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Environmental legal aspects of permitting economic activities

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Abstract and key words

This work analyzes the existing permitting tools taking into consideration environmental matters while allowing certain commercial activities within the European Union. The quality and effectiveness of the latter are assessed according to the criteria set by legislation and based on practical implementation of the legislative provisions on EU level. The research focuses on the aspects of public involvement into the processes as one of the common criteria for permitting.

Keywords: licensing commercial activities, environmental consideration, public access to information and participation, EU environmental policy

LIST OF ABBREVIATIONS

EU	European Union
NEPA	National Environmental Policy Act
UNOPS	United Nations Office for Project Services
EIA	Environmental Impact Assessment
UN	United Nations
UNECE	United Nations Economic Commission for Europe
EIA Directive	Environmental Impact Assessment Directive
TFEU	Treaty on the Functioning of the European Union
EIAR	Environmental Impact Assessment Report
PPP	Polluters Pay Principle
IED	Industrial Emissions Directive
SED	Solvent Emissions Directive
LCPD	Large Combustion Plants Directive
IPPCD	Integrated Pollution Prevention and Control Directive
WID	Waste Incineration Directive
IPPC Directive	Integrated Pollution Prevention and Control Directive
BREF	Best Available Techniques Reference Document
NGO	Non-Governmental Organization
BAT	Best Available Techniques
BAT-AEL	BAT-Associated Emission Level
BAT-AEPL	BAT-Associated Environmental Performance Level
IPPC	Integrated Pollution Prevention and Control
EIPPCB	European IPPC Bureau
AA	Appropriate Assessment
IROPI	Imperative Reasons of Overriding Public Interest
SAC	Special Area of Conservation
SCI	Site of Community Importance
SPA	Special Protection Area
SEA	Strategic Environmental Assessment
UNOPS	United Nations Office for Project Services

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Introduction

The environment is an essential component of the world as it is the most fundamental and necessary component of human existence, which influences directly not only the quality of human life but also of other species that inhabit our planet. While the environment is crucial to human life, it is also vastly important for the activities that humans are carrying out on daily basis. This includes vide range of commercial or non-commercial activities. Therefore, human race has an obligation and a reasonable interest to preserve the natural world and modify their behaviors so that they contribute to the healthiness of the environment. The EU has made human rights, including the right to a healthy environment, to be the aim of its union while working to its objective of creating and running a dynamic and competitive single market in the region. The EU has introduced and revised many environmental legal policies as part of that aim.

The EU as economic union strives to maintain and further develop healthy business environment within its borders, therefore with new regulations covering conduct of business and competitive market of the EU, it is the most **relevant** now to evaluate how well existing legal tools contribute to sustainability and environmental aspects associated with various types of financial activities.

Based the Master studies concluded in International and European Law, the following research will focus on the EU legal framework, due to limited **scope** of master work in general, as it would not be effective to have bigger, vaguer scope. The EU law was chosen as EU has had both the ambition to lead by example and the influence on the rest of the developing or developed countries to commit to environmental matters and sustainability.

The purpose of this study is to investigate the most significant factors that have a role in decision-making about the authorization of activities that have an impact on the environment. The extent to which they cover the economic activities that are taking place is analyzed, as is their capability of efficiently responding to the issues that arise from commercial activity while maintaining environmental considerations.

The objectives of this study is to investigate and assess the criteria for effectively taking into consideration the environmental aspects within the legal framework of the EU, as well as to determine which aspects of the permitting process do not take these aspects into consideration and what factors contribute to the existence of these consideration gaps. At the same time as evaluating

the matters described above, the objective is to initiate a conversation about potential solutions to the problems that now exist.

The primary sources of policies that are analyzed are the regulations, directives, and implementation guidelines that are provided by the EU. EU environmental law comes in the form of Regulations and Directives, both of which may impose duties directly on any individuals or entities that fall under the jurisdiction of the Member States. When these particular EU legislative instruments are used, which is relatively uncommon in the field of environmental policy, there is no need for transposition into national law; however, Member States may still need to adopt complementary legislative, regulatory, or administrative measures to ensure the practical application and enforcement of the rights and obligations set out in the Regulation. Additionally, non-binding EU environmental standards that are developed via instruments such as recommendations, reference notes, or technical advice papers will be discussed during this research. Depending on the circumstances and objectives, such instruments may be issued by the European Commission, the Council, the European Parliament, and the Council collectively; alternatively, they may be issued by EU institutions tasked with scientific, technical, and administrative responsibilities in the implementation of particular policies.

In light of the criteria that they all have in common, **the tasks of this research** is to investigate the connection that exists between the various tools that are used to provide permission for activities and environmental matters. In the process of achieving the purpose of this research, additional tasks are defined as evaluating processes associated with implementation of the discussed legal tools, analysis of the clearness of the decision-making steps and requirements set by the EU law as well as assessment of the enforceability elements of them.

The European legal instruments are often quite difficult to understand, and as a result, they are analyzed and examined in a more particular manner, which means not as a whole. This study, in its **originality,** presents the comprehensive evaluation of the licensing instruments at the EU level, and as a result, it provides a larger scope and knowledge of how environmental policies are correlated in the legal requirements imposed by the legislation of the European Union. The majority of the already existing and conducted studies focuses on either certain legislative tools made available by the EU or the behavior of some Member States in putting them into effect. On contrary, within the confines of this study, an examination will be made of the instruments that are

outlined in EU legislation and serve to govern environmental issues at the EU level. Since the bulk of EU environmental legislation is written in the form of Directives, which are legally directed to the governments of EU Member States and do not impose direct duties on private sector operators, Directives make up the majority of EU environmental law.

The **methodologies** used while conducting the following research were vastly based on methods of description which was used with a purpose to acquire, organize and describe the laws, tools and requirements found in primary sources; and on methods of evaluation used to conclude analysis of effectiveness of the described tools and the key aspects of how they work in practice.

The introduction of the study includes an explanation of the theoretical framework that was used as a guide throughout the investigation. The next step is to do a literature review on each chosen tool, in the following order: The Environmental Impact Assessment, the Industrial Emissions Directive and the Natura 2000. Each chapter will provide corresponding in-depth description of the procedures for laid down by EU legislation. After a discussion of the findings, the final section of the chapters explores the significance of the participation of public and different stakeholders in these processes and evaluation of effectiveness of the tools in the view of access to final decision-making.

Chapter I - EIA as a precondition for permits

1.1 Legal Background

The chapter will analyze Environmental Impact Assessment (EIA) as an internationally acknowledged process for permitting certain economical activities, with the focus of its importance in the European Union (EU) law. The purpose of this subchapter is to display definitions and legal concepts, as well as applied principles and scope of the EIA within EU to lay a foundation for upcoming analysis of decision-making aspects and ensure better understanding of the basis of the tool.

Environmental Impact Assessment is a tool that has been in force for many years now, as it was first introduced in 1969 by the National Environmental Policy Act (NEPA)of the United States of America. At that time, European Economic Community had almost no mention of environmental policy in place. The 1972 meeting of the European Council in Paris, as well as the 1972 United Nations' (UN) Conference on Human Environment in Stockholm, marked the birth of European environmental policy as a distinct sector of policy. The UN Conference emphasized the responsibility of states to respect the environment of other states. Principle 13 of the Stockholm Declaration stressed the necessity of process similar to EIA as follows: "In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve the human environment for the benefit for their population". (Declaration of the United Nations…, 1972). The Declaration also underlined the necessity of sharing the responsibility over environmental matters in a transboundary context with Principle 21 requiring the states to ensure that activities under their jurisdiction did not cause any damage to the environment of other states. The principle was further solidified between states in 1991 by the signing of Espoo Convention (Convention on Environmental Impact Assessment…, 1991). One of the important legal documents acquired around that time has been Aarhus Convention (UNECE Convention on Access to Information…, 1998). EU and now its 27 Member States [1]are parties to the Aarhus convention, making it source of law itself, and has laid foundation for multiple EU legislation throughout time. This also means that the EU is fully committed to complying with provisions of the Aarhus Convention and has its

[1] Data provided from the official webpage of the European Commission

responsibilities as a party to the treaty, such as collection and publishing the reports on how the Aarhus Convention is being implemented as well. The Aarhus Convention will be referenced and analyzed further in this chapter.

EU environmental legal tools cannot be examined and understood without a thorough knowledge of EU law. The first EU directive relating EIA has been adopted in 1985 requiring member countries to introduce the EIA systems in local legislations by 1988. The current version of the Environmental Impact Assessment Directive (EIA Directive) has been based on Article 192(1) Treaty on the Functioning of the European Union (hereinafter TFEU) and created to assure environmental activities that the EU must take in order to accomplish the goals of the Union's environmental policy. Currently, the main law of the EU is a codified act from the 2014 amendment of the Directive (Directive 2014/52/EU) and it aimed to address implementation shortcomings, reduce unnecessary administrative burdens, simplify the assessment procedure, and reinforce a certain level of environmental protection while taking into account emerging challenges such as biodiversity loss, climate change, disaster and risk prevention, and resource efficiency. In the following work, the research will seek to evaluate the effectiveness of EIA in decision-making from the last amendment to thus far.

EIA is a study to calculate the environmental impact of a proposed activity or a project and to identify the single alternative that best balances economic and environmental costs and benefit. It is a decision-making tool that allows all parties to recognize all the effects, suggest mitigation and forecast weather there will be any in earliest stages of project planning. (Glasson et al., 2005, p.4). It is a multi-beneficial tool, as it aims not to solely “allow” or “not allow” certain projects, but to promote seeking alternative and greener ways to conduct different economic activities. It can be considered a management tool closely associated with the project that provides appropriate environmental information within the time frame that is specified within EU legislation (Rosales, 2020). The EIA sets many goals, however the main would be to ensure environmental considerations are addressed properly on time and that these considerations are incorporated into the decision-making process. While doing so, it reflects to avoid, reduce, or balance the adverse significant biophysical, social, and other relevant effects of development projects.

It is crucial to understand the effects of Aarhus and Espoo Conventions on EIA Directive, which will occasionally be analyzed throughout this chapter. While certain provisions might differ,

definitions are almost identical in both of these documents. While EIA Directive uses term "project" and Aarhus convention term "proposed activity", they define any activity/process/project or any change to it, which is subject to a decision-making from a competent authority in applicable national law. The latter includes not just new or planned activities, but also any significant modification to existing activity. However, it does not specify what constitutes a significant change. The decision of whether or not to apply the Convention is made by the appropriate national authorities. The words 'activities' (as defined by the Espoo Convention) and 'projects' (as defined by the EIA Directive) are used interchangeably in this research as well. EIA Directive applies to projects that likely will have significant effects on the environment; It must identify, assess, and clarify likely direct and indirect effects of the activities on humans, flora and fauna, climate, water, landscape, cultural heritage or even the interaction between those factors. It is important to highlight that EIA must be conducted before consent is given. Therefore, process of EIA subjects proposed projects to requiring development consent, which is acquired only after effect of the development will be properly assessed.

As the scope of this research is permit-giving tools in EU, it is crucial to take into consideration the general principles that apply to overall environmental law policy in EU. These principles do not apply solely to EIA or EIA Directive, but to all the policies in place and practices across the EU, therefore they apply to all the other decision making tools reviewed after this chapter. Environmental principles guide the establishment of legislative frameworks for environmental conservation and sustainable development. They serve as a guide for national lawmakers, judges, and decision-makers, providing EU legislation structure and purpose (Glasson & Therivel, 2019). Because EU environmental law principles are embedded in a large list of enforceable legislative regulations, acting against them (even incorrect interpretation) is *contra legem* and may constitute a breach of EU law (Rosales, 2020, pg 28). They are also embedded in a variety of wider, broad principles that consequently apply to environmental policy but are not solely 'environmental.[2]' Article 191(2) of the Treaty on the Functioning of the European Union establishes four major environmental principles that must drive policy within the framework of EU legislation. These have influenced the formulation of a number of EU directives and regulatory measures. The principles are: (1) The precautionary principle, which permits regulatory action to be done even if

[2] such as proportionality and subsidiarity, as defined in Articles 3, 5, 9-12 of the Treaty of the Functioning of the EU.

a risk has not been shown conclusively. The precautionary principle is a risk management tool that may be used when there is scientific un-clarity regarding a potential danger to human health or the environment from a particular activity. In certain way, we can say, that EIA as a tool, aims to embody the precautionary principle. (2) The prevention principle seeks to prevent environmental harm, such as that caused by protected species or natural habitats, water, and soil, rather than to respond to it. In other words, seeks to avoid, rather than respond to, environmental harm caused by certain activities. Unlike the precautionary principle, it is implemented in law and policy when the risk of environmental harm is obvious. However, the precautionary and preventative concepts have always been interconnected and used moderately. (3) The source-principle, which aims to tackle existing issues on uncertainties from the root and avoid spread of the effect further rather than treat the issues it has caused. (4) Polluters-pay principle also known as PPP establishes that polluters must incur the financial burden of their activities. The PPP requires polluters to internalize the cost of possible pollution throughout the manufacturing and production process (built-in costs), rather than charging society with it later. (5) Integration principle, presented in Article 11 of TFEU, states that environmental protection measures must be included in all EU policies and actions in order to achieve sustainable development. Aims to establish that environmental aspects are considered in all necessary regulation areas. (6) The proportionality of directives and regulatory measures is determined by a high degree of environmental protection concept. Because Article 191(2) TFEU is geared at EU-level action, persons cannot rely on it to exclude the application of national legislation in an area covered by environmental policy for which no EU legislation has been approved. Similarly, in the absence of any national legal foundation, the competent environmental authorities cannot rely on Article 191(2) TFEU in the field of the environment to impose preventative and corrective measures. (*Fipa Group and Others*, Case C-534/13, para. 40-41).

While the first EIA Directive did not have a separate description of the environmental impact assessment, as a concept, the latest amendment of the Directive in 2014 has introduced a definition for EIA process in Article 1(2)(g) by identifying five criteria it must consist of: (i) process of preparing an environmental impact assessment report by the developer, as established in Article 5(1) and (2) of the Directive; (ii) process of consultations (as referred to in Articles 6 and 7); (iii) examination of the information gathered and presented in EIA report and all of the other relevant information as described in Articles 5(3), 6 and 7 of the Directive; (iv) the competent authority's

reasoned conclusion on the significant environmental effects of the project, taking into account the results of the examination referred to in point (iii) and, where applicable, its own supplementary examination; and (v) the incorporation of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a. (Directive 2011/92/EU, 2014).

As already reviewed, the EIA must be conducted before development consent is given, for projects that likely have significant effects by virtue of, inter alia, their nature, location, size and location, are made subject of requirement of development consent and an assessment of their effects. The EIA Directive has a broad scope and a broad target, and it applies to both public and private projects that are expected to have major environmental effects. According to the Directive, several project types must always be subject to an EIA since they are always thought to have significant environmental effects. While Annex I deals with projects that are established to have significant environmental effects[3], Annex II of the Directive consists of projects that are considered *likely* to have major effects and are depended on their nature, size and location, these include list of certain activities as well as changes or extensions to Annex I and II projects that may have adverse environmental effects. Member States can choose to subject Annex II projects to an environmental impact assessment on a case-by-case basis, or based on thresholds or criteria such as size, location (particularly vulnerable ecological areas), and probable impacts (surface affected, duration) (Rosales, 2020). Whether Member States use a case-by-case approach or thresholds/criteria, the applicable selection criteria in Annex III must be considered.

