



Reasonable Time-Frames in Legal Framework of Environmental Impact Assessment in the European Union (EU), European Free Trade Association (EFTA) and Southern African Development Community (SADC)

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JENDROŠKA JERZMAŃSKI BAR I WSPÓLNICY



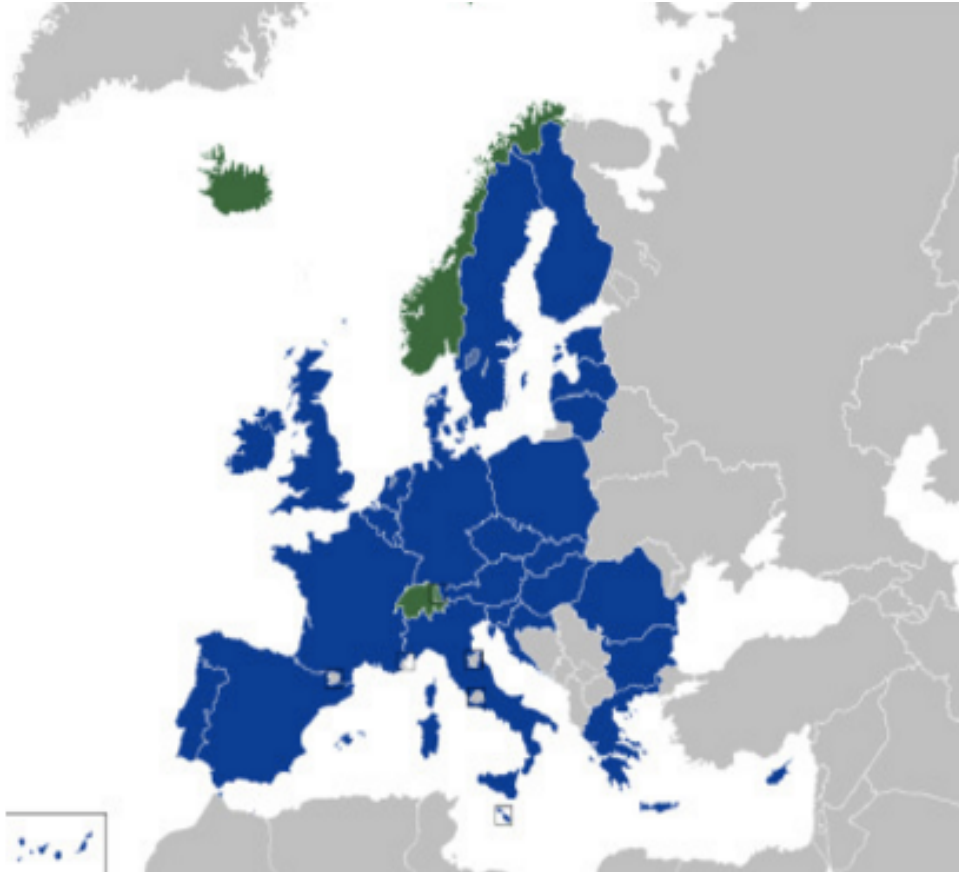
Method – comparative; 3 objectives of the comparison of EIA (environmental impact assessment)



- Better understanding: EIA procedures (their nature) are best understood in their international context than by studying the system in a single jurisdiction;
- Identification of the factors which are essential to the success of the EIA process;
- Improvement of the effectiveness of the national legal framework (Wood, 2003).



28 EU and 4 EFTA Member States:



Source: http://www.sfbvg.ch/xml_3/internet/EN/application/d50/f60.cfm



15 SADC Member States:

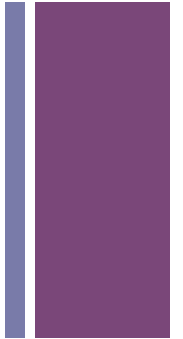


Source: <http://www.sadc.int/member-states/>



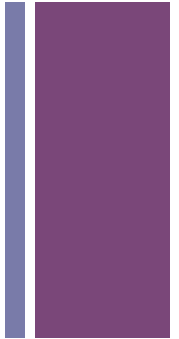
Obligation of reasonable time-frames (the Aarhus Convention, Art. 6(3)):

“The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public [..] and for the public to prepare and participate effectively during the environmental decision-making.”





