration of human health effects which do not relate to the factors identified in the Directive.

36. It is not considered this should be understood as requiring consideration of social and/or economic impacts.

37. Where other health and safety requirements are addressed in accordance with other regulatory requirements, the EIA report should take account of the results of such assessments without duplicating them.

38. Guidance on the information in relation to ‘population human health’ to be included in an Environmental Impact Assessment Report will be provided.


**Screening**

Article 4(3)

*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.*

Article 4(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 the 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 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.*

39. These two sections are new to Directive 2014/52/EU. Article 4(3) is optional and Article 4(4) is mandatory.

40. Article 4(3) allows Member States to set thresholds or criteria where projects must undergo EIA without a screening determination, and/or when projects need not undergo either a determination or an EIA. These are Annex II projects.

41. Article 4(4) introduces a new Annex IIA to be used in the case of a request for a screening determination for Annex II projects. This is information to be provided by the developer on the projects listed in Annex II (see below).

**Annex IIA**

**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.

4. The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.:
42. Article 4(4) specifies that the developer may provide a description of any features of the project and/or mitigation measures to avoid or prevent what might otherwise have been significant effects on the environment (underlining added). It should be noted that this does NOT include compensation measures.

43. Article 4(4) requires that the developer take into account where relevant, available results of other relevant assessments of the effects on the environment carried out under other EU legislation.

44. The main legal provisions are in the Planning and Development Act 2000, as amended, as follows:

45. Sn 172(1)(b)(II) – PA or ABP can determine that proposed development would be likely to have significant effects on the environment.

46. Sn 173A(5)(b) – Where PA or ABP are obliged to make a determination and IPPC or Industrial Emissions licence are also required, observations from the Agency must be requested and taken into account before the determination is made.

47. Sn 173B(5)(b) - Where PA or ABP are obliged to make a determination and a Waste licence is also required, observations from the Agency must be requested and taken into account before the determination is made.

48. Sn 176A – (inserted by the Planning and Development (Housing) and Residential Tenancies Act 2016 (Sn 26); not yet commenced) – provides for screening determination request for both EIA and AA to planning authority. There is a requirement for mandatory screening where the proposed development is of a class prescribed (expected to be prescribed upon commencement of sn 176A).

49. Sn 176C – provides for review of PA determination to be made to ABP (not yet commenced).

Proposed Approach

50. It is not proposed to transpose Article 4(3), which is optional, at this stage. The possibility of transposing it after the main transposition is completed will be urgently considered (e.g. higher thresholds than currently provided in Part 2 of Schedule 5 of the Planning and Development Regulations 2001-2015 for mandatory EIA and thresholds below which EIA will not be required, with projects falling between these thresholds requiring to be screened for EIA).

51. Article 4(4), which is mandatory, will be transposed into amended legislation.

52. Annexes IIA and III are mandatory and will be transposed into amended legislation.

53. Guidance should address the requirement for the developer to take account of the results of other relevant assessments of the effects on the environment.
Screening Determination

**Article 4(5)**
The competent authority shall make its determination, on the basis of 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.

54. This is a new provision in Directive 2014/52/EU; there was no similar provision in the earlier Directive.

55. A key implication of this Article is that the screening determination made by the competent authority, whether positive or negative, must be based on the information provided by the developer and take into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out under EU legislation other than the EIA Directive.

56. Where the determination of the competent authority is positive requiring EIA, the main reasons for the determination must be given with reference to the relevant criteria listed in Annex III (criteria to determine whether the projects listed in Annex II should be subject to EIA). It should be noted that Annex III is amended in the 2014 Directive.

57. Where the determination of the competent authority is negative and not require EIA, the main reasons for the determination must be given with reference to the relevant criteria listed in Annex III and, where the developer has provided a description of any features of the project and/or mitigation measures designed to avoid or prevent significant effects on the environment, these must also be referenced in the determination.