The **scope** of the obligation to assess environmental impacts stems from a provision in Article 3 of Directive 85/337 as amended, which states that the environmental impact assessment must identify, describe, and assess in an appropriate manner, in light of each individual case and in accordance with Articles 4 to 11 of that directive. Article 3 of the Directive refers to the contents of the environmental impact assessment, which comprises a description of a project's direct and indirect effects on the factors, as well as their interactions. The task of conducting such an assessment lies to the responsible environmental authority. According to the Court of Justice (hereinafter CJEU or the Court), in the case of Commission v Ireland: “even a small-scale project can have significant effects on the environment if it is in a location where the environmental factors

[3] This type of projects is listed in Annex I of the Directive, and include, inter alia: nuclear power stations, motorways, long-distance railways, express roads, airports with a basic runaway length of 2100m or more, roads of four lanes or more (of at least 10 km), waste disposal installations for hazardous waste.

set out in Article 3 of [the EIA Directive], such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration." (C-392/96, EU:C:1999:431, paragraph 66)

The definition of significance with regard to environmental effects has been an important issue in EIA. It may relate, inter alia, to scale of development, to sensitivity of location and to the nature of adverse and beneficial effects (Glasson & Therivel, 2019). As the nature and scale of development or a project overall may drastically vary, they have long operational lives, meaning that it may take multiple years to develop a proposal of the project. While developers are encouraged to take into account environmental aspects into the earliest stages of project development, procedurally, EIA stands on the last steps of a project cycle – right by the decision-making. Although the scope of EIA is limited to major development projects with broad implications for the human environment, any action, project, operation, administrative policies, plans and programs, legislative actions, and so on that has the potential to cause significant environmental changes should be subjected to EIA. Regardless, EU practice shows that, it can be problematic to decide if individual projects fall within its scope. This issue has been addressed frequently in the European Commission Reports on the application and effectiveness of the EIA Directive (Report from the Commission to the Council….2009).

The rulings of the Court are the source of definitive interpretations in the European Union law. It is important to remember that the EIA Directive explicitly refer to other directives and international agreements, and when discussing the scope of the Directive, these agreements are sources of definitions to interpret project types in Annex I and II. Wide scope and purpose of the EIA has been consistently reassured by the Court. In Case C-72/95, Kraaijeveld and others (1996, para 31) the Court stated that 'The wording of the Directive indicates that it has a wide scope and a broad purpose. In the 2020 judgement on a case A and Others v Gewestelijke (C-24/19) the CJEU highlighted that this broad definition of "plans and programs mandated by legislative, regulatory, or administrative provisions" is necessary to guarantee that the Directive captures the wide-ranging activities of national authorities. National authorities might more easily avoid the goal of environmental protection if they could simply choose to accept a plan or program without making environmental aspects 'required' if the definition were to be loosened.

Projects specified in Annex II of the Directive are not automatically required to undergo an environmental impact assessment. Member States may choose to review them on a case-by-case

basis as required for projects mentioned in Annex II is called screening and it is the first step of the EIA process. The appropriate selection criteria set out in Annex III to the Directive should be considered when defining thresholds or assessing the effects of initiatives, it should not be focused solely on one factor (for example, size), but should take into account all of the essential selection criteria specified in Annex III (Recital 10 of the EIA Directive). Whatever method a Member State uses to determine whether or not a specific project requires assessment — whether through legislative designation or through an individual evaluation of the project — the Directive's goal must not be compromised (Interpretation of definitions of project categories…2015). This means that Member States cannot establish a standard in which all certain type of projects can be exempted in advance from the EIA, or a type of threshold that does not take into account all relevant criteria from Annex III. In practice, projects can consist of multiple stages of consent, for example one involving a principal decision and another implementing decision. In those cases, the Court has emphasized that competent authority is required to conduct an environmental impact assessment in respect of a proposed activity even after the initial permission is given (*Commission v United Kingdom*, para 103-106.) A similar issue emerges when an environmental impact assessment is not carried out on a project that, in theory, is not subject to an assessment but involves a modification or extension that is covered by the Directive's annexes. The Court has also determined that EIA cannot be conducted on a split-up projects, meaning the cumulative effect of several projects must not give them the loophole to escape the obligation to make the assessment, when, all of the projects together, are likely to have significant effects on the environment. (*Commission v Ireland*, para 76 and 82)

In terms of definitive scope of the EIA within EU, some of the projects can be subject to variety of environmental assessments, including the assessments provided by the other decision-making tools of this research, in cases of which the article 2(3) of the EIA Directive mandates to use either a coordinated or combined approach. In this regard, certain parts of whole EIA can be used as a part of the assessment procedure for certain regulated activities. More on that in the upcoming chapters. However, there is established type of projects that can be excluded or exempted from the EIA Directive. For example, "projects that serve national defense purposes" are not covered by the Directive. The Court has clarified that only projects that are mainly connected to serve purposes of national defense can be excluded from the assessment obligation (*WWF and Others*, para 66). As per article 1(4) of the Directive, EIA does not apply to projects that have separate legislation

established for acquiring development approval – through different administrative procedure. The process by which it was adopted must meet the Directive's objectives, including the provisions of information. the specific legislative act permitting adoption of that project must include all elements relevant for the assessment of the project's environmental impact (*WWF and Others*). Justifications for exempting a projects from the EIA can be found in article 2 (4) of the Directive, which also outlines the requirements for exemption in points (a) through (c) of the second subparagraph of article 2(4). Member States are obligated to conduct another, alternative assessment for the exempted project, as well as make public participation accessible before permitting implementation of the exempted project. Prior to giving approval, the Court emphasized the responsibility to inform the Commission of the reasons establishing the exemption and to supply it with any information made available to their own nationals (*Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen*, para 101-102).

After the developer finished preparing the project, as mentioned, the first step to the EIA is screening, to confirm the significance and necessity of conduction EIA. In some of the EU Member States it may be required for the developer to notify the competent authority in advance of the application for development consent, though the developer may also do this voluntarily and informally (Guidance on EIA Screening, 2001). In total, EIA consists of eight steps.

1.2 EIA Process, EIA Report and decision-making

Because of the large number of projects and activities that may be subject to EIA, some sort of screening method is required. Screening entails making a preliminary estimate of the probable environmental effect of a proposal as well as its relative importance. For this reason, some basic information about the project and its location is required. The length of time needed to complete the screening process will vary depending on the type of proposal, the context, and the level of expertise or awareness of its possible implications. Most proposals can be evaluated quickly (in an hour or less), but others may take longer, and a few will require an extensive screening or preliminary evaluation. (Guidance on EIA Screening, 2001) At this stage, most of the activity proposals prove to have few or no impact and therefore are screened out from the EIA process, however smaller number of projects will require more evaluation and only some projects, usually

major ones, will be requested to full EIA. If screening stage proves the need to move forward with rest of the EIA, process moves to scoping stage. A competent national authority's decision on project not necessarily requiring an assessment of its environmental effects, must contain and be supported by all the information needed to verify the adequacy of the screening that was carried out. In other words, authority's decision not to continue with EIA, should be based on a proper screening process that was carried out according to the Directive and upon excluding the project from the EIA, the official formulation of screening process itself should answer the question "why" behind the decision.

The scoping findings establish the scope of the environmental information to be presented to the appropriate authority, as well as the terms of reference for the environmental studies that will be conducted to gather that information. The Directives' scoping provisions are included in Article 5(2) of Directive. This mandates Member States implementing a mechanism in which developers can, at the very least, seek assistance from competent authorities on the information to be provided under the EIA procedure. The developer must provide information that contains a project description, such as location, design, and size, as well as project characteristics and/or methods to avoid, prevent, minimize, or counteract substantial unfavorable consequences. The developer must also detail the project's expected important environmental impacts, as well as the feasible alternatives relevant to the project that were examined, as well as the key justifications for this choice and a non-technical summary of this material. With due consideration for commercial and industrial secrecy regulations and practices, this data must be made accessible to interested parties as early as possible (EIA Directive 35 Years, 2021) From this point on in the process, the developer conducts study to gather and produce the environmental information required by Article 5 of the Directive. The developer presents the environmental information to the authority together with the application for development approval – the Environmental Impact Assessment Report is prepared as part of the consent application.

Within the first subchapter it has been analyzed that currently EIA Directive provides definition of the EIA process, which first and foremost consists of preparing the EIAR. The Report has significant importance to the decision-making process and for EIA to be efficient, it is crucial to conclude the Report within the standards and high quality requested by the law. Once scoping stage determines necessity to move forward with the process, the internal, EIAR process begins.

Article 5 of the EIA Directive specifies what information must be included in the EIA Report and how to guarantee that it is both sufficient and complete. Article 5(1) specifies what Developers must include in the EIA Report as a bare minimum. These standards are expanded in Annex IV, which is referred to in Article 5(1)(f).

A description of the Project: this is an introduction to the Project and includes a description of the Project's location, construction characteristics, and operational phases, as well as estimates of the expected residues, emissions, and waste produced during the construction and operation phases (Article 5(1)(a) and Annex IV point 1);

Baseline scenario: a description of the existing condition of the environment and its probable evolution in the absence of Project execution. This sets the framework for the future EIA, and Member States must guarantee that any agencies holding information for the Baseline scenario make it available to the Developer (Annex IV.3); The Baseline is a description of the existing state of the environment in and around the project's proposed location. It will serve as the foundation for the EIA. Specifically, developing a robust Baseline scenario for the EIA serves two purposes: it provides a description of the status and trends of environmental factors against which significant effects can be compared and evaluated; and it serves as the foundation for ex-post monitoring to measure change once the Project is initiated (Rosales, 2020). The environment's status and the nature of its consequences, such as pollution rates or emission restrictions, change with time, and this must be accounted for in the Baseline assessment. Furthermore, the Baseline should take into account existing and/or approved projects in the area.

The 'do-nothing' scenario: how the situation would be expected to develop over time (rather than a static description of the status of the environment at the time of the assessment); The proportionality of the efforts to be expended, ensuring that resources are not wasted on data collection if the cost surpasses the benefits; The development of the baseline can frequently take up the majority of the EIA process and take up a considerable percentage of the final EIA report (Rosales, 2020). The EIA Directive demands that only "relevant elements" be explored, and data gathering that is excessive might result in needless expenses. Scoping that is detailed and thorough from the start of the project will go a long way toward preventing this issue.

Some common sources of information used for collecting baseline data include: (i) national/regional databases of previous EIAs; (ii) data collected under other EU legislation; (iii)

EU level and other international databases; (iv) local level/community experts; and (v) primary research conducted by competent experts (Environmental Impact Assessment of Projects, 2017).

A baseline has traditionally been included in EIAs, however the 2014 revisions to the EIA Directive state that a baseline must be included in the EIA Report and must cover both the existing environmental status and predicted future developments ('do-nothing' scenario). As established by the Directive, qualified experts should identify and analyses data; efficiencies in data gathering from existing databases, free services, and other relevant environmental evaluations should always be examined.

Environmental aspects impacted: a description of the Project's environmental impacts, with a focus on climate change, biodiversity, natural resources, and accidents and catastrophes (Article 3, Annex IV points 4 and 8). The 2014 changes to the Directive expanded this list of environmental problems by specifically adding the following factors: Climate change - both mitigation and adaptation; significant accident and catastrophe hazards; biodiversity; and natural resource usage (Environmental Impact Assessment of Projects, 2017). These characteristics may necessitate EIA conductors paying more attention to risk, uncertainty, and resource usage concerns associated to a Project than they may have previously - in certain circumstances, new assessment methodologies or procedures will be required. In addition to the guidelines offered in this part, a great number of efforts, primarily at the EU level, are mentioned to help practitioners with their assessments.

Effects on the environment: the scope and the concept of ‘significant effects’ has been analyzed in the subchapter above. Please see 5-6 above including the importance of cumulative effects (Article 5(1)(b), Annex IV point 5);

Alternatives to the project must be outlined and contrasted, with an explanation of the major reasons for choosing the alternative chosen supplied (Article 5(1)(d) and Annex IV point 2); Mitigation or compensation measures, that is, characteristics or steps to avoid, mitigate, or decrease undesirable consequences and counteract them, should also be considered (Article 5(1)(c) and Annex IV.7). The Special Report of IEMA (Institute of Environmental Management and Assessment, 2020) mentions that: EIA practitioners gather information to support and justify the evaluation of a single effect in order to deliver justified outcomes. Effective EIA practice ensures that the procedures employed are properly stated in the EIA Report so that stakeholders and the public consulted may understand them. The assessment's findings are frequently presented as

several degrees of relevance (e.g. major, moderate, minor, etc.). This technique is considered best practice: while acknowledging the inherent subjectivity of the evaluation, it aims to facilitate communication of the extent of the impact by establishing a categorization.

The magnitude of the anticipated effect and the sensitivity of the receiving environment are two common factors for determining significance: The magnitude of the change that would most likely influence the environment as a result of the proposed Project is considered. Sensitivity is defined as the environmental receptor's sensitivity to change, including its ability to accommodate the changes that the Projects may bring about (Institute of Environmental Management and Assessment, 2020).

Mandatory assessment of alternatives: The Developer must provide: a description of the reasonable alternatives examined; and an explanation of the primary reasons for adopting the preferred option in terms of environmental concerns. Reasonable alternatives must be relevant to the proposed project and its unique characteristics, and resources should be focused exclusively on evaluating these alternatives according to the Directive. Furthermore, the number of Alternatives available is restricted in terms of viability. On the one hand, an alternative should not be ruled out merely because it would incur the Developer difficulty or cost (Rosales, 2020, pg 32). At the same hand, it would be ridiculous to believe an Alternative to be practicable if it is prohibitively expensive, technically or legally challenging. Ultimately, Alternative options must be capable of meeting the Project's objectives while also being realistic in terms of technical, economic, political, and other relevant aspects.

Presented options can be deemed unreasonable if: high costs of a necessary technology may prohibit it from being considered a viable choice, or a lack of technological advancement may remove some solutions from consideration; There are budget constraints: appropriate resources are necessary to undertake Project Alternatives (Environmental Impact Assessment of Projects, 2017). There are stakeholder roadblocks: stakeholders opposing to a Project Alternative may make a certain choice unappealing. Some alternatives are inclusive and may be recognized in plans and programs or by the competent authority during the EIA scoping stage while others may be related to technical design and identified by the developer. In some circumstances, EIA practitioners may discover and recommend alternatives to the developer. Identifying and evaluating alternatives is an iterative process that involves some flexibility and strong communication from all involved.