Findings of the Compliance Committee and conclusions of the European Commission



- There are considerable differences in time-frames provided in national legal frameworks for the public to get acquainted with the documentation and to submit comments.
- The requirement to provide “reasonable time-frames” in Article 6, paragraph 3, implies that the public should have sufficient time to get acquainted with the documentation and to submit the comments taking into account, inter alia, the nature, complexity and size of the proposed activity.
- Thus a time-frame which may be reasonable for a small simple project with only local impact may well not be reasonable in case of a major complex project.
- The time-frames for the consultation on the EIA report vary considerably, from 2 weeks up to 2 months;
- However, while too short time-frames may create a risk of inconsistencies with the principles of the Aarhus Convention, too long ones may generate additional costs and uncertainties for the developer.

(European Commission
(SWD(2012) 355 final, p.17))

(Compliance Committee (General report to the Meeting of the Parties, 2008, para. 60))



Case law of the Compliance Committee



10 days

“[T]ime frame of only 10 working days [...] for getting acquainted with the documentation, including EIA report, and for preparing to participate in decision-making process concerning a major landfill, does not meet the requirement of reasonable time frames in Article 6, paragraph 3.”

ACCC/C/2006/16 (Lithuania)

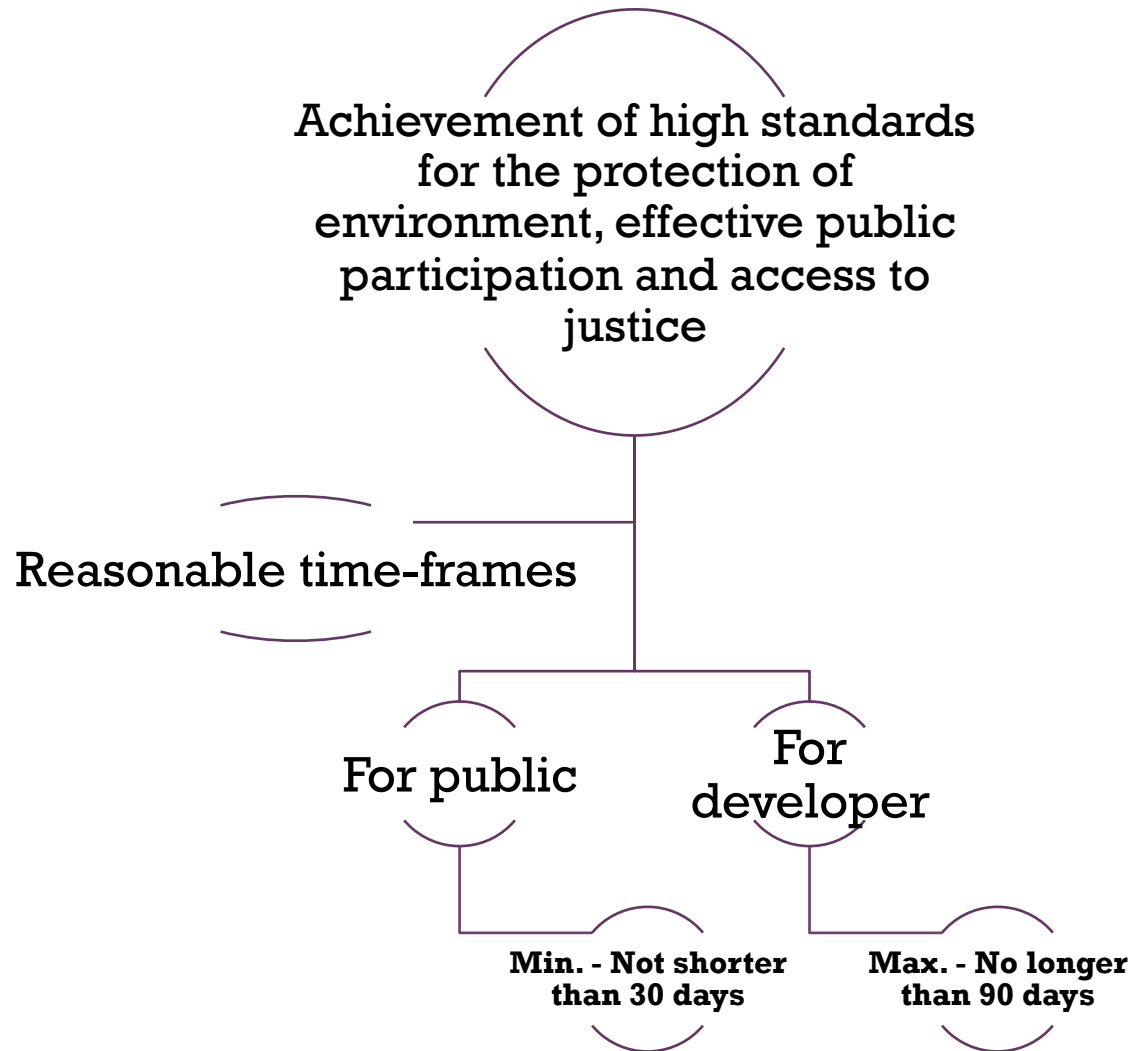
45 days – 6 weeks

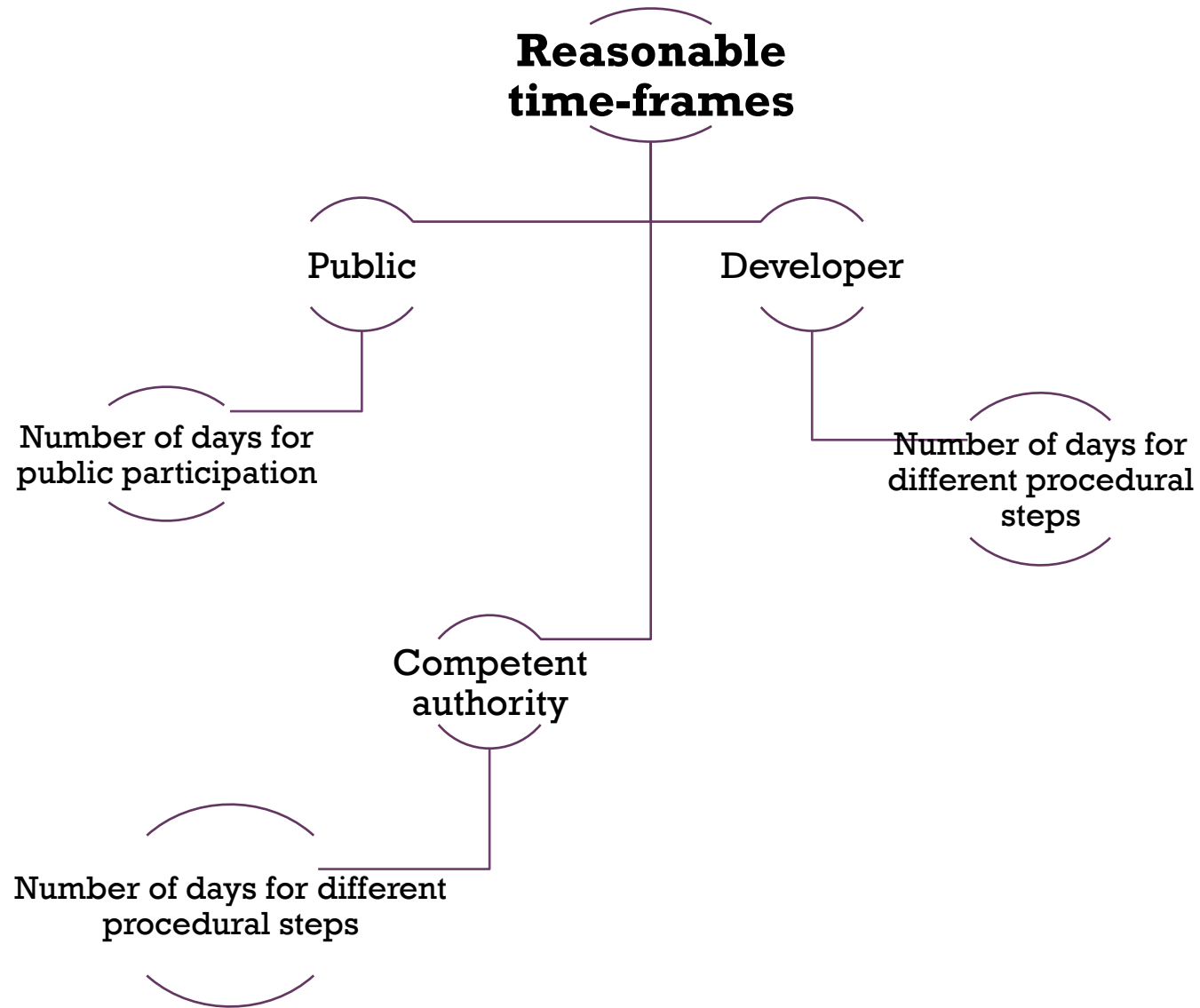
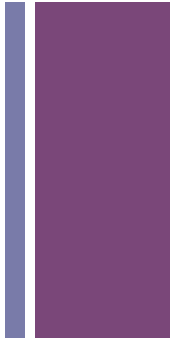
- “a period of approximately six weeks for the public to inspect the documents and prepare itself for the public inquiry”
- “45 days for public participation and for the public to submit comments, information, analyses or opinions relevant to the proposed activity”

are in line with the requirements of the Aarhus Convention.