58. The determination and reasons must be made available to the public.

59. The main legal provisions in respect of screening are in the Planning and Development Regulations 2001-2015, as follows:

60. Art 103 – where proposed development is sub-threshold and likely significant effects or potential impact on designated sites cannot be excluded, the PA must make a determination. The determination is to include reasons and considerations;

61. Art 109 – Similar requirements for ABP;

62. Art 120 – where LA proposing to carry out sub-threshold development the authority must make a determination. ABP can make a determination in case of LA sub-threshold development. Any person can make request to ABP to make a determination in the case of LA sub-threshold development;

63. Art 123A – the same provisions as in paragraph 62 apply in respect of proposed development by State authorities.
### Proposed Approach

64. Is proposed to transpose Article 4(5) into amended legislation.

65. It is proposed to transpose Annex III into amended legislation.

66. Guidance will address the issue of relevant preliminary verifications or assessments of the effects on the environment carried out under other EU legislation.

67. The requirement to make the determination available to the public may include publication on weekly lists, websites and possibly other social media. This will be addressed by way of future guidance.
### Timeframe for determination

<table>
<thead>
<tr>
<th>Article 4(6)</th>
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<tbody>
<tr>
<td>Member States shall ensure that the competent authority makes its determination as soon as possible and within a period 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.</td>
</tr>
</tbody>
</table>

68. This is a new provision in Directive 2014/52/EU. No similar time-frame was included in the previous Directive.

69. The mandatory part of this Article is the first paragraph. It prescribes a time period not exceeding 90 days for the making of a screening determination by the competent authority. The time period starts when the developer has submitted all of the information required.

70. The transposition of the second paragraph is optional for Member States. It allows for an extension of time for the making of a screening determination by the competent authority in exceptional cases. In such cases the competent authority must, in informing the developer in writing, state the reasons justifying the extension of time and state the expected date for the determination.

### Proposed Approach

71. The wording of this Article is flexible allowing for a time-frame not exceeding 90 days. It is considered that a 90 day time-frame is likely to be excessive in some but not all cases, so it is proposed to include a 90 day time-frame in amended legislation and also to transpose the optional paragraph in this Article allowing the competent authority to extend the deadline when there are reasons justifying such an extension.
Alternatives to the proposed development

Article 5(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:

... (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;
...

ANNEX IV

INFORMATION REFERRED TO IN ARTICLE 5(1) (INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT)

...
2. 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 selecting the chosen option, including a comparison of the environmental effects.
...


73. There is no corresponding reference in the 2011 Directive to “the reasonable alternatives ... which are relevant to the project and its specific characteristics”.

74. The 2011 Directive refers to the developer providing “an indication of the main reasons for his choice, taking into account the environmental effects”.

75. The 2014 Directive makes it obligatory to address the issue of “reasonable alternatives” in any determination on scoping made by the competent authority (Art 5(1) final sub-paragraph and Art 5(2)).

76. The 2011 provisions are transposed into Irish law by Art 94 and Para 1(d) of Schedule 6 of the Planning and Development Regulations 2000-2015.

Proposed approach

77. Transposition is mandatory.

78. Guidance will be developed on the requirement to study reasonable alternatives, including reference to the fact that some alternatives may already have been studied in relevant SEAs. The guidance will also deal with relevant considerations, including ‘do nothing’ alternative(s), alternative site(s), alternative design(s)/layout(s), alternative processes(s), alternative mitigation measure(s). Reference will also be made to the requirement that “reasonable alternatives ... relevant to the project and its specific characteristics” are required to be studied.

79. The initial guidance will be provided in an update of the Department’s “Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment”\(^\text{17}\) and

\(^{17}\) Guidelines published in 2013 are available [here](#).
augmented by the EPA in its Guidelines and in the EPA’s update of its “Advice Notes on Current Practice (in the preparation of Environmental Impact Statements)”\(^\text{18}\).

80. Where a developer does not provide a description of any reasonable alternative, the guidance will deal with the need for the developer to provide his or her reasons for taking the view that there is no reasonable alternative.

81. It will also be made clear in the guidance that a separate Environmental Impact Assessment Report (EIAR), or ‘mini-EIA’ will not be required for the reasonable alternatives described.