Consultation with the public may be highly helpful in developing and evaluating alternatives. A thorough presentation of alternatives and how they were evaluated increases openness and can improve public acceptance and support for projects.

Monitoring measures are addressed in Article 8a of the EIA Directive[4], which describes the information to be included in the Development Consent, and the proposed Monitoring Measures (if applicable) to be included in the EIA Report. The statement of monitoring actions is connected to the characterization of measures proposed to reduce major adverse environmental consequences and should be directly tied to assuring these measures are successfully implemented (Bernny, 2020). While it is not legally binding, it outlines the Directive's aim on monitoring, emphasizing the necessity for the EIA results to be implemented in practice and measures to be put in place to achieve this.

In practice, monitoring should not duplicate monitoring performed under other evaluations; consequently, practitioners should be aware of other similar arrangements. Monitoring measures should assist in ensuring that projects satisfy all current environmental legal requirements, and that impacts are consistent with EIA Report Projections; They are required to include any mitigation or compensation measures for projected substantial effects are implemented as intended. Monitoring measures can also give insight into the quality of the EIA method, as well as lessons learned and best practices for future EIAs (Environmental Impact Assessment of Projects, 2017). Practitioners should first determine whatever monitoring measures are mandated by other laws. If they are insufficient or inappropriate for monitoring the anticipated environmental consequences or suggested mitigation actions, further methods may be proposed in the EIA Report.

Non-Technical summary, i.e. a readily available overview of the EIA Report's material given without technical jargon, and thus intelligible to anybody with no knowledge in the environment or the project (Article 5(1)(e) and Annex IV.9); The non-technical summary should be more than a few pages long. However, keep in mind that it is a summary, so it must be brief and engaging enough for stakeholders and the general public to understand the important problems at stake and the suggested path ahead: depending on the Project and the degree of complexity of the environmental concerns involved (Berny, 2018). It should highlight any significant uncertainties

[4] Recital 3513 of the 2014 Directive revising the EIA Directive also addresses monitoring.

about the project and its environmental effects; explain the project's Development Consent process and the role of the EIA in that process; and provide an overview of the approach to monitoring. The non-technical summary is written in non-technical language, avoiding technical jargon, comprehensive statistics, and scientific discussion; it must be understandable to the general audience (Guidance on the Application… 2013).

The EIA procedure's efficacy is dependent on high-quality EIA Reports that are appropriately examined and analyzed by qualified specialists and contribute to informed decision-making. To make this feasible, qualified expert must be involved in both the development and evaluation of the EIA Report (Environmental Impact Assessment of Projects, 2022). A high-quality EIA Report must be created by competent experts who are knowledgeable with the necessary legislation and technical factors involved in conducting an effective assessment and producing a high-quality report. At the same time, the competent authority in charge of analyzing the report must have access to adequate knowledge to determine its quality and, if necessary, seek adjustments (Glasson & Therivel, 2019). Article 5(3) of the EIA Directive refers to the expertise required to complete the EIA report and the necessity for adequate information for the competent authority to draw a judgement regarding the Project's ecological impact. The developer is responsible for ensuring the quality of the experts who prepare the EIA Report (Rosales, 2020); the competent authority is responsible for ensuring that it has access to the necessary expertise to review and evaluate the EIA Report; and the competent authority is responsible for being able to request additional information from the developer, as needed. Developers must understand the notion of 'competence' in relation to experts drafting the EIA Report. The EIA Directive does not go into detail, such as requiring experts to be external consultants rather than in-house experts; rather, the Directive only requires that experts be competent, leaving interpretation to the Member States concerned. There are several techniques that may be followed to ensure the competency of the specialists hired by developers to create EIA reports: a centralized list/standardized qualification to assess competence; specialists from recognized institutions; practitioners' experience as a measure of competence; a more flexible approach, where transparency allows for easy scrutiny of competency These ways to determining competence can be employed alone; however, they can also be combined (Rosales, 2020).

Because there is no established technique for gauging competence, selecting and confirming experts through a more ad hoc, transparent procedure provides for greater flexibility on the side of the Developers. Instead, regardless of how experts are chosen, the names and CVs of all consultants are published in the final report, as are the reason(s) for hiring them. Authorities in charge just like developers must guarantee that the EIA Report is created by qualified specialists, and authorities must demonstrate that they have enough experts to study and assess EIA Reports. According to Recital 33 of the EIA Directive: 'sufficient knowledge in the relevant field of the project concerned is necessary for the purpose of its evaluation by the component authorities in order to guarantee that the information submitted by the developer is full and of a high degree of quality.' Competent Authorities might have in-house knowledge or obtain it through other sources. In certain Member States where EIAs have been conducted for decades, personnel examining EIA Reports, particularly those inside competent authorities, have years of expertise and can thus be regarded experts (Berny, 2018). When in-house knowledge is unavailable, research institutions and professional bodies may be called to conduct evaluations. A review body may be available in some Member States to conduct the review.

In this regard, the European Commission has introduced Commission Expert Groups – a consultative body that aims to assist the already existing expertise of the Commission as external consultants, or experts. Currently, there are two Commission Expert Groups (1) formal – which is set up per Commissions' decision (Commission Decision C(2016)3301; 2016) and (2) informal – set up by an individual Commission department that has obtained the agreement of the Commissioner and Vice-President responsible and of the Secretariat-General (Environmental Impact Assessment of Projects, 2017). The term 'examination' appears in the EIA Directive in reference to the responsibilities performed by the competent authority in adopting the reasoned conclusion. According to case law, article 3 of the EIA Directive is an essential element that should drive the whole EIA process. This section requires the EIA process to not only identify and characterize the Project's direct and indirect consequences, but also to assess them. The Court concluded that this evaluation included a consideration by the competent authority of both the material contained in the EIA Report and the outcomes of the consultations (*Commission v. Ireland*, 2011). There are two primary processes for adopting reasoned conclusions in EU Member States: Integrated process - the reasoned conclusion is incorporated into the development consent decision. Separate EIA procedure - the reasoned conclusion is approved as a legally enforceable

environmental judgment until the issue of the development consent decision (Environmental Impact Assessment of Projects, 2022) The competent authority shall ensure that the reasoned conclusion is up to date before making a decision on the development consent. The reasoned conclusion, environmental circumstances, and monitoring measures must all be incorporated into the development consent decision. Decisions to withhold the development consent should be supported by evidence.

Articles on decision-making ensure that the reasons and conditions connected with the decision to give (or reject) development consent are clearly justified, and that environmental conditions arising from the EIA conclusion are not overlooked when making the development consent decision. As a result, the goal is to ensure that the EIA process informed decision-making and that a high degree of environmental protection can be ensured once the project is completed and operational. (35 years of EU EIA,2021). According to the article 1 (2) (c) development consent means the decision of the competent authorities to proceed with development of the project. In other words, represents permission to conduct proposed activities. The identification of a decision as a "development consent", within the meaning of Article 1(2) of the EIA Directive, must be governed by national law in accordance with Community law (*Barker*, C-290/03, para 41). The court has also stated in multiple decisions that term itself defines a single type of consent, permitting-one, that is drawn up by a procedure that involves several stages and combination of multiple distinct decisions. (*Comission v Spain*, para 56, also *Abraham and Others*, para 26, also *Križan and Others*, para 103).

Depending on the projects, the duration of the whole EIA process can be quite long. The latest amendment of the Directive has introduced certain timeframes to be followed: (i) screening decision shall be adopted by competent authority as soon as possible and not exceeding 90 days – also provides possible extension options; (ii) sets minimum time for public consultations as minimum 30 days – this aspect of the timeframes will be further discussed in the upcoming subchapter; and (iii) the final decisions must be taken within “reasonable” period of time. As projects may vary in size and volume, the processes associated with it will vary as well, therefore reasonable is determined separately for each case. It also should be taken into consideration that there are two main ways how to implement the EIA Directive: as separate EIA procedure and as an Integrated process when EIA is carried out in order to reach the final development consent (Environmental Impact Assessment of Projects, 2017). To compare the latter in general, integrated

EIA procedure is carried out in parallel with other processes and assessments necessary to make development consent, while in separated EIA approach, reasoned conclusion is reached in a separate procedure from the one developing the development consent.

1.3 Public Participation as an effectiveness component in decision-making in EIA.

Public participation and access to information regarding environmental matter has been one of the core-concepts of EU environmental policy. In that regard, worth to mention one more time that, EUs legal framework has been heavily influenced by the Aarhus Convention especially in regards to public participation in environmental decision-making. Despite its underlined importance, it has generally been identified that all competent public authorities take advantage of the interest of the public especially when it comes to conducting economic-activities. Due to the necessity of properly incorporating environmental factors into government decision-making, public authorities must always provide reliable, exhaustive, and current information. According to the UNECE Implementation Guide (The Aarhus Convention: An Implementation Guide, 2014), public participation is generally self-motivated to gather information and participate in decision-making processes, however the public must have faith in an open, regular, and transparent procedure – that can be possible by providing a framework in which the public can exercise its rights to information, association, and participation; Parties can simultaneously achieve two goals: enhancing the ability of authorities to carry out their responsibilities and creating the conditions for the public to exercise its rights and fulfill its obligations.

In context of EIA, internationally, there are two main instruments assuring that public is involved with EIA processes: Espoo Convention[5] and EIA Directive. The primary provisions of the EIA Directive on consultations are Articles 6 and 7. A number of additional rules are also applicable, such as Article 4(5) on the screening stage and Article 5(2) on the scoping stage. These following subchapter will analyze: (i) what information should be supplied to the public, (ii) who should be consulted during the EIA process, and (iii) certain minimum requirements to guarantee that it is

[5] For example, Espoo Convention, article 2, para. 2 obliging Member States to take necessary measures to establish public to access EIA procedures and participate.

incorporated properly; while also touching upon distinguishing access to information and public participation, and setting time-frame.

It must be understood that the EIA Report is essentially an informative decision-making tool: once generated by the Developer, it must be reviewed by the public and other involved parties (The Aarhus Convention: An Implementation Guide, 2014). Within the EIA Directive, Member States have obligations to exchange collected information, consult, involve public and guarantee the possibility to of challenge before the courts (*Commission v Ireland,* C-50/09, para35?). Obligation to set public consultations are prescribed in article 6(1) and (2), requiring authorities likely to be concerned by the project and the public to be invited and given chance to express opinion – prior permitting – as one of the parts of the decision-making. These consultations, together with any other opinions that Member States may require, are part of the consent procedure and are intended to aid the competent body's decision to grant or deny development consent. Therefore, they are preliminary and often not susceptible to appeal (Commission v Spain, C-332/04, para 54). Authorities and public group concerned can be understood in broad terms or on a case-by-case basis, and they must be given the chance to comment on the facts provided by the developer and the request for the development consent. Participation in the decision-making process has no bearing on the access requirements for the review process. Participation in an environmental decision-making procedure under the conditions outlined in Articles 2(2) and 6(4) of Directive 85/337 is distinct and serves a different purpose than a legal review, which may, where appropriate, be directed at a decision adopted at the conclusion of such a procedure (*Djurgården,* C-263/08, para 36,38). While Member States are given the flexibility to allocate reasonable time-frames to consultations on case-by-case basis, the EIA Directive specifies 30 days as the minimum period for public consultations on EIA Report. The notion of acceptable timeframe for public consultations is covered in Aarhus Convention as well and case law of the Aarhus Convention Compliance Committee has determined that a total of 90 days (45 to get familiar relevant information and prepare and 45 days to comment) to be sufficient (*Andresuvych et al*, 2011, pg 44-45)

Transboundary consultations must be carried out if a project is anticipated to have major environmental implications in another Member State, or if another Member State requests them. The Member State whose territory the Project will be carried out will provide the affected Member

State a description of the Project (including any information on the probable transboundary implications) as well as information on the nature of the decision that may be made. The impacted Member State must be given a fair amount of time to indicate whether or not it will participate in decision-making procedures. If the affected Member State confirms that it will participate, the authorities and public in the affected Member State must be notified and given the opportunity to express their views before the Development Consent is granted. These discussions may be carried out through an appropriate joint organization, and certain Member States may have national law outlining additional obligations (Guidance on the Application of the Environmental Impact …,2013).

Minimum requirements for effective consultation consultations have two primary components: educating consultees and providing consultees, whether public or public authorities, time to prepare and successfully engage in environmental decision-making (Environmental Impact Assessment of Projects[6], 2022). As established by the Court, the imposition of an administrative charge is not necessarily contradictory with the goal of the EIA Directive. It is clear from the sixth recital in the preamble to the EIA Directive, as well as from Article 6(2) of that directive, that one of the directive's objectives is to provide members of the public with the opportunity to express their opinions during development consent procedures for projects that are likely to have significant environmental effects, under that Article, Member States may define the specific arrangements for public information and consultation, including determining the public to be informed and consulted and specifying how that public may be informed and consulted(*Commission v Ireland*[7], para 37-38). A cost, on the other hand, cannot be set at a level that would preclude the directive from being entirely effective in achieving its goal. In other words, it is possible for authorities to set a charge for participation, however the amount shall not be absurd and prevent general public with executing their right to participate. This arrangement can be connected to the root-reason why most of public participation is self-motivated, making it is for the process to be perceived as not mandatory obligation for public to participate but a volunteer activity to use the right in general.

[6] Environmental Impact Assessment of Projects – Rulings of the Court of Justice of European Union European Union, 2022
[7] C-216/05

Access to information has big importance for public participation. The 2014 Directive has put more emphasizes on the need of effective public engagement in EIA decision-making procedures. Consequently, it has imposed the requirement to improve public access to information and boost transparency. Different source of media, including electronic format is vital for information to be accessible. In general, the information channels used may be considered reasonable for reaching the members of the public concerned, in order to provide them with an adequate opportunity to be kept informed of the proposed activities, the decision-making process, and their opportunities to participate early in the procedure (*Flausch and Others, para 32*). Taken into regards the latest amendments, the information shall be available digitally – online (Recital 18 of the 2014 Directive). While specific participation arrangements are left to Member States to determine, the Directive dos not allow them to carry out those procedures only at the level of headquarters of the projects regional administrative authority – they should be carried out through municipal level as well (*Flausch and Others*). The importance of accessing information has come forward before the changes of 2014 as well, in 2003 the Council has developed an Directive on public access to environmental information[8]. The disclosure of information must be the general rule, as specifically provided for in the second subparagraph of Article 4(4) of the Aarhus Convention, and the grounds for denial referred to by those rules must be read restrictively. The goal of the abovementioned Directive is to ensure a general principle of access to environmental information held by or for public authorities and, as stated in recital 9 and Article 1 of that directive, to achieve the broadest possible systematic availability and dissemination of environmental information to the public. With the phrase 'any... information,' the Directive's area of applicability must be interpreted broadly, according to 2016 judgement in *Bayer CropScience and Stichting De Bijenstichting*, the directive covers all information relating to the state of the environment, activities or measures that could affect it, or activities or measures intended to protect the environment, without the list in that provision including any indication such as to limit its scope, so that 'information relating to the environment' within the meaning of the Directive must be understood to include documents that are not related to carrying out a public service.

