Amended EIA Directive – An Increased Emphasis on Screening

Introduction
Member States have until 16\textsuperscript{th} May 2017 to transpose the Environmental Impact Assessment (EIA) amendments brought by the European Directive (2014/52/EU) (the 2014 Directive) into domestic legislation. In light of the recent DCLG consultation on the amended Town and Country Planning (Environmental Impact Assessment) Regulations 2017, this article focuses on what the changes will mean for the screening process in particular.

Changes to Information required for Screening Request
The 2014 Directive introduces changes to the information that should be provided by a developer when making a request for a screening opinion.

In contrast to the 2011 Regulations, which state a screening request should be accompanied by ‘such other information or representations as the person making the request may wish to provide or make’, Regulation 6(2) of the draft 2017 Regulations includes a specific requirement for the applicant to provide ‘a description of the aspects of the environment likely to be significantly affected by the development’ and ‘to the extent the information is available’, a consideration of any likely significant effects on the environment from the production of waste and the use of natural resources, in particular soil, land, water and biodiversity.

Perhaps the most significant change is the introduction of an explicit provision in Regulation 6(2) that applicants can provide information on any mitigation measures which will avoid or prevent what might otherwise have been significant adverse effects on the environment – thus increasing the scope to screen out projects at an early stage.

Changes to Information required for Screening Opinion
As well as the information to be submitted with a screening request, the 2014 Directive alters the requirements on the local planning authority when issuing its opinion. Regulation 5(7) of the draft 2017 Regulations now explicitly requires the competent authority to state the main reasons for its decision with reference to the relevant criteria listed in Schedule 3. This compares with the more general requirement of the 2011 Regulations (Regulation 4(7)) for decisions to be accompanied by a ‘written statement giving clearly and precisely the full reasons for that conclusion’.

Tying into the new provision for developers to provide information about mitigation measures, Regulation 5 (7) now also states the competent authority should:

“if it is determined that proposed development is not EIA development, state any features of the proposed development and measures envisaged to avoid, or prevent what might otherwise have been, significant adverse effects on the environment”
Perhaps to reflect the expectation that additional information will be considered at the screening stage, the 2014 Directive introduces a requirement for the competent authority to make its screening determination within a maximum of 90 days. DCLG propose to keep to the current mandatory 21 days, unless otherwise agreed in writing with applicants. We anticipate however that if more material is being submitted, authorities may struggle to meet the 21 day deadline and requests for extensions will become more frequent.

**Implications**

Through these changes, the 2014 Directive pushes greater emphasis onto the screening process, ‘front-loading’ the provision of detailed information at this initial stage with the hope that this will reduce the number of projects subject to EIA. Whilst in principle these efforts are welcomed, it raises questions as to the most appropriate time to make a request for a screening opinion.

The shift being introduced, and most specifically the ability to take mitigation measures into account, may force developers to commit to the design of schemes earlier on, before the screening request is made. This would enable requests to be supported by technical assessments and detail of the proposed mitigation measures thereby providing the certainty required for authorities to conclude a negative screening opinion.

It would also avoid the risk that a screening opinion made on the basis of specific mitigation measures could become obsolete and open to challenge if those measures are altered before the submission of the planning application. Such a scenario may increase the need for multiple screening throughout the determination process.

The benefits of delaying a request until closer to application submission would need to be weighed against the very real danger that an authority could still conclude the development should be subject to an EIA. Receiving such an opinion at that stage would have significant implications for project costs and timescales.

In practice, the best approach will depend on the specific considerations in each project. In any event, the amended regulations serve to re-emphasise the importance of undertaking comprehensive and timely screening, and an attempt to reduce the number of unnecessary EIAs being conducted.

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