\(^{18}\) Advice Notes published in 2003 are available [here](#).
### Scoping Opinion

<table>
<thead>
<tr>
<th><strong>Article 5(1)</strong></th>
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<tbody>
<tr>
<td>... 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. ...</td>
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</table>

<table>
<thead>
<tr>
<th><strong>Article 5(2)</strong></th>
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<tbody>
<tr>
<td>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 authorities referred to in Article 6(1) before it gives its opinion.</td>
</tr>
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</table>

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

---

82. Art 5(1) is a new provision in Directive 2014/92/EU.

83. The first paragraph of Art 5(2) is based on Article 5(2) of the 2011 Directive and essentially clarifies the scoping stage.

84. Scoping is a process of determining the content and extent of the matters which should be covered in the environmental information to be submitted in an EIS report (EIAR).

85. For developments requiring planning consent scoping is currently carried out under the planning system. A developer can request a planning authority or An Bord Pleanála to issue a scoping opinion setting out the information to be contained in an EIS (EIAR) for a proposed project.

86. Where a scoping request is made to a planning authority, that authority must consult with An Bord Pleanála and relevant Prescribed Bodies before issuing an opinion.

87. Where a scoping request is made in respect of a proposed project involving licensing from the EPA, the Agency has a statutory consultee role.

88. Further information may be requested by the competent authority before a competent authority issues a scoping opinion.

89. The second paragraph of Art 5(2), which is optional, provides that Member States can choose to make it mandatory that competent authorities have to give a scoping opinion irrespective of whether the developer so requests.

90. Under the provisions of the EPA Act 1992, as amended the Agency has issued ‘Guidelines on the information to be contained in environmental impact statements’, The March 2002 Guidelines are currently being updated.

91. The main legal provisions are in the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2001-2015, as follows:

92. Sn 173(2)(a) – An applicant or person intending to apply for permission may request planning authority to give a written opinion. Must consult with ABP and Prescribed Bodies.
93. Sn 173(3)(a) – Similar request may be made to ABP.

94. Sn 181C(3)(b) – A State Authority may request ABP to give a written opinion on information to be contained in an EIS, NIS or both.

95. Art 95 – Procedure for scoping requests.

96. Art 117 – In case of LA development, the authority may request ABP to provide a written opinion.

97. Art 123A – Development by State Authority. Requirement for State Authority to make determination where likelihood of significant effects etc. cannot be excluded. ABP can make determination in respect of State development.

98. Note: All determinations must have regard to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001-2015.

### Proposed Approach

99. Art 5(1) is mandatory and will be transposed by amendment of the Act.

100. The first paragraph of Art 5(2) is mandatory and will be transposed by amendment of the Act.

101. It is not proposed to introduce mandatory scoping as set out in the second paragraph, which is optional.
Competent Experts

Article 5(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.

102. This is a new provision in Directive 2014/52/EU. There is no comparable provision in the previous Directive.

103. Under this Article the developer must ensure that the EIA report (EIAR) is prepared by competent experts.

104. The Article specifies that the competent authority must ensure that it has sufficient expertise to examine the EIAR.

105. It is not proposed to define the terms ‘competent experts’ or ‘sufficient expertise’ in legislation given the broad and diverse range of EIA topics and the different areas of specialist expertise.

106. It is a requirement of the EIA process to consult with statutory consultees and to take into account any submissions made by these consultees. Such submissions may contain expert specialist opinions on topics to be assessed in the EIA process (see Article 6(1)).

Proposed Approach

107. This Article is mandatory and will be transposed into amended legislation.

108. It is proposed that the competency of experts preparing an EIAR should be a matter for each competent authority, having regard to the diverse range of EIA topics and areas of specialist expertise.

109. It is proposed that the issue of access to sufficient expertise to examine the EIAR should be a matter for each competent authority.

