

# Environmental Impact Assessment Directive 2011/92/EU

[Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the EIA Directive), defines environmental impact assessment (EIA) procedure. It codifies Directive 85/337/EC of 27 June 1985, on the assessment of the effects of certain public and private projects on the environment, with all its amendments ([1997](#), [2003](#) and [2009](#)). In doing so, the directive is designed to ensure that the environmental impact of public and private projects likely to have significant effects on the environment is assessed by Member States' competent authorities prior to authorisation of those projects. The directive distinguishes between mandatory EIA (Annex I) and optional (discretionary) EIA (Annex II). A key feature of EIA procedure is broad consultation with the public, and detailed arrangements for such consultations have to be made by the Member States. The directive also requires cooperation between Member States if it is likely that a particular project will have significant effects on the environment of another Member State.

## The EIA Directive

The Commission's proposal	12 April 2011 ( <a href="#">COM(2011) 189 final</a> )
Date of adoption of legislation in plenary	13 September 2011 ( <a href="#">P7_TA(2011)0349</a> ) (first reading)
Date of adoption of legislation by the Council	15 November 2011 ( <a href="#">CSST/2011/16602</a> ) (first reading)
Deadlines for transposition	3 July 1988 (Article 14, Directive 2011/92/EU) <sup>1</sup>
Guidelines	To help Member States with the transposition of Directive 2014/52/EU, the Commission drafted <a href="#">an informal checklist for transposition</a> .
Amendments	<a href="#">Directive 2014/52/EU</a> amending Directive 2011/92/EU

## The EIA procedure (simplified)

- The project developer can ask the competent authority what information is to be provided (scoping stage).
- The project developer provides the requested information on the environmental impact.
- The environmental authorities, the public and the Member States concerned are informed and consulted.
- The competent authority takes a decision taking the results of consultations into account.
- The public is informed of the decision and has the possibility of challenging it before the courts.

## European Commission report

In 2009, before codifying Directive 85/337/EC, the Commission issued a report ([COM\(2009\) 378 final](#)) on the directive's application and effectiveness. The report outlined the directive's main strengths while pointing to several areas that needed improvement. These areas included, for instance, the application of a

<sup>1</sup> Since Directive 2011/92/EU codified Directive 85/337/EC together with all its amendments, the deadline for the transposition of Directive 2011/92/EU does not differ from the transposition deadline of the codified Directive 85/337/EC or the transposition deadlines for amendments of this directive.

'screening procedure' i.e. a procedure to assess whether projects are listed in Annex II of Directive 85/337/EC; concerns regarding the quality of Directive 85/337/EC; the quality of EIA processes; the lack of harmonised practices for public participation; and the need for better coordination between Directive 85/337/EC and other EU directives and policies. The Commission has not produced a new report on the implementation of Directive 2011/92/EU.

## European Parliament position

In its resolution of 21 November 2012, **on the [environmental impacts of shale gas and shale oil extraction activities](#)**, Parliament urged the Commission to issue guidance on the establishment of the baseline water monitoring data necessary for the environmental impact assessment of shale gas exploration and extraction (point 6). Parliament also called on the Commission to bring forward proposals ensuring that the EIA Directive provisions covered the specifics of shale gas extraction (point 23). It also called for the inclusion in the directive of projects involving hydraulic fracturing. In its **resolution of 5 February 2014 on a [2030 framework for climate and energy policies](#)**, Parliament reiterated its call to include a mandatory EIA for the exploration and extraction of shale gas.

## Members' questions

Members have addressed questions to the Commission, for written or oral answer, on the implementation of the directive and on environmental impact assessment. These questions have covered various aspects, such as enforcement of EIAs and of the directive (e.g. [P-006493-14](#), [E-010677-14](#) and [P-007955-14](#)); compliance with the directive's provisions (e.g. [E-002122-15](#), [P-002248-17](#), [E-003437-18](#), [E-010677-14](#) and [P-005834-16](#)) and implementation of the directive (e.g. [E-016039-15](#), [E-008279-14](#), [E-000883-15](#) and [P-002486-17](#)). The Commission provided answers to all these questions.

## Petitions

Parliament has received numerous petitions regarding transposition and potential breaches of the directive. These include for instance: [Petition 3/2018](#) on the building of a high voltage line; [Petition 1018/2017](#) on a planned waste incinerator; [Petition 198/2018](#) regarding a decision to authorise the construction of a cruise liner terminal in London; [Petition 1468/2016](#) on the construction of a regional motorway in an earthquake zone; [Petition 1052/2017](#) on incorrect transposition of the directive in a national legal system; and [Petition 2812/2013](#) on the lack of EIA for a wind farm.

## Selection of relevant case law

The Court has had occasion to react to preliminary questions from national judiciaries and provide interpretation for several of the directive's provisions. For example, in [Case C-470/16 North East Pylon Pressure Campaign and Sheehy](#), the Court ruled that the 'requirement that certain judicial procedures not be prohibitively expensive' should apply to a procedure brought before a Member State court to determine whether to authorise a challenge in the course of a development consent process, in particular where that Member State had not determined at what stage a challenge might be brought (point 34). In [Case C-645/15 Bund Naturschutz in Bayern and Wilde](#), the Court found inter alia that the concept of 'construction' (point 7(b) of Annex I to Directive 2011/92) referred to 'the carrying-out of work not previously existing or to the physical alteration of existing installations', while the national court must 'take account of all the characteristics of the work concerned and not only of its length or of the fact that its initial route is retained' (point 43). In [Case C-329/17 Prenninger and Others](#) the Court clarified that 'clearance of a path in a forest for the purpose of the construction and operation of an overhead electrical power line and for the duration of its lawful existence is covered by the concept of deforestation for the purposes of conversion to another type of land use' (point 41). In some cases the Court has also ruled on the failure of a Member State to fulfil its obligations under the directive (e.g. [Case C-137/14 Commission v Germany](#) and [Case C-141/14 Commission v Bulgaria](#)).

This document has been prepared for the interparliamentary committee meeting of 27 November 2018: Empowering parliaments and enforcing citizens' rights in the implementation and application of Union law.