Participation in an environmental decision-making procedure under the terms of the Directive serves a different purpose from access to review, since the latter may be directed towards a decision

[8] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

reached at the end of the decision making procedure. The right to a review procedure under the Directive is unaffected by whether the authority that made the decision or action in question is an administrative body or a court of law. Therefore, involvement in the decision-making procedure cannot relevance on the terms of admission to the review procedure. Members of the "public concerned" within the meaning of the EIA Directive must have access to a review procedure to challenge a decision made by a body attached to a court of law of a Member State on a request for development consent, regardless of the role they may have played in the examination of that request by participating in the procedure before that body and expressing their views (*Commission v Spain*). Article 9 of the EIA Directive requires that the public be notified whenever a decision to grant or deny development approval has been made. The goal of publishing this information is not only to inform the public, but also to allow anyone who believe they have been damaged by the project to use their right of appeal within the periods specified. It follows from the foregoing that the publication by a Member State of an environmental impact statement issued by a competent administrative authority in environmental matters, an action not required under Community law, is no substitute for the obligation to inform the public of the granting or refusal of consent to proceed with a project (*Commission v Spain*, para 55).

Member States may establish in their national implementing laws a limited number of grounds for public agencies to deny requests for access to information. Within the scope of this research, these grounds can be when: the request relates to work-in-progress or unfinished documents or data; the request relates to internal communications; disclosure of the information would have a negative impact on intellectual property rights; disclosure of the information would have a negative impact on the confidentiality of commercial or industrial information where required by national or Community law (Institute for European Environmental Policy, 2010). Considering the public interest in information, all grounds for rejection must be construed in a limited manner. The latter two reasons for denial cannot be claimed when the requested information pertains to environmental emissions. Information must be provided in part if it can be isolated from elements exempted by the confidentiality requirements of the Directive.

According to the 2016 Briefing published by the European Parliament (Ebbesson, 2016), certain states had failed to meet the standards established for accessing information – and encouraged the Commission to be closely supervising the implementation process and practice. In terms of EU as

part of the Aarhus Convention, the same briefing has voiced that the EU itself, on certain occasions, has failed to effectively provide public participation. Overly strict policy and thresholds were found in countries like Austria, Germany and Bulgaria, who set too high standards for eligibility to appeal decisions in court – both as individuals and as NGOs (Ebbesson, 2016). Stating the shortcomings of implementation, the Committee has expressed that Member States have so far failed to establish and maintain, clear, transparent and consistent regulatory framework to meet standards set by the Aarhus convention. In 2022 summary report by the UN regarding the environmental assessment in Europe[9] (UNECE, 2022), it has recommended that governments encourage the growth of green finance and more carefully evaluate environmental spending's both in the context of environment and public finance - Governments should also examine environmental subsidized finance on a frequent basis in context of the polluter pays principle, and conduct impact assessment analyses on such funding on a regular basis, so that the funds can provide true value added.

Overall, Environmental Impact Assessment has been a tool that has been available for decades now, making it one of the relatively established tools within this research, and it reaches out to wide range of economic-activities and has effect on more than environmental aspects of human life. The European Union's legal framework around EIA has been revised and clarified for years, while corresponding to new arising challenges that new day and age bring alongside general implementation issues that may arise on local and regional level - even a small-scale project can have significant effects on the environment if it is in a location where the environmental factors set out in the Directive are sensitive to the slightest alteration. Wide scope and purpose of the EIA has been consistently reassured by the Court. The length of time needed to complete the screening process will vary depending on the type of project and its location. If screening stage proves the need to move forward with rest of the EIA, process moves to scoping stage. The EIA Directive provides definition of the EIA process, which first and foremost consists of preparing the EIAR. The Report has significant importance to the decision-making process and for EIA to be efficient, it is crucial to conclude the Report within the standards and high quality requested by the law. Personnel evaluating EIA Reports can be considered specialists in some Member States where

[9] The Seventh pan-European Environmental Summary for policymakers, progress in establishing a Shared Environmental Information System: Key messages and recommendations, developed by the UNECE, available as web-brochure

EIAs have been conducted for decades. Generally, research asserted that approach and an actual qualifications of the people involved to give expert opinions and evaluations has been an underlining issue for practical implementation of the EIA. This in great part affects the EIA process to analyze the Project's direct and indirect implications in addition to identifying and characterizing them. The case law and studies analyzed in this chapter have highlighted that as matter of assigning competent experts to the process of EIA varies from State to state, it reoccurs as a loophole for error and inconclusiveness of the process, and it may be used the best to avoid certain obligations regarding the projects. According to case law, adopting the reasoned conclusion is a critical component that should guide the entire EIA process. EIA Reports must not only identify and define the Project's direct and indirect effects, but also evaluate them. The objective is to guarantee that the EIA process be based on informed decision-making and that once the project is finished and functioning, a high level of environmental protection can be ensured. while the Court has made important determinations in regards to significance of scope of EIA - meaning cumulative effects of several projects, split-up scenarios and exceptions allowed for Member States within legal framework- it can also be observed that because of the plurality of projects that may need to be permitted through EIA evaluation, that's when the exceptions can be overlooked.

One of the core themes of EU environmental policy has been public engagement and access to environmental information. It has been underlined in the EUs commitment to Aarhus and Espoo Conventions and its reflections on the European policies. The studies observed in this research state that main issues arise from the inconclusiveness of the reports and from public involvement, which is typically self-motivated to obtain information and engage in decision-making processes. It can be assessed that current scope and flexibility of the EIA according to the directive leaves certain grey areas that create possibility for wrongfully excepting projects. While EU law in its nature leaves these flexibilities for Member States to implement on their own terms, it could be debated that environmental matters, by the importance that they have on overall quality of life of all human kind, need more direct measures and rules and do not require that much freedom of choosing. It is concluded by the researcher of the thesis, that for EIA to maintain high level of effectiveness, all of parties affected and involved should be participating with intent and environmental objectives in mind. More focus should be allocated to promoting and mandating public participation in EIA process for Member States, for which suggested could be more legal or financial aids towards raising awareness within the public and assuring general common

understanding of the importance of the environmental assessments within the humans of Europe. It seems that the importance and procedural or legal rights and requirements of permitting these activities are mostly the information that are meant and used for authorities responsible of assuring them, while transparency and effectiveness of EIA desperately requires for the public to be just as aware and obliged to participate in order to truly reach environmental goals.

Chapter II - IED requirements for the permitting process

2.1 Legal Background

Since 1996, EU Member States have used integrated pollution prevention and control (IPPC) methodology and laws to grant environmental permits to regulate the operation of larger industrial units. However, in 2010, the EU introduced Directive 2010/75/EU on Industrial Emissions (hereinafter referred to as IED or the Directive), which is the most recent version of EU legislative standards for industrial activities. The IED is the main piece of EU legislation governing the environmental effects of large agro-industrial sources. The Directive consists of and incorporates obligations established by seven separate EU Directives: The Integrated Pollution Prevention and Control Directive (IPPCD); the Large Combustion Plants Directive (LCPD); the Waste Incineration Directive (WID); the Solvent Emissions Directive (SED); Council Directive 78/176/EEC on waste from the titanium dioxide industry 20; Council Directive 82/883/EEC on procedures for the surveillance and monitoring of environments affected by waste from the titanium dioxide industry; and Council Directive 92/112/EEC on procedures for harmonization. In terms of structure, the Directive is organized into first nine are more common provisions, and deal with object and scope of the directive, provide definitions, provisions relating holding and granting permits and basic compliance matters. It applies to all of the Directive, all industrial activities mentioned, without being bound to just Annex I of the Directive. Annex I of the IED is a re-written version of the Integrated Pollution Prevention and Control Directive (IPPC Directive) and solely includes to IPPC activities – now listed within Annex I.

Before the integration of different sector legislations into the IED, the main regulatory instrument was considered to be the IPPC Directive in terms of standards of the environmental quality management in decision-making. The main goal of integration of the 7 directives into one, was to tackle pollution from various industrial sources through unified law. The European region requires EU-wide legislation because the largest industrial facilities in the EU account for a significant proportion of the total emissions of critical atmospheric pollutants, in addition to having other significant environmental consequences such as emissions to water and soil, waste generation, and energy usage. Generally, EU environmental policy is subject of analysis of researchers from variety of disciplines, as current structure of the EU environmental law is “investment-heavy” regulations (Vasovic et al, 2015) is mostly The Aarhus Implementation Guide calls the Directive

an instrument that aims to achieve integrated pollution prevention and control from a wide range of activities through measures to prevent or, where practicable, reduce emissions from industrial facilities to air, water, and land, including waste, in order to achieve a high level of overall environmental protection (United Nations, 2014). It establishes guidelines for the integrated prevention and management of pollution caused by industrial activity. The IED also establishes laws to avoid or, when that is not possible, minimize emissions and attain a high degree of overall environmental protection (Article 1 of the IED). To compare with the previous tool discussed, he EIA Directive's goal, is to identify, describe, and assess in an appropriate manner, in light of each individual case, the direct and indirect effects of a project on human and environment and the interaction between all of the factors included in Article 3; Therefore, the tools overlap in their goals when emissions related activity has effect on the environment.

As stated, the IED is designed to meet a wide range of needs: first and foremost, to provide a high degree of protection for human health and the environment by preventing, mitigating, and eliminating detrimental effects from industrial operations as much as possible. Secondly, the goal is to level the playing field for industrial pollution prevention and control operators across industries of the EU. The Directive also asks to enable public access to information, public involvement in decision-making, and access to justice in context of the environmental permits and performance of industrial operations. The fourth need is to decrease unnecessary or excessive administrative expenditures for economic operators resulting from prior industrial emissions regulations. In response to these demands, the IED has a number of objectives. These include: establishing a framework for major industrial activity control and permitting; avoiding competition distortion by ensuring consistent environmental requirements for all economic operators within each sector; ensuring that industrial installation permitting is based on best available techniques; stimulating innovation by encouraging the development and application of emerging techniques; and ensuring the process's simplification and clarity (European Commission, 2020). The IED is founded on numerous concepts, including an integrated approach to pollution prevention and control, the use of best available permitting processes, flexibility, inspections and monitoring, public engagement, and access to justice, each of these aspects will be further analyzed in the next part of this chapter.

To attain a high degree of environmental protection, the IED integrates the environmental consequences of approximately 50 000 large-scale agricultural and industrial operations, according to the European Commission[10]. The IED regulates activities such as power plants, refineries, waste treatment and incineration, steel, nonferrous metals, cement, lime, glass, chemicals, ceramics, pulp and paper, food and drink, and intensive pig and poultry husbandry, among others. National authorities are required to give permits for plants engaging in activities covered by the IED, with permission restrictions based on the adoption of Best Available Techniques (BAT) (Ricardo et al, 2021). In terms of the **scope** of the Directive, sectors covered by the IED account for a significant portion of Europe's emissions to air and water, as well as non-household waste production. It is estimated that they produce around 23% by mass of total EU air emissions and approximately 40% of overall EU greenhouse gas emissions (Commission Report 793, 2021). On 5 April 2022 the European Commission adopted a new proposal to revise the EID bringing changes to the original overall scope of the directive a bit further, establishing that "The Union's extractive industry is key to achieving the aims of the European Green Deal and the EU industrial strategy, including its update". Therefore, the importance of IED has been further recognized as strategical and policy tool to achieve broader goals than set initially. Article 2 defines the scope of the IED as industrial operations with a high pollution potential, as described in Chapters II to VI. However, Article 2 (2) of the Directive states that it does not apply to research, development, or testing of novel goods and processes. Similarly, to other EU tools, the Directive is structured in a manner that provides a list of activities and requirements set for the activities to apply IED provisions on them. Currently, the IED scopes out to all activities that are presented in Annex I of the Directive, taking into account the nature of the activities listed, and where applicable, the Directive sets additional capacity thresholds presented in Article 10 and Annex I. Alongside the broad list of activities in energy, production and processing of metals, minerals, or chemicals, waste management, it also applies to – with certain requirements to be met - combustion plants, waste incineration plants, dry-cleaning as well as installations producing titanium dioxide. IPPC facilities are subject of general guidelines that will be further analyzed in upcoming subchapter, and include: taking appropriate preventive measures against pollution, avoid waste production and recovering or

[10] All of the Data in following paragraph are provided from the official European Commission webpage.

safely disposing waste produced; efficient usage of energy and taking all necessary precautions to prevent accidents.

At mentioned, it can have connection with the EIA Directive and process. Because the EIA Directive and the Industrial Emissions Directive may sometimes refer to the same types of operations, it is critical to understand the distinctions between their objectives, scope, categorization systems, and thresholds. In the framework of the EIA Directive, Member States have discretion to utilize the thresholds set out in Annex I to the IED, as long as they act within the limit of discretion set out in Article 2(1) of the EIA Directive. This requires projects to undergo an impact assessment if they are expected to have substantial environmental implications due to factors such as their nature, magnitude, or location.

2.2 Requirements for permitting set by IED

In this part will be discussed the key features of the IED in terms of permitting activities, such as Best Available Techniques (BAT), flexibility, quality process criteria set and mandatory environmental inspections. The general requirements outlined in Chapter I and II of the Directive oblige all facilities carrying out operations that are described in the Annex I of the Directive, to operate on the base of the permit granted by the competent authority in the concerned State - while also reflecting on the principles and regulations provided in IED. The permit mentioned should cover all environmental elements of an installation's operations, including pollutant emissions to air, water, and soil, waste generation, resource utilization, noise, odor, accident prevention, and site restoration after closure. In certain specialized activities (such as major combustion plants or titanium dioxide production), according to the nature and specificities or the activity, the IED additionally establishes minimum standards based on preceding Directives in its sectoral chapters[11].

The notion of Best Available Technique (BAT) was first adopted in European Community legislation in 1984. The Council Directive 84/360/EEC[12] mandated that EU Member States

[11] See paragraph 3 of Chapter 2.1 above, as IED incorporated predecessor Directives and scoped out to multiple sectors, the Directive provides special chapters for specific industry related activities.
[12] Council Directive of 28 June 1984 on the combating of air pollution from industrial plants

monitor improvements in the best available technology and establish plans to gradually adapt existing plants in the categories mentioned in Annex I to the best available technology. According to the current Directive, one of the core permit requirements is to call for the employment of Best Available Approaches, which are the most ecologically friendly of the economically possible techniques available. The BAT are techniques that each Member State employs to achieve "a high level of environmental protection," as mandated by the Industrial Emissions Directive. Best Available Techniques, as stated in IED Article 3(10), are "intended to avoid and, if prevention is not possible, to decrease emissions and the overall effect on the environment."

National authorities are required to give permits for plants carrying out activities covered by the IED, with permission restrictions based on the adoption of Best Available Techniques (BAT), therefore the permit criteria are based on the performance levels obtained with Best Available Techniques and they are documented in a reference document known as a 'BREF,' which serve as the foundation document for permitting. BREFs describe which techniques are considered to be BAT and what emission levels correspond with them. To ensure unified approach, sectoral BREFs are customized to each agricultural or industrial activity and are created through EU-wide evaluation with Technical Working Groups comprised of environmental and civil society NGOs, industry groups, EU Member States, and the Commission. It should be noted that BREFs are the main basis of the information exchange and therefore provide significance to whole process.