110. Annex IV, which amends the previous Directive, will be transposed into amended legislation.

111. Guidance will address the issue of ‘expertise’ in both the preparation and assessment of EIARs.

112. It would be good practice for the EIAR to state who prepared each element of the EIAR and list the qualifications and experience of each such person to assist the competent authority satisfy itself as to the competency of the experts who prepared the EIAR. The level of expertise required for each element of the EIAR would depend on the nature and importance of that element vis-à-vis the size, nature and location of the project and the receiving environment and the likely significant impact on that environment.
**Prescribed Authorities**

**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 the 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.*

113. This Article is similar in wording to Article 6(1) of 2011/92/EU for the most part. A significant amendment is that it recognises authorities with local and regional competences as important in the EIA process and ones to be consulted.

114. Authorities to be consulted are already prescribed in the Irish planning system and, other than the addition of authorities with local and regional competences, there should be no change arising from this Article.

115. Current legal provisions of the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2001-2015 are:

116. Art 28 – Relates to the notification of Prescribed Bodies when a planning authority receives a planning application.

117. Art 95(2) – PA or ABP, on receipt of a scoping request must consult with Prescribed Bodies.

118. Art 121 – Notification of Prescribed Bodies in case of local authority developments.

**Proposed Approach**

119. This Article is mandatory and will be transposed into amended legislation.

120. It is proposed that the appropriate administrative level is at competent authority level.
Electronic notification of the public and electronic access to information to enable public consultation

**Article 6(2)**

In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed 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 719 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;

(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

...

**Article 6(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.

121. The reference to electronic notification in the corresponding provision of the 2011 Directive is permissive rather than mandatory, as is now the requirement in the 2014 Directive. There is now a statement of the purpose of the notification (“to ensure the effective participation of the public concerned in the decision-making procedures”). The matters to be provided electronically are unchanged from the 2011 to the 2014 Directive.

122. There is no reference to a “central portal or easily accessible points of access, at the appropriate administrative level” in the 2011 Directive. It is left to the Member States to determine the means of ensuring that relevant information is electronically accessible to the public through a central portal or easily accessible points of access, at the appropriate administrative level.

123. Art 97 of the Planning and Development Regulations 2001-2015 requires a developer to submit a copy of the EIS electronically. Section 34(1A)(a) permits a planning authority to publish notice of its decision in the case of an application required to be accompanied by an EIS by way of “one or more newspapers ... and/or by electronic means informing the public ...”. There are further provisions,

19 This Article deals with circumstances where it is likely that the project will have significant effects on the environment in another Member State (i.e. there are transboundary implications).
Proposed approach

124. The existing permissive requirements to provide notifications, make documents available, etc., electronically will be extended and made mandatory as required, including a requirement that the developer provide all information in electronic form.

125. Article 6(2) is mandatory and will be transposed into amended Regulations. The requirement that the public “shall be informed electronically” will be met by providing that the required information following receipt of the EIS will be included on the planning authority’s website, and included in the weekly planning list, which will be required to be published on the website. This will require amendment of Art 27(5)(a) of the Planning and Development Regulations 2000-2015.

126. For projects, or parts of projects, being developed within the functional area of a local authority, the appropriate administrative level for providing an easily accessible point of access will be at this level. Provision will need to be made that all competent authorities, across all legislative codes, must provide sufficient information to the planning authority or planning authorities in whose functional area the development is proposed, and for the planning authority or authorities to include the required information in their weekly planning list. If it is not the competent authority itself, the planning authority will be required to maintain a hyperlink to the website of the competent authority.

127. Guidance will be provided in relation to the use of social media (e.g. twitter, Facebook, RSS feeds), where these are used by the planning authority.

128. For projects which are wholly offshore, the ‘appropriate administrative level’ for electronic notification etc. will be the relevant competent authority.

129. To meet the requirements of the first part of Art 6(2) (effective public participation), there will be a requirement that all the specified information will be maintained publicly accessible via the competent authority’s website.

130. Since the relevant information will be made electronically accessible via the planning authority’s website, thus meeting the requirements of the requirements of Art 6(5) of the Directive, it is not proposed to provide for a central portal.

131. It is important that a level of consistency is reached in providing electronic accessibility and this issue will be addressed in future guidance.

