



*Ministero dell' Ambiente e della Tutela del Territorio e del Mare*

DIREZIONE GENERALE PER LE VALUTAZIONI E LE AUTORIZZAZIONI AMBIENTALI

DIVISIONE II – SISTEMI DI VALUTAZIONE AMBIENTALE

REF.: FIFTHS REVIEW OF THE IMPLEMENTATION OF THE CONVENTION

Even though the requested clarifications dealt with the implementation of the Convention on EIA in a transboundary context during the period 2013-2015, it is important to highlight that the national EIA legislation (Second Part of the Legislative Decree n. 152/2006 - Environmental Code) has been amended in 2017 by the Legislative Decree n. 104/2017 (entered into force on 16 June 2017) due to the implementation of the EIA Directive 2014/52/EU (hereinafter “new EIA legislation”).

The information reported below take into account, where relevant, the amendments to the EIA national legislation in force during the period 2013-2015.

**Concerning the first clarification requested** (“*How article 4(1) was implemented within Italy's national legal and administrative frameworks*”) it is important to point out that, according to the Italian EIA legislation, the documentation that the developers shall submit (binding provision) to the EIA competent authority is:

- Project documentation, consisting of technical designs and reports, describing the project in detail both for the construction and operating stages, according to the requirements under the relevant sectorial rules;
- EIA report, with the (general) contents listed in article 22 of the Legislative Decree n. 152/2006 and with all the relevant further detailed information listed in Annex VII of the Second Part of the Legislative Decree n. 152/2006. Before the entry into force of the new EIA legislation, very detailed technical regulations on the preparation and contents of the EIA report were in force, from 1988, and were legally binding (Decree of the President of Council of Ministers). Such regulations have been repealed in 2017 and the specific contents of the EIA report are now contained in the Annex VII of the Second Part of the Legislative Decree n. 152/2006, as amended according to the Annex III of the Directive 2014/52/EU. New technical regulations on the preparation and contents of the EIA report replacing those repealed are provided by the new EIA legislation and they are being prepared (to be issued in the short term).

Both article 22 of the Legislative Decree n. 152/2006 and information listed in Annex VII of the Second Part of the Legislative Decree n. 152/2006 establish an informative framework on the project and its environmental impacts (EIA report) fully complying with EU EIA legislation, which defines the contents of the EIA report more exhaustively and completely than those listed in Appendix II to the Convention, mentioned as minimum contents in article 4.1 of the Convention.

Furthermore, according to the new EIA legislation (articles 23 and of the Legislative Decree n. 152/2006, as amended in 2017), in order to ensure the completeness and quality of the environmental impact assessment report the developer:

- shall ensure that the documentation is prepared by experts competent in EIA and relevant sector-specific rules and that its contents are certified as accurate by experts which are members of professional bodies;
- shall have access to the information and data made available from the public administration, according to the relevant legislation;
- in the context of a transboundary EIA procedure under Espoo Convention, together with the above mentioned documentation (project, EIA report) the developer shall submit to the EIA competent authority the “*relevant information about any transboundary impacts of the project*”.

From a procedural point of view (article 23 of the Legislative Decree n. 152/2006), upon the receipt of an EIA request accompanied by the above mentioned documentation, the competent authority within 15 days checks the documentation provided by the developer and, where not complete and/or fulfilling the legislative requirements, may request additional documentation. Only after such verification of completeness has been positively concluded, the EIA procedure can start and the competent authority simultaneously:

- informs the territorial (regions, provinces, municipalities) and environmental competent authorities concerned; the same information is notified to the affected Party in the context of a transboundary EIA procedure under Espoo Convention;
- makes available and accessible to the public all the documentation submitted by the developer electronically (available on the national/local EIA portals/websites).

The Italian legislation provides that all relevant information and documentation about an EIA procedure shall be promptly made available for public access to all citizens, NGO, public authorities, bodies and Parties concerned in the in the context of a transboundary EIA procedure under Espoo Convention (i.e. any person interested in the EIA procedure) for an early informed and effective participation in the environmental decision-making, as stated by the first and second pillars of the Aarhus Convention.

For completeness of information and with reference to the question I.17 of the Questionnaire, the answer provided “*There are no specific procedures or mechanisms*” shall be interpreted as the quality of EIA report is first of all granted by specific requirements for the developer provided by the national EIA legislation.

As reported in detail below, the quality of the EIA documentation is also verified during the assessment phase, which is carried out by the EIA competent authority during and after the consultation phase (total duration of 60 days starting from the publication of the documentation on the website).

According to the EIA Directive, the Italian legislation provides that the examination by the competent authority of the documentation submitted by the developer (project, EIA report) may require supplementary information to ensure the high quality and adequacy of the information provided by the developer, necessary to allow a duly substantiated assessment of the environmental impacts.