These BREFs describe the state of the industrial technologies, emission control techniques, and corresponding emission level ranges. The emission limit values must be based on the application of the best available techniques, without prescribing the use of any particular technique or technology, but taking into account the technical characteristics of the affected installation, its location, and the local environmental conditions (Joined Cases C 165/09 to C 167/09, 2011). They also describe emerging techniques that will be the BAT of the future. Local authorities should use BAT conclusions in these BREFs in order to set permit conditions (Giljam, 2017). In terms of the sectoral BREFs and finding that they have - those resulting BAT conclusions are eventually formally incorporated into EU legislation as Implementing Decisions and are legally obligatory. Once the BREFs are published, the European Commission utilizes them to generate BAT Conclusions, which are then accepted as Commission Implementing Decisions - they provide the

range of predicted emission limitations in operating licenses (Farmer, 2022). The IED provides for some latitude in their interpretation. Permitting authorities in EU Member States must consider these as a guideline when establishing their permission criteria. EU-wide BAT conclusions are implemented as sector-specific implementation decisions that specify BAT and the associated environmental performance to be included in licenses granted by competent authorities in Member States. (Ricardo et al, 2021). In this regard, BREFs can also be categorized according sectors they apply to: vertical – meaning it deals with issues related to specific industrial activities, and horizontal – multi or cross-sectoral activities. The BREF provides four main guidelines that lead the process of choosing best environmental option as a technique, summarized the content that BREFs should provide for it are the following: The information required to define and scope the different procedures being considered; The creation of an inventory of the emissions and resources used by each alternative technology. Such an inventory might be a crucial prerequisite for implementing future guidelines; The actions required to estimate environmental consequences. Typically, there will be a variety of emissions, discharges, or resources utilized by the alternative strategies under consideration (Institute for European Environmental Policy, 2010). This section examines ways to describe the environmental consequences so that comparisons may be made between the alternatives. Calculations may be used to express a broad variety of contaminants, allowing them to be compared and compiled into seven environmental themes: human toxicity, global warming, aquatic toxicity, acidification, eutrophication, ozone depletion, and photochemical ozone formation potential. Consideration should be given to the examination of energy consumption and waste generation; The comparison of different environmental impacts and how to choose which of the options provides the highest overall degree of environmental protection.

As Integrated Pollution Prevention and Control Reference Document (European Commission, 2006) defines, "techniques" refers to both the technology used and the manner in which the installation is designed, built, maintained, operated, and decommissioned; "available" techniques are those developed on a large enough scale to allow implementation in the relevant industrial sector under economically and technically viable conditions, taking into account costs and benefits, whether or not the techniques are used or produced within the Member State in question, as long as they are available. When applying BAT, all of technical and environmental features of the installation concerned shall be considered. While setting permission requirements, competent

authorities responsible for issuing permits must take into account the broad principles outlined in Article 3. These requirements must contain emission limit values, which must be complemented or replaced as needed by similar parameters or technological measures. According to Article 9 (4) of the Directive, these emission limit values, equivalent parameters, and technical measures must be based on the best available techniques, without prescribing the use of any technique or specific technology, and must take into account the technical characteristics of the installation in question, its geographical location, and the local environmental conditions.

A non-exhaustive and non-prescriptive list of BAT should be provided in the BAT findings, along with the environmental performance levels that may be attained by using BAT. They may include: BAT-Associated Emission Levels (BAT-AELs), i.e. a numerical range of emission levels for specific pollutants, BAT-Associated Environmental Performance Levels (BAT-AEPLs) other than emission levels, which typically address the consumption of raw materials, energy, or water, as well as waste generation, and/or Descriptive BAT that are not associated with either BAT-AELs or BAT-AEPLs, e.g. monitoring, site remediation, environmental management systems, or the limitation or ban of the use of hazardous substances. BAT conclusions are the compulsory reference for determining permission requirements under IED Article 14(3). In order to define BAT and the environmental performance associated with BAT at the EU level, the Commission organizes an information exchange with experts from Member States, industry, and environmental organizations. The European IPPC Bureau is in charge of coordinating this activity (EIPPCB); Competent authorities must update installation licenses to reflect the content of the BAT findings, and operators must comply with them within four years of the BAT conclusions being published in the Official Journal of the EU. This elevates BAT conclusions above their previous status under the IPPCD, where they were not legally obligatory. Permitting authorities must also guarantee compliance with the necessary minimum standards in IED Chapters III–VI (Council working group evaluation, 2020).

The IED gives competent authorities considerable flexibility in establishing less stringent emission limit levels. Such exceptions are only permitted in limited circumstances, such as when an assessment shows that achieving specific emission levels associated with BAT described in the BAT conclusions would result in disproportionately higher costs compared to the environmental benefits due to the geographical location, local environmental conditions, or technical

characteristics of the installation, preventing BAT implementation. Nonetheless, the use of this derogation method is and should be carefully regulated since the responsible authority must guarantee that no considerable pollution is created and that a high degree of environmental protection is attained overall. Also provisions should ensure that they cannot be used to avoid responsibility applied to them or high costs of appropriate process. The responsible authority must always document the reasons for granting such derogations. Derogations cannot exceed the minimal standards in the specific sectors outlined in the sectoral Chapters of the Directive. Simultaneously, when an environmental quality threshold is surpassed, responsible authorities must impose tighter emission limitations. In fact, for clearer guidance and higher quality, the Commission has adopted the Commission Implementing Decision on 2012, regarding the implementation of the quality assurance provisions of the IED. According to the document, BAT consists of two stages: drawing up the BREF and second submitting to the committee (Art 75 of IED) which conducts examination, before making a decision regarding implementation. To put the process into clearer perspective, Technical Working Groups are made as an information exchange platform to ensure flow of data during creation of the BAT document. The IPPC Bureau collects and assesses that information, after examination BAT conclusions are drawn from the finding. As M.E. Conti has described it (Conti et al, 2014) BAT is a dynamic concept, while the revision of the BREF documents is a continuous process. In the judgement *Poland v European Commission* (Case T-699/17,2021, para 3) the Court has outlined the process of drawing up a technical BAT in BREF, emphasizing that information must be exchanged between the European Commission, Member States and the sector concerned, including the NGOs promoting environmental protection. The committee – which should be composed by the representatives of the Member States - reviews the draft implementing decision of the BAT conclusion, making decision by the qualified majority[13].

The IED includes mandatory environmental inspection standards. Member States must establish an environmental inspection system and develop inspection strategies. The IED mandates a site inspection at least every 1 to 3 years, based on risk-based criteria. Operators must submit to Member State authorities the outcomes of the monitoring obligations established by BAT findings, and Member States must report to the EU on many elements of the Directive's implementation.

[13] For specific time frame interpretations and explanation of the concept of the majority for a specific case, please see the Case T-699/17

Operators must also promptly notify authorities of any significant accidents and provide the authorities with the necessary access and assistance to conduct inspections and other monitoring functions. In the revision proposal of the Directive, the Commission established it as an objective to increase the permit ambition and restrict flexibilities in order to promote the green transition and meet the goals of the EU Green Deal. In its Joint Position the European non-energy extractive industry (CEMBUREAU et al, 2022) [14]has criticized multiple aspects of the proposal, including the Commission's decision to introduce "default option" (as set in Article 15.3) deeming it "technically impossible" and challenging for all of the operators to develop required feasibility assessment, making permit procedures prolonged and less efficient. It must be noted that alongside the specified list of information for each sector provided by the Directive as grounds for permit, it should also include measures for conditions other than "normal operating conditions," such as start-up, leaks, malfunctions, momentary stoppages, or permanent cessation of operations.

In terms of effectiveness, the main issues of the EU law could be enforcement aspect of it. In that regard, IED acknowledges fines as traditional method of addressing illegal or non-compliant activities. one of the primary functions of fines is to deter IED operators from violating IED duties and to assure compliance in the first place. As of today, the IED requests that Member States set punishments for IED violations that "must be effective, proportional, and dissuasive" (Article 79 IED), without elaborating on what this phrase implies (European Environmental Bureau, 2022). In fact, the Bureau has stated that, a number of Member States have imposed sanctions that are insufficient to deter IED operators from violating the IED. Moreover, the variety and diversity of implementation at the national level generates enormous disparities in IED enforcement within the EU, resulting in disproportionate treatment of IED operators operating in various geographic regions. To ensure that sanctions are effective, reasonable, and deterrent throughout the EU, it is vital to standardize the IED's minimal standards (Ricardo et al, 2021). In particular, there should be clear criteria for determining the amount of fines as well as a minimum threshold for fines. When determining the actual amount of the punishment, the company's global revenue must also be considered to ensure a level playing field for all EU operators. It would also automatically imply that EU legislation protects impacted individuals uniformly.

[14] The joint review by 5 non-energy associations of the then proposed revision of the EID.

Finally, in assessment of the effectiveness of the IED as permitting tool in defense of environmental aspects, access to justice should be analyzed. National courts play a crucial role in achieving the successful execution of EU laws targeted to preserve the environment, however in order to do so, EU law needs to give individuals and NGOs the right to access to justice, in this particular case for a wide range of possible IED violations. The "public concerned" can only appeal certain kinds of actions that violate the IED in national courts, the most prevalent being the issuance of new IED permits (European Environmental Bureau, 2022). Other pertinent IED violations that are commonly experienced in reality cannot be brought to the notice of the national judge because they are not included in the IED's provisions (Art. 25 IED). However, despite current issues in EU, access to justice must always be allowed. This is the only way to ensure compliance with the EU's international obligations: under the Aarhus Convention, the EU must allow the public "access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities" in all cases where an alleged violation of environmental law has occurred (Article 9(3) Aarhus Convention).

2.3 Access to information and public participation

The IED relies heavily on public engagement and access to information. In compliance with the Aarhus Convention, they allow the public to participate in decision-making and be informed of its repercussions. This implies enabling public access to information on permit applications submitted by industrial operators, as well as access to permits issued by competent authorities and the results of emissions monitoring conducted by them. Goal is to allow for effective public participation in decision-making, in which relevant opinions and concerns are considered in the decision-making process, resulting in greater accountability and transparency in the permitting process and contributing to increased public awareness of environmental issues (OECD, 2019). IED Article 24 has a number of requirements to enable early and effective possibilities for public engagement in the permission process (Article 24.1) through information availability (Article 24.2). Given the vast number of IED installations, public participation is also essential for monitoring the right execution of IED regulations in licenses and their observance by operators. Each of the permits issued under IED require public participation. It is worth mentioning that while EIA procedures are not usually applied to existing activities unless there is a significant change, public participation

is required even when permit under IED will be updated or reconsidered. Therefore, the Directive mandates to guarantee to make permitting process available for public to participate, review and discuss prior to a decision. Same environmental principle applies, that this information should be available as early as possible. General requirements for the type of information that must be presented to public are the following (Institute for European Environmental Policy, 2010): the application for a permit or the proposal for an update; where applicable, reference to the fact that a decision is subject to a national or transboundary environmental impact assessment or to consultations between Member States; the competent authorities involved; the nature of the proposed decision; and the nature of the environmental impact assessment. Before a decision is made, the affected public has the right to provide comments and opinions to the responsible authorities, and the authorities are obligated to take these into considerations. When a decision is made, responsible authorities must also inform the public and make available the following: the decision's substance, including a copy of the permission, conditions, and modifications;

Public participation and accessible information is touched upon in many provisions of the IED: Article 25 is concerned with access to justice and grants the public access to a review procedure before a court of law or another independent and impartial authority to question the validity of decision-making. The IED expressly recognizes environmental non-governmental organizations (NGOs) as having these characteristics and so being eligible for this evaluation. Article 15(4) of the Directive requires that the public be consulted when an installation applies for a derogation from the BAT Conclusions. Overall, IED provides detailed standards for the type of data that should be made accessible to the public when a decision to issue, reconsider, or update a permit is made, including information on how permit conditions were developed.

In terms of application of the Aarhus Convention, permits issued under the Industrial Emissions Directive need public engagement under article 6 (Aarhus Convention Implementation Guide, 2014). Depending on the type of permit in question, the need to provide opportunities for public engagement may apply to various ecologically relevant decisions within a given approval procedure. required to establish systems to ensure public participation in the conception, commencement, development, operation, and even closure of projects, facilities, and other activities that have the potential to have a substantial impact on the environment. The Industrial Emissions Directive also provides for special transboundary consultations if the operation of an

installation is likely to have significant adverse effects on the environment of another EU member state, or if an EU member state that is likely to be significantly affected requests such consultations (article 12). In such instances, the public notice alerting the public about the permission application shall contain information regarding the transboundary consultations that will be conducted. Similar information is often needed to be provided in an application for a pollution permit, such as an Industrial Emissions Directive permit application. It needs to be pointed out that Member States are allowed to follow the example of such legislation by using the polluter-pays principle and laying the burden of information creation and its related expenses on the applicant/developer. In the Report to the Council and European Parliament on implementation of the IED (European Commission, 2020) it has been found that not all permits are publicly available online, information that is available online is frequently difficult to find, and authorities in at least one Member State have originally asked charge for access to permits. It also found that central permit repositories are accessible at the national level in 20 Member States and at the regional level in 5 Member States for public access to such documents, but information available for site visits is frequently limited.

As a response to existing evaluation, proposed new guidelines has attempted to tackle public participation even further. Permits should be provided "on the Internet, free of charge, and without restrictions to registered users" Under the same conditions, a standardized permission summary shall be made available to the public (Article 5.4). This summary should include, at a minimum, the major permit requirements, emission limit values, and environmental performance limit values, any derogations granted, appropriate BAT conclusions, and mechanisms for evaluating and upgrading permits (EPRS, 2022). Cases in which the public is allowed to participate in the granting or updating of permission conditions by the competent authority would be expanded, in accordance with the Aarhus Convention (Article 24).

Researchers from a wide range of disciplines, from ecology and environmental protection to finance and economics, have paid close attention to policy issues in the field of environmental management. V.Dejan and others (Dejan et al, 2015) have expressed that reason could be that the current framework of EU environmental law consists primarily of "investment heavy" directives. In contrast, in terms of historical context, environmental regulation has been the primary motivator for many improvements in the field of environmental performance/environmental protection across many industry sectors. Since the adaptation of the IED the number of permits have

increased, however the raise in numbers were criticized that they did not correspond to the quality of the permits nonetheless (Conti et al, 2014);

In conclusion, taking into account the legal conditions and discussion of the IED above, the revision proves to be an important conversation within different sectors as well. As mentioned through the chapter, during the process of revision, many opinions were shared regarding the proposal and what effects it would bring. To reference back to the joint opinion of non-energy extractive industry representatives have expressively called the proposal leading to prolonged permitting process and legal uncertainties as it would need more financial and human resources to apply its provisions. Criticism in regards to time and cost-effectiveness is not new for EU legislation in general, however it seems when it comes to environmental aspects of legal provisions the sector representatives look for simplified methods that would require them less human or cost spent on receiving permits. While activities included in the IED are various, they do provide enough economic capacity of the developers to invest and regulate their activity according to the provisions, and therefore the approach of putting forward legal-details rather than simplified procedures might be justified, however as the issue of complexity of permits has been the core issue of its efficiency, environmental legal aspects shall be focused on being less associated with complex procedure that developers would want to "skip" or go through as easy as possible, as their involvement is as important for process efficiency as legal provisions regulating them. In other words, involving developers from different sectors in revision of the law and focusing on the ways how to make the process less unpleasant for them, might lead to better efficiency and overall level of environmental protection reached.