132. Consideration is being given to providing guidance on not publishing a defamation (Defamation Act 2009) and conforming to the requirements of the Data Protection Acts 1988 and 2003.
**Time-frames**

**Article 6(6)**
*Reasonable time-frames for the different phases shall be provided for, allowing sufficient time for: (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.*

**Article 6(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.*

133. This is an expansion of a similar provision in the 2011 Directive. It includes the requirement for a reasonable time-frame allowing authorities with specific environmental responsibilities or local and regional competences to participate in decision making. It is not considered that this Article introduces significant change to current procedures.

**Proposed Approach**

134. This Article is mandatory and will be transposed into amended Regulations.
**Information to be included in a decision**

**Article 8**

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

135. This is similar to a provision in the 2011 Directive with the addition of the word “duly”.

**Proposed Approach**

136. This Article is mandatory and will be transposed by amendment to the Planning and Development Act 2000.
### Information to be included in a decision to Grant

<table>
<thead>
<tr>
<th>Article 8a(1)</th>
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<tbody>
<tr>
<td>The decision to grant development consent shall incorporate at least the following information:</td>
</tr>
<tr>
<td>(a) the reasoned conclusion referred to in Article 1(2)(g)(iv);</td>
</tr>
<tr>
<td>(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.</td>
</tr>
</tbody>
</table>

137. This is a new provision indicating the information to be incorporated into a grant of development consent. The first part refers to the reasoned conclusion by the competent authority on the significant effects on the environment, having considered the EIAR and any supplementary information provided by the developer.

138. Other information which must be incorporated into a positive consent decision includes the following:
   - 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 appropriate.

### Proposed Approach

139. This Article is mandatory and will be transposed into amended Regulations.

140. It is considered that this Article may require amendments to be made to the format of decision orders to grant consent issued by the competent authority. It is proposed that this issue be addressed in future guidance.
Information to be included in a decision to Refuse

Article 8a(2)
*The decision to refuse development consent shall state the main reasons for refusal.*

141. ECJ case law requires that, where consent is refused, the competent authority must state the reasons for refusal. This appears to be common practice in the Irish planning system.

**Proposed Approach**
142. This Article is mandatory and will be transposed into amended Regulations.
Monitoring

Article 8a(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 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.

143. This is a new provision. Under this Article the competent authority must ensure that mitigation features and/or measures incorporated into the design of a project are implemented by the developer.

144. The development consent should set out procedures for the monitoring of significant adverse effects on the environment.

145. The type of parameters to be monitored and the duration for monitoring must be proportionate to the nature, location and size of the project and the significance of its effects on the environment. This will be a matter for the competent authority.

146. Monitoring should be focused and not used as a general means of gathering environmental information.

147. The third paragraph in Article 8a(4), the transposition of which is optional, seeks to avoid duplication of monitoring under other EU or national legislation.

Proposed Approach

148. The first two paragraphs in this Article are mandatory and will be transposed into amended Regulations.

149. The third paragraph is optional. To streamline procedures and avoid duplication, it is intended to transpose this provision.
Information to be made available to the public

**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 national procedures, and shall ensure that the following information is available to the public 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) 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.

150. This is similar to the wording of Article 9 of the 2011 Directive. There is a new requirement to promptly inform the public and Prescribed Bodies when a decision is made to grant or refuse development consent. Having regard to the current legislative provisions it is not considered that this will require any significant change.

151. The competent authority in respect of a development consent decision must make information available to the public in respect of the public participation process and include a summary of the results of the consultations and information gathered throughout the EIA process and how those results have been incorporated or otherwise addressed.

152. While it is considered that this Article may not involve significant changes to procedures in respect of planning consent, there may be implications for competent authorities responsible for granting other forms of consent for EIA related developments.

153. Sn 38 of the Planning and Development Act 2000 requires a planning authority to make available, for public inspection, documentation in relation to a decision on a planning application within 3 working days. The information must be made available at the offices of the authority and may also be made available on the authority’s website or otherwise in electronic format. This section requires information to be available for inspection for a period of not less than 7 years; there is no time period mentioned in the 2014 Directive.

154. Art 31 of the Planning and Development Regulations 2001-2015 details information which a decision by a planning authority must specify. This includes the main reasons and considerations on which the decision is based, and reference to regard being had to submissions or observations received in accordance with the Regulations.