ACCC/2008/2 (France)

Changes – the EIA Directive amendments – Directive 2014/52/EU







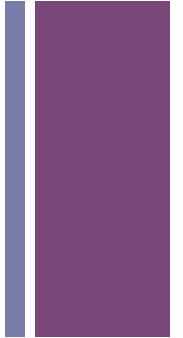
Main studies – number of days for public participation



- European Commission, DG ENV. Study concerning the report on the application and effectiveness of the EIA Directive. June, 2009, pp. 192 (+appendixes);
- Walmsley B. & Patel S. Handbook on environmental assessment legislation in the SADC region. Third edition. Pretoria: Development Bank of Southern Africa (DBSA) in collaboration with the Southern African Institute for Environmental Assessment, 2012, pp. 516;
- Relevant EIA laws and regulations of the countries.



Public involvement in EIA



■ Generally:

1. screening,
2. scoping (development of terms of reference),
3. EIA report preparation,
4. EMP preparation,
5. monitoring, compliance and enforcement.

■ For the purposes of this research:

1. screening,
2. scoping,
3. preparation of EIA report,
4. process after the EIA report is completed.



Limitations – updating information



- Used different approaches (to the stages of the EIA and public participation involvement);
- No recent cumulative studies or availability of the data base;
- Use of diverse languages (specially, in the smaller EU member states);
- Scarce information on recent amendments.

RESULTS ARE PRELIMINARY!

+ SADC countries – 1

(in days if not indicated otherwise)

Country	Screening	Scoping	Preparation of EIA report	After EIA report is completed
Angola	-	-	-	5 - 10
Botswana	-	✓ - n. t-f.	-	✓ (d) - n. t-f.
DRC (Congo)	-	-	Max. 2 months	-
Lesotho	✓ - n. i.	✓ - n. i.	-	✓ - n. i.
Madagascar	-	-	-	10 - 30; 14 – 45
Malawi	-	✓ - n. i.	✓ - n. i.	✓ (d) - n. t-f.
Mauritius	-	-	-	✓ - n. t-f.

+ SADC countries – 2

(in days if not indicated otherwise)

Country	Screening	Scoping	Preparation of EIA report	After EIA report is completed
Mozambique	✓ - n. t.-f.	✓ - n. t.-f.	-	✓ - n. t.-f.
Namibia	✓ - n. t.-f.	✓ - n. t.-f.	-	✓(d) - n. t.-f.
Seychelles	-	-	-	✓(d) - n. t.-f.
South Africa	-	30	30	-
Swaziland	✓ - n. t.-f.	-	-	15 (cat. 2) 20 (cat. 3) +10
Tanzania	-	-	✓ - n. t.-f.	✓ - n. t.-f.
Zambia	-	✓ - n. t.-f.	✓ - n. t.-f.	20 + 15
Zimbabwe	-	-	✓ - n. i.	-



EU and EFTA countries - 1

(in days if not indicated otherwise)

Country	Screening	Scoping	Preparation of EIA report	After EIA report is completed
Austria	-	-	-	Min. 6 weeks
Belgium	-	Brussels, Walloon – 15; Flanders – n.t.-f.	30 (in Walloon 30 for category B and 15 for category C projects)	
Bulgaria	14 - 30	30	Min. 30	
Croatia	-	-	Min. 30	
Cyprus	-	-	30	
Czech Rep.	20	30	30	
Denmark	-	-	30	
Estonia	-	Min. 14	Min. 14	



EU and EFTA countries - 2

(in days if not indicated otherwise)

Country	Screening	Scoping	Preparation of EIA report	After EIA report is completed
Finland	-	30 - 60	30 - 60	
France	-	-	Min. 30	
Germany	-	-	Min. 6 weeks – max. 2 months	
Greece	-	-	Min. 30	
Hungary	21		Min. 30	
Iceland	-	-	-	6 weeks
Ireland	-	n.t.-f.	5 weeks	
Italy	45	-	30 - 60	



EU and EFTA countries - 3

(in days if not indicated otherwise)

