The Short-Term Impact of Brexit on the EIA Process

On the 23rd June 2016 a referendum will be held, posing the question of ‘should the United Kingdom remain a member of the European Union or leave the European Union?’ Voters will be given the option to either ‘Remain a member of the European Union’, or to ‘Leave the European Union’.

Whether the UK remains a member of the European Union (EU) or opts to leave could be one of the most important decisions of recent times, with a wide range of impacts.

The referendum has been a gift to newspapers, broadcasters and political commentators, providing almost endless discussion and an opportunity to reflect on the UK’s place in Europe and the wider world. One question that has received relatively little discussion, but is nonetheless important to planners, environmental consultants and other built environment professionals, is the potential impact of leaving the EU, or ‘Brexit’ as it has become known, on the EIA process in England.

To address this question it is first necessary to consider some background. Since its formation, the European Union has grown to operate as a single market for the free movement of goods, capital, services and people between member states.

Following the European Communities Act 1972, Government ministers are able to lay regulations before Parliament to transpose EU Directives into UK law. The Environmental Impact Assessment (EIA) Directive has been transposed into UK law through a series of statutory instruments, most recently the Town and Country Planning (Environmental Impact Assessment) Regulations 2015.

Therefore, whilst the EIA Directive has a major impact on the planning sector, the detailed provisions are designed and applied by UK EIA regulations.

Following a vote to leave the EU, the UK would still be subject to EU laws, including new provisions and amendments to existing laws, until a withdrawal agreement has been made. Under Article 50 of the Treaty of Maastricht 1992 (as amended by the Lisbon Treaty 2007) any country looking to leave the EU must negotiate a withdrawal agreement between itself and the remaining EU members. This agreement must occur within two years of the country notifying its intention to leave, and must be approved by a qualified majority of the Council and Parliament of the EU.

Once a withdrawal agreement has been made, EU regulations and treaties would no longer apply to the UK. However, the provisions of EU Directives would still apply indirectly, as they have been transposed into UK law.

As such, it seems that a decision to leave the EU would have no immediate impact upon EIA and its position within the planning sector in the UK. EIA would remain within UK law and part of the planning process until such a time as the UK legislation governing the EIA process is altered.

The short-term security of the EIA process is also likely to be maintained due to the requirement for the revised 2014 EIA Directive to be transposed into UK law by 16th May 2017.
As this date is before the two-year withdrawal agreement limit of June 2018, the EIA process in England will not immediately fall behind that of countries within the EU, even as it works to extricate itself from the political union.

Whilst the above can be stated with a fair degree of certainty, some commentators have noted that there is one path that could significantly impact the EIA process in the short term following Brexit. This is one where the 1972 European Communities Act is repealed without any saving provisions. This would mean all the EU directives transposed into UK law, including EIAs, would fall away. However, it has been suggested that this is unlikely to occur, as it would create various legal vacuums.

In the event of a vote to leave the EU there could also be a period of political uncertainty, with some suggestion that the PM would be likely to resign, potentially delaying major decisions on the application of EU directives for a significant period.

Therefore, it is suggested that a vote to leave the EU would have little short-term impact upon EIAs in the UK.

Matthew Barron, Planner, Adams Hendry Consulting Ltd, April 2016.

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