155. Art 74 of the Planning and Development Regulations 2001-2015, in relation to decisions on an appeal under sn 37 of the Act, requires ABP to specify the main reasons and considerations on which the decision is based, and reference to regard being had to submissions or observations received in accordance with the Regulations.

**Proposed Approach**

156. This Article is mandatory and will be transposed into amended planning legislation.

157. An elaboration of the terms of this Article will be included in Guidance.
**Conflict of Interest**

**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.*

158. In the Planning code, there is no instance where an authority is both the promoter of a project and the competent authority for determining an EIA.

159. It is noted that this may not be the case in all legislative codes.

160. It is not required to transpose this in the Planning code.
Penalties

**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.*

161. This is a new provision.

162. Section 151 of the Planning and Development Act 2000 provides for the offence of carrying out an unauthorised development, and the rest of Part VIII of the Act provides for enforcement procedures. By virtue of their nature and size, any development falling within the scope of Annexes I and II of the 2011 and 2014 Directives and within the remit of the Planning Code, requires planning permission and thus will be screened for EIA, and the EIA carried out where appropriate. Development in the absence of EIA in such cases would be unauthorised development.

163. The penalties on indictment provided for in Sn 156 of the Planning and Development Act 2000 are sufficient to meet the requirements of the 2014 Directive that they be “effective, proportionate and dissuasive”. An offence under Sn 151 attracts a fine of c. €12.7 million, or 2 years imprisonment, or both, with a continuing offence attracting a daily fine of c. €12,700, or 2 years imprisonment, or both. Where the offence involves the construction of an unauthorised structure, the minimum fine is the lesser of the cost of the construction or c. €12,700 (unless the person convicted can show to the court’s satisfaction that they do not have the financial means to pay the minimum fine.

164. Section 158 of the Planning and Development Act 2000 relating to offences by bodies corporate does not apply to an offence committed by a competent authority, but in the event of such an offence leading to the granting or refusal of development consent, affected parties have recourse to judicial review in the courts.

**Proposed Approach**

165. The requirements of Art 10a are already provided for in the Planning and Development Act 2000 and no further transposition is required.
Arrangements for Pre-Existing Applications

**Article 3 (of Directive 2014/52/EU)**

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:
   
   (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.

166. Article 3(1) provides that where an application for development consent is made before 16 May 2017 in the case of a project listed in Annex II, and the screening for whether an EIA is required in respect of the application is commenced before this date, the screening must be carried in accordance with the provisions of the 2011 Directive.

167. In such cases, where the screening process determines that an EIA is required and the EIS is submitted after 16 May 2017, Article 3(1) does not provide that the 2011 Directive will apply; in such cases the 2014 Directive must apply to the EIA process after the screening is completed.

168. Article 3(2) provides that where a developer requests a scoping opinion before 16 May 2017, or where the developer has submitted an EIS in accordance with the requirements of the 2011 Directive by this date, the provisions of the 2011 Directive must apply to the EIA process in respect of the application for scoping or to the EIS, as appropriate.

**Proposed Approach**

169. It is proposed to provide that where screening has commenced before 16 May 2017 this must be in accordance with the requirements of the 2011 Directive.

170. Where a scoping request is made prior to 16 May 2017, or where an application for development consent which is accompanied by an EIS is received before this date, it will be provided that such applications must be dealt with in accordance with the 2011 Directive.

171. It will be provided that a request for further information under Art 108 of the Planning and Development Regulations 2000-2015 after 16 May 2017 will not act to invalidate an application for development consent made before this date.

172. Where an application requiring an EIA is received after 16 May 2017, or where an application was received before this date and screening, commencing after the date, determines that an EIA is required, these will fall to be dealt with under the 2014 Directive.

173. In the event that transposition is not possible by 16 May 2017, it is intended that the arrangements for pre-existing applications will be applied with effect from the date of the making of the transposing Regulations.