To conclude, in the EU, industrial establishments are responsible for a sizeable share of the overall emissions of dangerous air pollutants. The Directive is a tool that intends to accomplish integrated pollution prevention and control from a variety of activities. Sectors covered by the IED represent a sizable share of Europe's emissions to air and water in terms of the Directive's purview. The Directive defines standards for the comprehensive management and avoidance of pollution brought on by industrial activities; also creates legislation to decrease emissions and achieve a high level of general environmental protection when avoiding emissions is not practicable. Operators of industrial pollution prevention and control in all EU industries. As it relates to environmental licenses and the running of industrial activities, the Directive also calls for enabling

public access to information, public participation in decision-making, and access to justice. The IED has a variety of goals in response to these needs, including creating a framework for significant industrial activity regulation and permitting.

Each Member State uses the BAT in order to achieve "a high degree of environmental protection." Plants that engage in IED-covered operations must get permissions from national authorities, with the BAT's adoption serving as the basis for any permission limits. The sector-specific implementation decisions that specify BAT and the related environmental performance are used to execute the EU-wide BAT findings. The European Commission uses the BREFs when they are made public in order to produce BAT Conclusions, which are subsequently approved as Commission Implementing Decisions and establish the range of anticipated emission limits in operating licenses. In accordance with IED, BAT conclusions must be used as the mandatory reference for calculating authorization requirements. The Commission's decision to implement the "default option," can be criticized in terms of making the permit application process more drawn out and ineffective because it can cause technical difficulties of implementing for all operators to create the necessary feasibility study.

IED recognizes penalties as a conventional means of stopping unlawful or non-compliant behavior. It should be highlighted that Member States are allowed to adopt such legislation's polluter-pays concept and hold applicants and developers accountable for information creation and related expenses. Access to justice needs to be examined when determining how successful the IED is as a mechanism for obtaining permits to protect environmental features. In the EU, the public must have access to administrative or judicial mechanisms to protest the actions and omissions of private individuals and public institutions. The only other method to guarantee adherence to the EU's foreign responsibilities is through this. The public must have access to information on permit requests made by industrial operators as well as to permits issued by the relevant authorities and the outcomes of their emissions monitoring. The intention is to make it possible for the public to effectively participate in decision-making, which will increase the accountability and openness of the permitting process and raise public knowledge of environmental concerns. Public also should be granted access to justice to a review procedure before a court of law or another independent and impartial body.

Through the Internet, permit information should be distributed free of charge and without unnecessary restrictions users. Included should be a summary of the main permit requirements, emission limit values, and environmental performance limit values. The instances in which the general public has a right to take part in the responsible authority's decision to issue or modify the terms of a permit would be expanded. However, it seems that sector leaders seek simplified procedures that require them to spend less time or money on getting permits when it comes to environmental parts of regulatory requirements. The researcher has concluded that the time and cost-effectiveness concerns with EU regulation are not new. In other words, increasing efficiency and the level of environmental protection might be achieved by including developers from other industries in the revision of the law and focusing on ways to make it less unpleasant for them.

Overall, the researcher has observed that the complexity of BREF development, considering the time and procedural steps that it needs, makes it less responsive to real time challenges that new technologies bring. At the same time, it must be commented that while it is not favorable to keep expending the list of activities it covers, changes in the general pool of activities the BAT covers could be widened, to ensure less getaways for the developers. It is believed that the BREFs bring main quality-assurance to the process, therefore preparation of more BREFs shall be viewed as one of the ways to promote more effective evaluations and decision-making. In this regard, first step for reaching this goal would be streamlining the process for drafting and preparing the BREFs.

Chapter III - Permitting tools within Natura 2000

3.1 Legal Background

Natura 2000 is the European Union's unified network of special protected areas. It is the most ambitious and far-reaching conservation initiative ever undertaken in Europe (Stanciu et al, 2014). The network was formed by unifying two special legal documents that existed at the time, the Habitats Directive (currently Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora) and the Birds Directive (currently Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds). It comprises conservation zones for various animal or plant species as well as ecosystems, as well as special protection areas created under the previous European Union Birds Directive to safeguard certain bird species (annex I or migratory species) (listed in annex I and II of the Habitats Directive). Therefore, it makes this piece of European law long-standing exactly as EIA, and by the year 2022, it will have attained the milestone of 30 years of being in effect and as a functioning mechanism of protecting biodiversity in Europe. According to the official homepage of the European Commission, Natura 2000 presently encompasses more than 18% of the land area of the European Union and more than 9% of its maritime area. There are 1400 different kinds of animals and 460 different kinds of birds living there. It is the goal of the Natura 2000 network of protected areas, which is a network of protected areas, to find solutions that allow environmentally friendly economic activities while also protecting biodiversity. However, these solutions must not limit property rights, restrict human activities, or limit free movement of people. When an area is designated as a Natura 2000 site, it signifies that the region possesses a high natural value and has the potential to produce cash from ecotourism and other activities that are connected (Stanciu et al, 2014).

Generally, bio-diversity is subject of many laws within EU, however, within the scope of the research work, object of the analysis falls within the Habitats – specifically in terms of permit conditioning and Birds Directives. Under the Habitats Directive, economic, social, and cultural rights should be considered and targeted at promoting the development of economic activities at Natura 2000 sites while carrying out implementation processes within Natura 2000. Given the diversity of nature in Europe and included in the Directives, Natura 2000 network has developed categories of sites based on their protected type of species and their level of protection, they are:

SAC – Special Area of Conservation, SCI – a Site of Community Importance and SPA – a special protection area. While the Networks scope is already broad, it cannot be established that it is "complete" with more sites left upon Member States to propose as Natura site, however designation processes are strictly scientific when it comes to giving the status of the site and applying provisions of the Directives. While Article 4(1) of the Habitats Directive states that, when appropriate, Member States are to propose the adaptation of the list in the context of the findings of the surveillance of the conservation status of natural habitats and species undertaken by the Member States in accordance with Article 11 of the directive, it (Art 4(4)) of that directive, in turn, requires Member States to identify all SCIs as SACs. In 2014, the Court has addressed declassification of a site in case C-301/12, and defined that when a site within the listed types of areas is definitively no longer capable of contributing to the achievement of the Habitats Directive's objectives and, as a result, it is no longer warranted for the site to remain subject to the directive's provisions, the Member State concerned is required to propose to the Commission that the site be declassified (para 28). Furthermore, judgement stated that if a state does not propose sites declassification, it may continue to waste resources put into managing that site, which will be useless for the conservation of natural habitats and species.

As stated, Natura 2000 scopes out to whole Europe, making it a large-scale and ambitious environmental policy project – rare occasion when Member States agreed to jointly protect their "natural heritage" in a common legal and institutional framework encompassing a significant portion of their territory (Winkel et al, 2015). Structurally, both of the Directives share common objectives (just to different type of species), share concepts and common provisions that relate to Natura 2000. the Birds directive addresses the conservation of all species of birds naturally occurring in a wild state within the European Union. It applies to the birds themselves, as well as their eggs, nests and habitats. In Annex I of the Birds directive, 194 species and sub-species are listed, including species that are threatened, have a limited range, or are particularly vulnerable to changes in their habitat. However, the Commission has emphasized its goal of protecting habitats of other migratory species with SPAs that may not be listed in Annex I (European Commission, 2019). The primary focus of the Habitats Directive is to keep all natural habitats and species of Community interest in good conservation status. The term "favourable conservation status" for species is defined in Article 1(i) of the Directive. The Directive establishes two main sets of provisions, first to conserve the natural habitats and species habitats (Articles 3-11), while the

second is concerned with the protection of species (Articles 12-16). Articles 12-16 apply to the entire natural range of species within the Member States, both within and outside Natura 2000 sites. Habitat types and species of the “Community interest” are listed in Annexes II, IV and V of the Directive. Despite the fact that different species are listed in different annexes and thus fall under different types of protection measures, many species are mentioned in more than one annex. The natural range of habitats roughly represent the geographical limits of the habitat or species. It is not the same as the precise locations or territory where a habitat, species, or subspecies reside permanently. It takes into account that many habitats and species' natural ranges may have patchy or fragmentary locations or territories, if the cause of the disjunction is natural, i.e. due to environmental factors, the isolated localities should not be interpreted as a continuous natural range. Despite this, in article analyzing the EU environmental goals achieved before 2020, V. Hermoso and others (Hermoso et al, 2019) have noted that because a large number of threatened species are not covered by the Directives, halting biodiversity loss in the EU requires going beyond the fixed lists that currently guide conservation efforts to better cover species threatened with extinction.

The Habitats Directive is critical for the conservation and management of Natura 2000 sites. According to Article 6 of the Habitats Directive, Member States are required to implement necessary conservation measures, including appropriate management plans designed specifically for Natura 2000 sites or integrated into other development plans, as well as appropriate statutory, administrative, or contractual measures that correspond to the ecological requirements of the natural habitat types listed in Annex I and the species listed in Annex II present on the sites. The word "conservation measures" in particular refers to a sequence of steps necessary to preserve or restore the natural habitats and populations of wild animals and flora at a positive conservation state (article 1(a)).

3.2 Requirements set for permitting activities by Article 6 of the Habitats Directive

Article 6 is one of the most important of the Directive's provisions, as it determines the relationship between conservation and other socio-economic activities the most. It can be regarded as the core legal framework to implementing concepts of integration for Member States to manage Natura

2000 sites in a sustainable manner, while establishing special boundaries for certain activities and including exceptions within. The 6th article is divided into three sections, first two parts of the Article set general requirements and last two parts define specific regime for specific group of sites, specifically: Article 6(1) addresses the establishment of necessary conservation measures, with a focus on positive and proactive measures to maintain or restore the natural habitats and populations of wild fauna and flora. The goal of these measures is to protect and preserve the natural environments in which wild animals and plants live. The prevention of habitat degradation and the significant disturbance of species is called for in Article 6(2), and Articles 6(3) and 6(4) prescribe foundational and procedural protective measures that apply to plans and projects that are likely to have a significant effect on a Natura 2000 site. Article 6(2) calls for the prevention of habitat degradation and significant species disturbance. It is possible to deduce, in terms of the comparability of the two Directives under Natura 2000, that they structurally overlap and have similarities. One example of these similarities is that the initial provisions for the conservation of natural habitats are comparable to Articles 3 and 4 of the Birds Directive. It is unnecessary to emphasize the shared concerns for environmental preservation that the Directives have under the auspices of Natura 2000. In general, we may divide the instruments that are supplied in article 6 into two categories: I those that are devoted to the Natura 2000 sites, and (ii) those that are devoted to the conservation of the unique species that are mentioned in the Directive. It is important to highlight that the measures for conservation apply to the entirety of the region that is part of the EU. These provisions encompass the preservation of specimens in addition to their habitats for breeding and resting. In all instances, the Directive recognizes the possibility of exceptions. It is made clear in the directing document that was published by the European Commission that because the majority of species are covered by more than one annex of the Directive, they become subject to a variety of instruments, a mix of conservative measures and approaches, the implementation of which should ultimately be examined on a species-by-species basis, taking into consideration the particular requirements that are specific to each species at a given time .Article 6(1) establishes general requirements for all Special Areas of Conservation (SAC) in the Natura 2000 network without exception and all the habitat types included in Annex I and specific species presented in Annex II (except for the ones that have been identified as non-significant in context of Natura 2000[15]). This article sets obligation for adoption of conservation measures, as clarified in

[15] See Natura 2000 Standard Data Form (SDF)

judgement on a case *Commission of the European Communities V Republic of Austria* (C-508/04) goal of the provision is for the Member States to fulfil their obligation of taking necessary conservation measures that are corresponding to the ecological requirements of Annex I and Annex II or the Directive respectively. The Directive does not define 'ecological requirements", however it should be understood that it includes biotic or abiotic factors. Member States are responsible for identifying such requirements on a case-by-case basis. Conservation measures can be administrative, statutory or contractual measures, or as article 6(1) adds, if needed it can be incorporated into management plans. The latter is not compulsory; the article rather references the fact that management plans are useful tools for implementing provisions in the article. However, statutory, administrative and contractual measures are mandatory requirements (*Commission of the European Communities V Republic of Austria*, para 71).

Prevention principle is embodied into article 6(2) and go beyond the scope of conservation under 1st part of the article. It emphasizes on avoidance of significant effects. This clause should be understood as requiring Member States to take all necessary steps to prevent deterioration or serious disruption. It is necessary to avoid both human-caused and expected natural degradation of natural ecosystems and species habitats (*Commission of the European Communities v Ireland*). It applies permanently in SACs, SCIs and SPAs and can be concerned with past, present or future activities or events (*Grüne Liga Sachsen eV and Others v Freistaat Sachsen*, para 32); It is interesting to note that it does not include constraints to purposeful acts or repercussions caused by human activities; all of these aspects should be evaluated to the greatest extent that they are predictable. To put it another way, it is not enough to only protect designated areas against activities that may cause disruption without also avoiding the areas' deterioration as a result of idleness or neglect. Sometimes, it may be absolutely necessary to implement both measures designed to minimize external man-caused degradation and disturbance, as well as measures designed to prevent natural changes that may cause the status of species and habitats in SACs to deteriorate. This may be the case in situations where it is essential to adopt both sets of measures. It is also important to note that the need to avoid does not just pertain to the acts or activities that take place within the SAC region, for instance, but also to the activities that have the potential to bring about degradation in the SAC. While the Directive is not providing specific definitions to all of the requirements and allows certain discretion, case law has demonstrated that steps taken by Member States must be "specific, coherent and complete" (*Commission of the European*

Communities v Hellenic Republic). The Court took similar clarification in Birds Directive case (*Commission v. Greece*, paragraph 15) and stated that legal regimes applicable should not be too general and should specify concerns in a coherent, specific and comprehensive legal manner. As for habitat deterioration, it happens on a site when the area covered by the habitat type or habitat of the species on that site reduces, or when the specific structure and functions needed for the long-term maintenance of that habitat or the status of the species that live there change from their original or restored state. This evaluation is based on the conservation aims of the site as well as its contribution to network connectivity.

