



# **Smarter EIA system through a deeper harmonization?**

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# Background and focus of the presentation

- Doctoral thesis on EU and Finnish EIA law (Pölonen 2007) & multidisciplinary studies on the effectiveness of the Finnish EIA legislation (2005-2010)
  - Synthesis (*Pölonen, I. – Hokkanen, P. – Jalava, K*): The Effectiveness of the Finnish EIA system – What works, what doesn't, and what could be improved? Environmental Impact Assessment Review (31) 2011, p. 120–128
- Report on the Commission's proposal (COM(2012) 628 final) for a new EIA Directive for the Finnish Ministry of Environment (2013)
  - analysis on the content, quality and needs for changes
- Presentation focuses on the needs and means for improving the Commission's proposal in terms of effectiveness, cost-efficiency and acceptability of the EIA legislation

# Important improvements in the Commission's proposal

- Mini-EIA in the screening phase (Art. 4(3) + Annex II.A)
- Supports higher quality EIA reports through
  - compulsory scoping (Art. 5(2))
  - more demanding content requirements (Annex IV)
  - sufficiency and quality assurance mechanisms for the environmental report. (Art. 5(3))
- Monitoring requirement (Art. 8(2))
  - testing and revising the predictions in light of experience
  - a significant tool for adaptive mitigation
- However, clear needs for clarifications and reconsiderations of the legal-technical choices (level of particularity and discretion)

# Main shortcomings of the proposal

- 1) Increases unnecessary administrative burdens
  - far from streamlining and lightening the EIA process
  - fails to utilize fully the expertise of developers and their duty to be aware of project's significant environmental impact

=> delays, increasing costs, loss of administrative resources
- 2) Regulates the means for screening, scoping, quality control and integration of environmental assessments in a too detailed manner

# Needs for reconsideration (Screening)

- Proposed Article 4(3): environmental assessment (EA) shall (always) contain the information detailed in Annex II.A
- => More discretion needed: the content of the EA should depend on the size, nature and location of the Annex II project
- Mitigation measures referred to Art. 4(5c) (for avoiding full-scale EIA)
  - 1) no assurance that mitigated effects (in pre-project phases) remain below EIA threshold in reality.
  - 2) environmental assessment would occur outside of public scrutiny.
- The scoping information shall be included in the screening decision (Art. 4(6))
  - more disadvantages than benefits? - developers often need an early screening decision

# Needs for reconsideration (Scoping)

- Art. 5(2) requires authority-driven scoping process
  - The developers have typically capacities and incentive to prepare the scoping document cost-efficiently.  
=> EIA Directive should leave more room for the arrangements where the developer has a more significant role and duties in the scoping phase.
- Inequality of the annex I and annex II projects
  - Scoping decision can be based on the environmental assessment but only Annex II projects are subject to EA.

# Needs for reconsideration (sufficiency and quality assurance)

- Sufficiency and quality control through accredited and technically competent experts or national experts (Art. 5(3)) .
  - Also competent authority (e.g. environmental agency specialized on EIA) can be the best national expert.
    - overlapping quality control would mean extra costs without benefits.
- => Call for for more general formulation which allow the quality control by the competent (environmental) authority.

# Remarks on the EIA 'one-stop shop'

- Article 2(3) refers to the coordinated or joint procedures of one or more *authorities* for integrating several assessments required by the EU norms.
  - Seems to hamper the integrated procedures in the MSs where the developers have important role in producing and integrating environmental assessments.
- ⇒ It would be sufficient that EIA Directive regulates the opportunity for integrating diverse assessments. Means for the integration should be left for the MSs to decide.



# Duplication between the assessment duties

- Proposal following the ruling *C-50/09 (Commission vs. Ireland)*
    - contrary to wordings and initial purpose of the valid EIA Directive
  - Assessment by the competent authority (Art. 3)
  - Assessment (environmental report) by the developer
    - Content requirements (Art. 5 + annex IV)
    - Does / should it differ from the assessments referred to Art. 3?
- => Only one assessment (provided by the developer) is needed, quality and sufficiency of which is controlled and ensured by CA (if environmental agency) or a committee of experts

# Summa summarum

- Smarter EIA system through a deeper harmonization?
  - No, if harmonization is conducted in commission's way
  - Commission's proposal would hinder the use of better regulatory choices with proven quality in the MSs
- Most of the suggested improvements are obviously needed but no reasons for change in the regulatory technique
- Strength of the current EIA Directive:
  - enables the context sensitive EIA legislation at national and sub-national levels with high effectiveness, cost-efficiency and acceptability
- **EIA Directive should set the frames but let the member states decide the details**