174. It will be a matter for the developer to decide whether to submit an application for development consent which requires screening, or to request scoping, or to submit an application accompanied by an EIS, in any interregnum between 16 May 2017 and the making of the transposing Regulations, if later.
## Selection Criteria for Screening

### 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\(^20\) to:

(a) the **size and design** of the whole project;

(b) 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 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, 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 national legislation; **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 and relevant to the project, or in which it is considered that there is such a failure;

\(^20\) **Bold text** in Annexes III and IV highlights significant/potentially significant changes from the 2011 Directive.
3. Type and characteristics of the potential impact

The 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, with regard 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 population likely to be affected);

(b) the nature of the impact;

(c) the transboundary nature of the impact;

(d) the intensity and complexity of the impact;

(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.

175. The main changes relate to the following:

- An elaboration/expansion of matters referred to in the 2011 Directive
- Additional matters to be considered
- Rewording of matters referred to in the 2011 Directive

Characteristics of projects

176. The elaboration/expansion include:

(a) The size and design of the whole project
(b) Cumulation with other existing and/or approved projects
(c) The use of natural resources, in particular land, soil, water and biodiversity

177. Significant additions include:

(f) The risk of major accidents 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)

Location of projects

178. The elaboration/expansion include:

(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) (i) wetlands, riparian areas, river mouths
(ii) coastal zones and the marine environment
(vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure
(viii) landscapes and sites of historical, cultural or archaeological significance

179. Rewording of paragraph 2(c)(v) to refer to areas classified or protected under national legislation.
**Type and characteristics of the potential impact**

180. The elaboration/expansion include:

The 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, with regard 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 population likely to be affected)

(b) The nature of the impact

(c) The transboundary nature of the impact

(d) The intensity and complexity of the impact

181. Significant additions include:

(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

### Proposed Approach

182. This Annex will be transposed in full as worded.

183. Guidance on the interpretation of the new and elaborated elements will be provided in the Department’s “Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment”.

Information to be included in the EIAR

ANNEX IV

INFORMATION REFERRED TO IN ARTICLE 5(1) (INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT)

1. Description of the project, including in particular:

(a) a description of the location of the project;

(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;

(c) a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;

(d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.

2. 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 selecting the chosen option, 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.

4. A description of the factors specified in Article 3(1) likely to be significantly affected by the project: population, human health, 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, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape [...].

5. A description of the likely significant effects of the 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 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.

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

7. A description of the measures envisaged to avoid, prevent, reduce 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.

8. 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.

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

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

184. The main changes relate to the following:

- An elaboration/expansion of matters referred to in the 2011 Directive
- Additional matters to be considered
- Rewording of matters referred to in the 2011 Directive

Information for the Environmental Impact Assessment Report

185. Additional matters to be included:

1(a) a description of the location of the project
5(a) the construction and existence of the project, including, where relevant, demolition works


the risks to human health, cultural heritage or the environment (for example due to accidents or disasters)
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
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
the technologies and the substances used

186. 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.

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 … 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 the proposed response to such emergencies.

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

187. The main elaborations/expansions include:

Description of the project
1(b) a description of the physical characteristics of the whole project, including, where relevant, requisite demolition works …
1(c) a description of the main characteristics of the operational phase of the project (in particular any production process) for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used
1(d) an estimate, by type and quantity, of expected residues and emissions (such as … subsoil pollution … and quantities and types of waste produced during the construction and operation phases

Description of 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 selecting the chosen option, including a comparison of environmental effects.

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.

Factors likely to be significantly affected by the project
Additional factors include … human health, biodiversity, land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example
hydromorphological changes, quantity and quality), … climate (for example greenhouse gas emissions, impacts relevant to adaption) … cultural heritage …

5. *Likely significant effects on the environment*
   (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 disposal and recovery of waste

6. *Description of forecasting methods*
   The description of forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. *Mitigation/Monitoring*
   A description of the measures envisaged to avoid, prevent reduce 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 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.

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<th>Proposed Approach</th>
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<td>188. This Annex will be transposed in full as worded.</td>
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| 189. Guidance on the interpretation of the new and elaborated elements will be provided in the Environmental Protection Agency’s “Guidelines on the information to be contained in Environmental Impact Assessment Reports” and accompanying “Advice Notes”. |