Even if it is determined that a particular initiative or action does not fall under the purview of Article 6.3, it will still be necessary to verify that it is in accordance with the other standards that have been stated in the preceding paragraphs. The stipulations of Article 6.3. and 6.4. together form a kind of authorization framework, which outlines the criteria under which plans and initiatives that have the potential to have large detrimental effects on Natura 2000 regions may or may not be authorized. On the other hand, it gives the member states the freedom to decide the manner in which the criteria will be carried out and how strict they will be. These articles also ensure that economic and other non-ecological demands may be fully assessed in light of the site's conservation goals. This is an important aspect of the site's protection.

Article 6(3) introduces "step-wise" procedure for consideration of plans and projects, which starts by a pre-assessment stage in order to determine if the plan or project is directly related to or essential for the administration of the site, and secondly, if it is anticipated to have a major impact on the site. The Directive itself does not provide clarification on terms project and plan, however according to the case law the Court has ruled that such definitions could be relevant from Directive 2011/92/EU[16] where in sixth recital project is defined as (i) "the execution of construction works or of other installations or schemes; (ii) other interventions in the natural surroundings and landscape including the extraction of mineral resources" (*Waddenvereniging and Vogelbeschermingsvereniging*, para 25-29). In a case brought against Germany in 2003, the Court has stated that the condition that an assessment of the effects of a plan or project on a certain site must meet is that it must be done if there is any doubt that significant effects will occur. This

[16] 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

condition does not allow that assessment to be avoided for certain types of projects based on criteria that do not guarantee that these projects will not have a significant effect on protected sites (Commission v Germany, para 43). At a pre-assessment step, screening may generally be based on already existing information, including expert views or published data, rather than requiring extensive new evidence to be acquired. However, if sufficient information, such as the presence of protected habitats and species in the region potentially affected by a plan or project, is not available or is outdated, further data may need to be acquired and analyzed to establish whether or not substantial consequences are expected (European Commission Notice…, 2021). If the information is lacking, it must be assumed that there is a possibility of major consequences and that an adequate evaluation is necessary. The significance of the impacts varies based on variables such as the impact's magnitude, type, area, length, intensity, timing, plausibility, cumulative effects, and the sensitivity of the ecosystems and species involved. The Court has also specified that when determining whether appropriate assessment of the implication is necessary or not, authorities should not take into consideration (at the screening stage) the measures intended to avoid or reduce harmful effects of the plan or project on the site (*People Over Wind and Peter Sweetman v Coillte Teoranta)*[17]. The screening phase must end with a documented, verified decision by the responsible authority in order to give a record of the grounds for obtaining this conclusion. Additionally, the decision should be made accessible to the public. Although the wording of the directive makes no explicit mention to this, the Court has acknowledged that public engagement is also necessary in the screening step of Article 6.3 (*Lesoochranárske zoskupenie VLK v Obvodný úrad Trenčín*, para 48-49). The importance of public participation will be analyzed separately in the next parts of this chapter.

Next step in the procedure set by article 6(3) is appropriate assessment of the level how plan or project will affect the goal of conserving the site – this can be assessed as specifically to one project or in combination with other plans and projects. If it is not possible to rule out likely significant effects, it has to be measured in regards to the effects on site's integrity. These assessments are components in decision-making from a competent authorities' side, whether or not to continue with the plan or a project. Similarly, to the assessment process during EIA, if it is not possible to assess with scientific clarity whether there will be any negative influences from proposed activity,

[17] The case discusses further the measures that may be taken into account for the same purpose.

the plan or project should not be granted a permit (*Waddenvereniging and Vogelbeschermingsvereniging, para 61*). It is essential to keep in mind that paragraph 4 of article 6 allows for exemptions from this rule under the conditions that there are no other options and that the rule is superseded by an urgent need to protect the public. In such a scenario, the overall coherence of the Natura network must be protected by putting into place adequate mechanisms of compensation. Both the project and the plan may be evaluated using the proper methodology. It is possible for it to be coordinated or integrated with other environmental assessments, such as the environmental impact assessment (EIA) that is conducted for projects, the strategic environmental assessment (SEA) that is conducted for plans and programs, and the assessments that are carried out in accordance with the Water Framework Directive (European Commission notice...,2018). The assessment process should include the collection and evaluation of information from many stakeholders, such as national, regional, and local nature conservation agencies, scientific specialists, and non-governmental organizations. The competent authority may also confer with internal and external experts and other stakeholders using the information submitted by the plan or project developer. In general, the following stages comprise an acceptable evaluation: (i) gathering information on the project and the relevant Natura 2000 site; (ii) evaluating the consequences of the plan or project in light of the site's conservation goals, alone or in conjunction with other plans or projects; (iii) determining if the proposed plan or activity might compromise the integrity of the site; (iv) taking mitigating measures into account (including their monitoring). Typically, the conservation goals for a Natura 2000 site are outlined in the site's management plan, applicable management instruments, or other published documents, either ways it should be developed in accordance to the ecological needs and specific data used to determine habitats conservation status. This information should also be accessible to the public. The Court has defined integrity of the site in many of its judgements, outlining that: if, after an appropriate assessment, the competent national authority concludes that the plan or project will result in the permanent and irreplaceable loos of either the whole or a part of the site in question, the project or the plan cannot be approved as it compromises the integrity of the site (*Commission v Spain*[18], para 21). In order to be conducted successfully, the appropriate assessment must be based on: (i) the best available scientific knowledge available in the field; (ii) up-to-date information; (iii) in-depth identification

[18] Referenced case - Case C-308/08, see also C-404/09 *Commission v Spain* para 99

of all possible effects of the plans and projects; (iv) apply best available techniques and methods to assess the extent of the effects on the integrity of the site.

If detrimental implications on the site's integrity are detected or cannot be ruled out during the required examination, the proposed plan or project cannot be authorized. Depending on the severity of the discovered effect, it might be possible to implement mitigation measures that will prevent these impacts or decrease them to a point where they no longer compromise the site's integrity (European Commission notice..., 2018). If the competent authority determines that the mitigation measures are adequate to prevent the negative effects on site integrity indicated in the relevant assessment, they will be included into the final plan or project specification or may be designated as a condition for project approval. If, notwithstanding the implementation of mitigating measures, there is still a residual serious effect on the integrity of the site, the plan or project cannot be authorized (unless the requirements outlined in Article 6(4) are met). In practice, the need for mitigation measures is often recognized early on in the design or planning stages of a plan or project and is included in the application for approval. Even though mitigation measures cannot be taken into account when screening a plan or project, the fact that they have been identified as needed can help a lot with the efficient, effective, and timely completion of the appropriate assessment stage and the decision on whether the plan or project can be approved under Article 6. (3). Hierarchy is established within the mitigation measures, focusing first on avoidance of significant impacts and then to reduction. The Court has established the distinction between mitigation measures and compensation measures and stated that they have different basis and context, therefore compensation measures cannot replace requirement of mitigation measures in the assessment process (*Commission v Italy*; also *Sweetman and Others*, para 35). Monitoring mitigation measures is essential not only for ensuring that they are successful and are put into action in a timely way, but also for identifying unanticipated repercussions that require further actions to be performed in order to address the problem. Before a plan or project can be given the approval, it is necessary to demonstrate that any mitigation measures are successful. This is a prerequisite for receiving the blessing. Monitoring should be used to check the intended outcomes and detect any possible changes that justify the adaption or reprogramming of the measures. The monitoring should also be used to verify the expected results.

Permitting processes laid down by article 6 has what may seem like similarities to the EIA process in certain stages, however despite the interconnectivity or usefulness of the two tools, it is important to distinguish them and the permits associated with them. In particular, findings and assessment in EIA cannot be used to substitute for the procedural steps and requirements set by the article 6 (*Commission v Ireland*[19], para 229). Frequently, the Appropriate Assessment is conducted in conjunction with or as part of the EIA or SEA process, and its conclusions are included into the relevant EIA or SEA report. This strategy may aid in streamlining the administrative procedures required to acquire development authorizations under EU environmental law. Article 2(3) of the revised EIA Directive mandates that, in the case of projects for which the obligation to conduct environmental impact assessments arises simultaneously from the EIA and Habitats Directives, Member States shall, as appropriate, ensure the use of coordinated and/or joint procedures. Relevant advice has been published in this regard (European Commission notice...2018).

As was discussed earlier, Article 6(4) makes an exception to the general norm stated in Article 6(3), and it grants the member states the right to determine the circumstances under which the exception may be implemented. However, in order to qualify for the exemption, one must first satisfy the predetermined conditions that are outlined in the article. In general, the article consists of three important points that need to be provided (and documented): the alternatives that were considered and proof that there are no other feasible alternatives that would not affect the integrity of the site; the reasons for the overriding public interest; and all of the compensatory measures that ensure the protection of the Natura 2000 site. During the course of the procedure, many options should be compared to one another and examined to see which would inflict the least amount of damage to the protected place. The evaluation is going to be quite detailed, and it's going to describe all of the criteria that will be used. If prospective alternatives are found to be effective, in the sense that they would prevent significant consequences, then it will be necessary to evaluate their potential effects in a different analysis that is more suitable. In order for alternatives, or the lack thereof, to be important to the decision-making process, the lack of alternatives must be objectively and fairly justified. The term "imperative grounds of overwhelming public interest" (IROPI) does not have a specified meaning in the Directive; nonetheless, the article itself makes

[19] Here Case C-418/04

reference to "human health, public safety, and positive repercussions of fundamental significance" as examples of IROPI. Considerations are made on a case-by-case basis, and explanation should be provided in great detail regarding how IROPI's benefits exceed the site's protection and conservation goals. The Court has defined “compensatory measures” in Case C-521/12 (*Briels and Others*) as measures that “*has negative implications for a type of natural habitat present thereon and which provides for the creation of an area of equal or greater size of the same natural habitat type within the same site, has effect on integrity of that site*.” In other words, the measures that are offered should be unique to the plan or project that is being worked on and should go above and beyond the measures that are necessary according to the conservation objectives of the site. It is stated that compensating measures have to be addressed according to the criteria of proportionality and ecological functioning in the Article 6 Guide, which was adopted by the European Commission in 2021. (pg 81). According to it, the ratios are typically higher than 1:1 in practice; hence, a ratio of 1 to 1 or below should be considered only if it demonstrates that it is successful and appropriate in restoring the operation of the site. Due to the fact that each species and habitat is unique, it is imperative that ecological functions be evaluated on a case-by-case basis in order to determine how extensive compensatory actions need to be taken in order to restore the site's original level of ecological functionality. Once an exception is granted in accordance with paragraph 4 of Article 6, monitoring must be completed in order to ensure that the compensating measures are carried out. It is possible that certain compensatory measures will be successful depending on when they are implemented, how extensive they are, and where they are situated.

Due to complexity of the components that need to be taken into account, the process of examining and determining effects and measures under Habitats Directive most of the time is case-specific and can have extremely broad scope. The Directive is structured in a manner that allows for regulations to provide specific points that need to be covered by the appropriate assessment in regards to various scenarios. The aim of this research is not limited to analyzing the Natura 2000 legislation, therefore it would be irrelevant to discuss each specific provision or part of the provision in more detail. However, it must be noted that in a study conducted by K. Sundseth and P.Roth for Ecosystems LTD in 2013, it was found that diversity of components, amount of permits that are required to obtain and amount of competent authorities involved in large-scale projects were all source of confusion and frustration for majority of developers. Similarly, article published year prior to that has assessed that stakeholders participation has been the most unpleasant part of

the procedures, as either stakeholders or local authorities are not as informed or engaged in the process as needed [20](Winkel et al 2015).

3.3 Aspect of participation for permitting activities

As part of the evaluation process for Natura 2000 sites, research has brought to light the importance of public engagement in later chapters. Because of the one-of-a-kind characteristics that Natura 2000 establishes, such as the possible diversity and complexity of the assessment process, not a lot of effort is paid separately to setting up a certain regime for accessibility and participation in both of the Directives' requirements. When discussing the participation component of the procedural activities and requirements related with Natura 2000, we are required to take into consideration the general nature of the rules, what they prescribe, and the types of procedures that are engaged in the endeavors. This indicates that, in contrast to the previous two processes discussed in the chapters that came before it, we are able to view participation either as an internal component of the procedures that are included in the granting of permits under Natura 2000 or as participation and involvement in the process of different parties, including the general public on occasion, in achieving the objective of the stakeholder participation. The latter is selected as the criterion in the provided chapter to examine the efficiency of the rules' application.

The Fitness Check in 2016 [21]has identified that early communication minimize the total duration of the AA and contribute greatly to creating mutual understanding, early identification of possible complications and trust among all involved parties – strong stakeholder awareness and collaboration has been assessed as crucial element for success (European Commission, Fitness Check,2016). The vast expansion of surveying, monitoring, research and management planning has to be facilitated by collaboration of the national authorities and nature conservation organizations, therefore having understanding how to establish and increase their interaction is

[20] The article has discussed implementation of Natura 2000 in forests, however the research has emphasized that stakeholder engagement throughout the implementation proves has re-occurred frequently as a challenge, the authors have disputed that it slows down the overall process unfavorably.

[21] Data provided from the Commission Staff Working Document Fitness Check of the EU nature Legislation (Birds and Habitats Directives) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

important to further increasing decision-making efficiency. The lack of ecological knowledge has had a significant impact on implementation delays (Maczka et al, 2021). Additionally, according to 2016 Fitness Check, a lack of biological understanding has made it difficult to estimate the possible implications of operations on species and ecosystems, both inside and beyond Natura 2000 areas. Stakeholders commonly cited the degree of political support for the Directives as a crucial component, with a positive effect where support was strong and a negative effect where support was low – in particular it had an impact on implementation through its effects on funding (European Commission Fitness Check, 2016). These issues can be main reoccurring issue with establishing and maintaining appropriate management and restoration of habitats.

When developing engagement among many stakeholders, it is important to keep in mind the following fundamental principles, which may be articulated into five key ones (Initiative for Climate Action Transparency, UNOPS, 2020): (i) inclusiveness, which means providing all stakeholders with the opportunity and capacity to participate; (ii) transparency, which means providing clarity and transparency of the entire processes and information, making it accessible to the public and effectively understood; and (iii) responsiveness, which means ensuring that stakeholder input is taken, addressed, and resolved. (iv) accountability, which is the establishment of governance structure for all processes, including decision-making and oversight; (v) respect for rights, which is probably the most fundamental of all of these principles, is the acknowledgment of and adherence to the rights of stakeholders in relation to policies, as well as the recognition of the impact of stakeholders. Stakeholder participation refers to the process through which interested parties (individuals or organizations) are brought into the decision-making or planning process so that they may have an input into the final result. Planning is essential since participation alone will not produce outcomes. Once the most important groups have been identified, a strategy for collaboration should be formulated, methods chosen to reach the consensus-based choices and strategies that are essential for the long-term management of protected areas (Nastran, Pirnat, 2012, pg 44). Participation from stakeholders need to be a process that is open to everyone and carried out all through the cycle of policy formation and implementation. The efficiency of stakeholder engagement may be improved by the use of an iterative planning strategy, which also makes adaptive management possible. Participants in the stakeholder engagement process conduct reviews and provide comments in order to identify areas in which changes are required and to search for efficient methods of bringing about these improvements (Initiative for Climate Action

Transparency, UNOPS, 2020). Maintaining flexibility in one's planning enables adaptive management, which allows for the management of uncertainty. Adaptive management entails monitoring, analyzing, and making adjustments to plans throughout the process. Iterative planning for adaptive management acknowledges the reality that the majority of endeavors are subject to change.