Country	Screening	Scoping	Preparation of EIA report	After EIA report is completed
Latvia	-	20	30	-
Liechtenstein	-	-	-	6 weeks
Lithuania	10	Min. 10	23	
Luxembourg	-	30	n. t.-f.	
Malta	-	21	21	
Netherlands	-	6 weeks	6 weeks	
Norway	-	Min. 6 weeks	-	Min. 6 weeks
Poland	-	-	-	30



EU and EFTA countries - 4

(in days if not indicated otherwise)

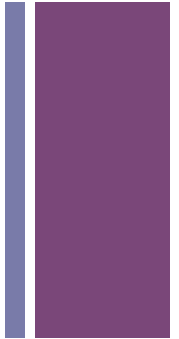
Country	Screening	Scoping	Preparation of EIA report	After EIA report is completed
Portugal	-	20 (d)	10 - 30	
Romania	15	20	30	
Slovenia	-	-	30	
Slovakia	21	10	30	
Spain	✓ - n. t.-f.	30	30	
Sweden	-	✓ - n. t.-f.	✓ - n. t.-f.	
Switzerland	-	-	-	30
United Kingdom	-	21	21	

+ Final Results (adopted from EC, 2009)

Time-frames	Screening	Scoping	Preparation of EIA report	After EIA report is completed
Not fixed	Lesotho, Mozambique, Namibia, Swaziland, Spain	Botswana, Lesotho, Malawi, Mozambique, Namibia, Zambia, Ireland, Sweden	Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Tanzania, Zimbabwe, Luxembourg, Sweden	
Two weeks or less	Lithuania	Estonia, Slovakia	Angola, Estonia	
Between two and four weeks	Bulgaria, Czech Rep., Romania, Slovakia	Belgium, Czech Rep., Hungary, Latvia, Lithuania, Malta, Portugal, Romania, United Kingdom	Lithuania, Malta, United Kingdom	
Four weeks or up to a month	-	South Africa, Luxembourg, Spain	South Africa, Swaziland, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, France, Greece, Hungary, Latvia, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Switzerland	
One month or more than one month	Italy	Bulgaria, Finland, Netherlands, Norway	DRC (Congo), Madagascar, Zambia, Austria, Finland, Germany, Iceland, Ireland, Italy, Liechtenstein, Netherlands, Norway	
No.	11	26	47	



Main conclusions on results



- The research characterizes the situation of reasonable time-frames of public participation in 47 countries.
- The legal frameworks of all countries require public participation in consultation phase – either in preparation of EIA report or after EIA report is completed.
- More than a half of the countries require the public participation during the scoping phase – preparation of the EIA programme.
- In $\frac{1}{4}$ of all countries, the public participation is demanded for the screening phase, however, the time-frames are not explicitly determined (specially in SADC region).

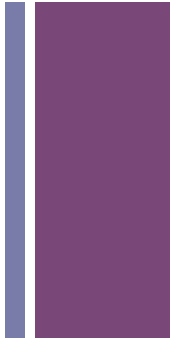


Main conclusions by organization



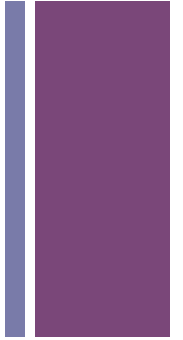
- EU and EFTA
 - Approx. 2/3 of the countries require the public participation in scoping phase.
 - In relation to screening, public involvement is required only in 1/5 of the countries.
- SADC
 - Public involvement is required by law, but quite often the time-frames are not specified.
 - The decision on the public involvement often is at the discretion of the competent authority.
 - However, some best practice examples are provided:
 - E.g. , several countries (Mozambique, Namibia) require public involvement during the screening,
 - South African regulations stipulate that the period from 15 December till 5 January should be excluded from public consultation.

+ General conclusions



- General trend demonstrates the unification of the time-frames across different countries.
- As the best practice, reasonable time-frames for public involvement must be cross-referenced to Art. 4(2) of the Aarhus Convention (time-frames for providing environmental information).
- The most common practice is that the timing is expressed in days (instead of weeks and months).
- Consultation at an early stage might mean the public integration in the EIA process at the screening stage.

+ Further research areas



- Investigation of interrelationship between the EIA objects and public involvement.
- One of the important determinants is whether the responsibility for organizing the public participation is of the developer or authority.
- It is necessary to clarify different phases of the EIA and appropriate public involvement.



Thank you for your attention!