Request for further information may also arise from the consultation phase, where relevant comments may be received by the public and by the different subjects concerned, including the affected Party in the context of a transboundary EIA procedure under Espoo Convention: in fact, according to national

provisions on EIA public consultation (article 24 of Legislative Decree 152/2006) public comments may “...also provide for new or further relevant information and elements for the assessment”.

In order to take into consideration the comments received, only after the conclusion of such phase the EIA competent authority formally requests further information to the developer, taking into account, where appropriate, any relevant elements received during the consultation phase. Such provision allows to anticipate the effective participation of the public to the decision-making process, providing to the EIA competent authority further information and elements.

It is also important to highlight that all further information provided by the developer during the whole EIA procedure are promptly made available for public access on the EIA website/portal so that anyone is informed in real time and may express opinions on environmental impacts of the project, where requested, as in the case of the affected Party in the context of a transboundary EIA procedure under Espoo Convention.

**Concerning the second clarification requested** (“How article as affected Party ensures public involvements in the environmental impact assessment procedure under articles 3(8) and 4(2) of the Convention”), even though some of the elements which have already been referred to above may be also useful, the relevant national legal provisions on public participation in the context of a transboundary EIA procedure under Espoo Convention EIA procedure are outlined below.

It is important to highlight that the public involvements in the EIA procedure under Espoo Convention as affected Party is regulated by the same legislative provisions in force for EIA procedure carried out not in a transboundary context.

In fact, article 32 of the Legislative Decree n. 152/2006 which lays down general provisions on EIA procedure under Espoo Convention expressly refers to the “*phases provided by the procedures referred to in Title II...*” of the above mentioned Legislative Decree, which contains the articles from 19 to 29 regulating EIA procedure.

With particular regard to the involvement of the public, article 24 lays down provision on “*Public consultation, acquisition of opinions and transboundary consultations*”. As already mentioned for the first clarification, in such article the public consultation phase provides that any person interested in the EIA procedure may submit comments and opinions on the environmental impacts of the projects as well as new or further relevant information and elements for the assessment carried out by the EIA competent authority which shall duly take into account the comments and opinions received for its final decision.

Italian legislation provides a duration of 60 days for the public consultation, which represent the double of the minimum of 30 days required by the EIA Directive, most frequently adopted by other EU Member States. To ensure the maximum of transparency of the process, Italian EIA legislation also provides that all comments and opinion received during the public consultation phase are published on the website of the EIA competent authority.

The results of the public consultation phase and specific indication on how such results has been integrated or otherwise taken into account during the EIA procedure represent a binding content of the EIA decision (decree, determination or other official act issued by the competent EIA authority, according to the different administrative levels).

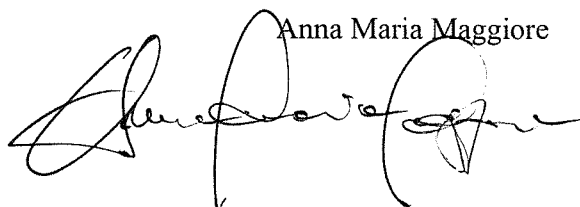
Notwithstanding the above, the only difference in the context of a transboundary EIA procedure under Espoo Convention, is that the public consultation phase starts from the date of the official communication to the Party of origin of the interest to participate; this implies that the EIA documentation provided by the Party of origin is published for public consultation on the EIA competent authority's website after the confirmation of participation as affected Party. A translation into Italian language of the Non Technical Summary and, where possible, of the EIA report, is requested to the Party of origin to allow an effective participation of citizens. Such practice is also adopted by Italy, as Party of origin.

For completeness of information and with reference to the question I.21 of the Questionnaire, the negative answer concerning the organization of public hearings as affected Party is perhaps not duly explained and therefore further clarifications are necessary.

According to EIA Directive which provides in article 6 that "*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*", national EIA legislation provides that the EIA competent authority may carry out public inquiries as alternative ways for public consultations through the direct engagement with the public (article 24 of the Legislative Decree n. 152/2006).

Such possibility is also applicable to transboundary EIA procedure, as affected Party, according to article 32 of the Legislative Decree n. 152/2006. In the period 2013-2015 national legislation did not provide specific regulation for the public inquiry which was organized by the EIA competent authority with a "case by case" approach and which concluded with a report on the works carried out and with a judgment on the outcomes.

The new EIA legislation, in force from July 2017, provides for a general regulation for the public inquiry (article 24 *bis* of the Legislative Decree n. 152/2006) carried out at national level, which is also applicable to transboundary EIA procedure, as affected Party. Further specific provisions for public inquiry are being prepared and will be issued by a Ministerial Decree.

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