Those who are directly or indirectly affected by a project, as well as any group that may be directly or indirectly affected by a project, as well as those who may have interests in a project and/or the ability to influence its outcome, either positively or negatively, fall under the purview of an inclusive definition (biodivERsA, 2014). To have influence over the results of a project, it is not necessary for a stakeholder to be a direct user of those results or to be directly affected by them. It is critical to recognize that not all stakeholders in a single broad group will have the same interests and objectives, and hence involvement levels may fluctuate for various individuals or organizations within a group. The process of identifying stakeholders should be reviewed on a frequent basis throughout the project to ensure that no organizations or people are overlooked (Nastran, Pirnat, 2012). After identifying, it is needed to assess and analyze stakeholders in order to prioritize them in terms of the importance of involvement. Not every stakeholder or stakeholder group must be included to the same extent or at the same time, and the same stakeholder may be of varying importance at various stages of the research or when collaborating with another group (biodivERsA, 2014). By analyzing the stakeholders' relevance to the project, it is able to determine which could be best to contribute and which will be affected, and therefore crucial to participate.

Early participation provides tools to ensure even small inconveniences as ones that may arise during the maintenance of the site. As example, landowners and land users in many Natura 2000 sites have the impression that they have little impact on the management planning for the site, and they believe that they are being excluded from the process (Bouwma et al, 2006). If the potential for conflict is caught early on and proactive action is taken to address it, it is possible to prevent the issue from developing to the point where the parties involved no longer trust one another and are unable to communicate with one another. This can be accomplished by recognizing the potential for conflict early on and taking proactive action to address it. It is helpful, in order to maximize the benefits of stakeholder engagement, to consider the timing of the most appropriate contributions that each stakeholder might make towards the project; the roles they might adopt;

and the times when these are critical to the success and impact of the research. In other words, it is important to consider the timing of the most appropriate contributions that each stakeholder might make towards the project. This will assist to guarantee that the advantages of engaging stakeholders are realized to the fullest extent possible. It is also important to analyze the possibility of a temporary or total disengagement, for whatever reasons, as well as the mechanisms by which this may be handled and the consequences that it will have on the results of the project. This evaluation is helpful for a number of reasons.

There is a need for increased communication and participation with stakeholders, the importance of inter-sectoral cooperation, the need for co-responsibility of all relevant stakeholders who are involved in the process, and an awareness of the socio-economic and cultural contexts in which conservation planning takes place. All of these things are necessary in order to meet the needs of the process. The majority of countries have room for improvement in their actual execution of the policy. The difficulties that are associated with the application of the Natura 2000 system in forests are related to striking a balance between the conservation of biodiversity and the production of timber; integrating nature conservation and the demands of local stakeholders; developing an effective and accepted funding scheme for the implementation of Natura 2000 in forests; and figuring out how to integrate nature conservation policies with forest and other land use sector policies (European Commission, Fitness Check,2016). However, the process of implementation also encounters problems, such as minimal interaction and unfavorable attitudes on the part of stakeholders, restrictive rules, and inadequate consideration for the local culture. The process of putting Natura 2000 into effect was infamous for being a difficult and time-consuming enterprise, which led to a number of debates on policy and administration. In addition, the procedure was notorious for being difficult and time-consuming. In addition to having different and competing land use conceptions as their guiding principles, the opposing interests, attitudes, and perceptions held by the many stakeholders were the root cause of the disagreements that arose. It has been emphasized as an important tool to increase the acceptance of Natura 2000 that the involvement of and cooperation with various stakeholders, as well as stakeholder participation and coordination between institutions and organizations, are all necessary to prevent further conflicts and to strengthen the process of implementation. Stakeholder participation and coordination between institutions and organizations are also necessary.

Overall, biodiversity is the topic of various regulations within the EU; nevertheless, the aim of the study falls within the Habitats - especially in terms of permit conditions and Birds Directives - within the scope of the research effort. Economic, social, and cultural rights should be recognized and focused at fostering the growth of economic activities at Natura 2000 areas while carrying out Natura 2000 implementation processes, according to the Habitats Directive. Given the diversity of wildlife in Europe and the Directives, the Natura 2000 network has created three kinds of sites depending on their protected species and degree of protection: SAC - Special Area of Conservation, SCI - a Site of Community Importance, and SPA - a Special Protection Area. While the Network's reach is currently extensive, it cannot be said that it is "complete," with additional areas still for Member States to designate as Natura sites; nonetheless, designation processes are rigorously scientific when it comes to providing the site status and executing Directive rules. While Article 4(1) of the Habitats Directive states that, when appropriate, Member States are to propose the adaptation of the list in the context of the findings of the Member States' surveillance of the conservation status of natural habitats and species conducted in accordance with Article 11 of the directive, it (Article 4(4)) of that directive requires Member States to identify all SCIs as SACs. In case C-301/12, the Court addressed site declassification and defined that when a site within the listed types of areas is definitively no longer capable of contributing to the achievement of the Habitats Directive's objectives and, as a result, it is no longer warranted for the site to remain subject to the directive's provisions, the Member State concerned must propose to the Commission that the site be declassified (para 28). Furthermore, the judgment said that if a state does not propose declassification of a site, it may continue to spend resources devoted to administering that site, which will be ineffective for the conservation of natural ecosystems and species.

As previously stated, Natura 2000 encompasses the entire continent, making it a large-scale and ambitious environmental policy project - a rare instance in which Member States agreed to jointly protect their "natural heritage" in a common legal and institutional framework encompassing a significant portion of their territory. Both Directives contain identical aims (although for distinct types of species), principles, and rules relating to Natura 2000. The Birds Directive covers the protection of all species of birds found in the wild in the European Union. It applies to both the birds and their eggs, nests, and habitats. There are 194 species and sub-species listed in Annex I of the Birds directive, including species that are threatened, have a limited range, or are particularly sensitive to changes in their environment. The Commission, on the other hand, has stressed its

objective of conserving the habitats of other migratory species through SPAs that may not be designated in Annex I. The basic goal of the Habitats Directive is to maintain the protected status of all natural habitats and species of Community significance. Article 1(i) of the Directive defines the term "favourable conservation status" for species 4. The Directive creates two major sets of regulations, the first to maintain natural ecosystems and species habitats (Articles 3-11), and the second to safeguard species (Articles 12-16). Articles 12-16 apply to the complete natural range of species in the Member States, including inside and outside Natura 2000 areas. Annexes II, IV, and V of the Directive list "Community interest" habitat types and species. Many species are referenced in more than one annex, despite the fact that distinct species are protected in separate annexes and so come under different forms of protection measures. The geographical bounds of a habitat or species are broadly represented by its natural range. It is not the same as the exact site or region in which a habitat, species, or subspecies lives continuously. It recognizes that many ecosystems and species' natural ranges may have patchy or fragmented locations or territories, and that if the source of the disjunction is natural, i.e. owing to environmental conditions, isolated locales should not be understood as a continuous natural range. Despite this, V. Hermoso and colleagues noted in an article analyzing the EU environmental goals met before 2020 that, because a large number of threatened species are not covered by the Directives, halting biodiversity loss in the EU requires going beyond the fixed lists that currently guide conservation efforts to better cover species threatened with extinction.

To evaluate in terms of effectiveness, the researcher has observed that despite its large scope, Natura 2000 still leaves out many threatened species out of its outreach. The initial tendency of excessive applications for qualifying habitats as Natura 2000 sites have drastically lessened, which can be analyzed as a sign of non-favorable approach to it, especially as it does not associate with economic gain. According to the observations, it can be concluded that the process of becoming the protected site should be reviewed and made simpler. The EU and the Member States shall focus on making management of Natura 2000 sites more financially beneficial and reasonable in the long term, as main issues arise with post-management of the sites and keeping them attractive for various financial gains. Tourism is the sector that directly corresponds to the latter needs, therefore the grants provided for Natura sites shall focus on sustaining the sites in a good quality shape and invested into so that they become lasting touristic attractions.

Conclusions

1. The EU has set many legal policies to include environmental matters into decision-making process when permitting sorts of economic activities. Current legal framework is represented in three main areas of legislation and tools that are in place to assure environmental matters are included in the process of making financial or industry-related activities. While EU environmental policy sets ambitious goals and scope, it has its shortcomings, the latter has to be viewed taking into consideration the fact that all of these permitting tools have been in place at least for a decade now.
2. While it seems plausible that even small scale projects can have significant effects on the environment from environmental point of view, the cases of evaluating their possible effects similarly to large scale projects is up to Member States, which are instructed by law to make the assessment on case-by-case basis. This method of distribution has been usual to European Unions' legal acts, as it has been taken to be the best way to make sure all of the Member States comply and implement with better flexibility. However, those initial policy level or individual case matters may provide an opening for violation. Those are the violations that usually tend to go unnoticed, or justified as unnecessary financial burden. For the purpose of facilitate the latter, a streamlined procedure may be put for smaller scale projects to conduct the assessment with less financially demanding procedure, or the system of financial aid/exemption can be established for such small scale projects.
3. Reporting of the assessment of the environmental aspects when submitting project for a permit is a key process piece in all of discussed tools, meaning that EU legislation requires for detailed evaluation of studies carried out before making decision on moving forward. Reports made during this process (made public as well in this regard) provides transparency and monitoring opportunity to avoid planned or accidental violations or miscalculations. However, as European framework is in most part strictly scientific the quality of these reports can be compromised. The lack of ecological knowledge has had a significant impact on implementation delays. While EU has implemented certain bodies to assist expertise level for Member States, most of the time, qualification issues arise on local and regional levels where it is easily overseen. It also should be noted that Member States must disclose several Directive implementation details to the EU. The Commission's "default choice" makes the permit

application process longer and less effective since it might make it difficult for all operators to create the feasibility study. Investing more into increasing levels of awareness and expertise on smaller scale should be considered as one of the remedies to the problem.

4. In order to maintain high level of effectiveness of discussed tools, research has pointed out that all of involved parties (local authorities, developers, public involved) be oriented and self-aware of the environmental aspects that shall not be overlooked and could potentially be still available if alternatives are correctly assessed. More focus and emphasizes should be allocated to promoting and mandating better environmental practices in general policies as well as within decision-making processes for projects and activities discussed in this research. According to the studies conducted for this study, public engagement is often self-motivated in order to collect knowledge and participate in decision-making processes. It must be determined that for EIA to remain successful, all parties impacted and interested must participate with intent and environmental goals in mind. More emphasis might be placed on encouraging and requiring public engagement in the EIA process for Member States.
5. It can be deducted that major problems with EU law's efficiency may be related to its enforcement. Access to information, participation and equally importantly to justice should be examined when determining successful application of decision-making tools. Strong stakeholder awareness and collaboration has been assessed as crucial element for success. The cases in which the general public has the right to participate in the decision of the competent authority to grant or change the terms of a permit should be enlarged. When it comes to environmental aspects of regulatory requirements, however, it appears that industry leaders desire streamlined procedures that require them to spend less time or money on obtaining licenses. Concerns about time and cost-effectiveness in EU legislation are not new. In other words, enhancing efficiency and environmental protection may be accomplished by simplifying the procedure of involving developers from different industries in the modification of the legislation and concentrating on methods to make it less unpleasant for them. The efficiency of stakeholders meeting will enhance if the stakeholders themselves will have certain financial interest in complying to environmental protection, in this regard, promoting and raising awareness on sustainable business is crucial for boosting the efficiency of each existing legal tool in place.

6. It has been noted that the complexity of BREF development, taking into account the amount of time and procedural processes that are required, renders it less responsive to real-time difficulties that are brought about by new technologies. Certain changes in the general pool of activities that the BAT covers should be expanded, which would ensure that the developers would have fewer opportunities to avoid meeting the set requirements. Since it is generally accepted that the BREFs are responsible for providing the majority of the quality assurance for the process, the creation of more BREFs need to be seen as one of the approaches to encourage more efficient evaluations and decision-making. In this sense, the first step toward achieving this objective would be to simplify and expedite the process of drafting and compiling the BREFs. With current procedures BREFs fall behind with technological development, rendering the effectiveness of BREFs overall, therefore it no longer associated with best practice, but with a demanding and time-consuming procedure for both Member States and Developers. Business and technologies develop at a rapid speed, therefore having legal procedures that cannot correspond to the market needs cannot reach its full effectiveness.
7. The original trend of excessive applications for classifying habitats as Natura 2000 sites has substantially decreased, which may be examined as a symptom of a non-favorable approach to it. The European Union and its member states need to prioritize making the management of Natura 2000 sites more financially beneficial and reasonable over the long term. The primary challenges that arise with post-management of the sites and maintaining their attractiveness for a variety of financial gains are where the focus needs to be placed. Because tourism is the industry that most closely meets the requirements of the latter demands, the funds that are made available for Natura sites should concentrate on keeping those sites in a healthy condition and investing in them so that they may become long-lasting tourist attractions. Currently, one of the biggest financial funding are allocated to Natura promotion, however it must be understood that success of Natura 2000 sites is heavily dependent on the stable jobs created by the site. Management of them is a continuous process that overall needs to continue for long period of time, therefore establishing sites in a way that it creates more seasonal or year-round jobs is crucial to keep it going. Eco-tourism shall be promoted heavily both in stakeholders and in general public and the sites shall be promoted to be designed and used in a way that brings financial benefit along with environmental protection.

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Summary

Environmental legal aspects of permitting economic activities

Ani Mtvarelidze

This master's thesis examines fundamental legislative acts, doctrine, and case law in order to provide an analysis of the attention given at the EU level to environmental issues during the decision-making process while also authorizing certain economic activity. This subject is most insightful when viewed through the lens of the EU's efforts to apply principles that are acknowledged and safeguarded.

The European Union recognizes the right of humans to live in a healthy environment as a fundamental value. Along with this right comes the responsibility of preserving the natural environment around us and the need to impose certain restrictions in order to address environmental concerns such as climate change, ecological preservation, and the protection of natural habitats. In the context of this subject of the master's thesis, the principle of prevention has been extremely important in the law of the EU, as public involvement has been acknowledged as an essential requirement for efficient decision-making.

Research has shown that in order to keep the effectiveness of the tools that have been discussed at a high level, all of the parties that are involved—including local authorities, developers, and members of the public—need to be oriented toward and self-aware of the environmental aspects that must not be ignored and that may still be available if alternatives are correctly evaluated. This is necessary in order to keep the effectiveness of the tools at a high level. It has been determined that strong collaboration and awareness among all of the stakeholders is a vital component for success. The circumstances in which members of the general public have the right to participate in the decision-making process of a competent authority regarding the granting of a permit or the modification of its terms have to be expanded.