

Implementation of EIA and SEA Directives in Finland

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Part A

1. How is the SEA-directive (Directive 2001/42/EC) implemented in your country? What is the scope of its implementation?

The SEA Act (8.4.2005/200) obliges public authorities to assess the environmental impact of plans or programs that may have significant adverse impact on the environment. The SEA Act concerns any authority responsible for making the plans defined by the Act. The government budget proposal is exempted from assessment, as are also plans concerning defence and public rescue service. The scope of plans to be assessed correspond to the provisions of Article 2-3 in the SEA Directive (2001/42/EC)

2. What types of public plans and programmes are subject to a strategic environmental assessment in accordance with the SEA-directive?

By the Finnish SEA Act, an assessment shall be made for plans that may significantly impair the conservation status of a Natura 2000 -site as well as for plans that are called for by the provisions in an Act or a Decree or by an administrative order and concerning

- agriculture, forestry or fisheries
- energy supply and industrial activity
- transport
- waste management
- water supply
- telecommunications

tourism, regional development or areal planning

protection of nature and the environment

A Government Decree on the application of the SEA Act (SEA Decree, 19.5.2005/347) lays down specifically, that an assessment is to be made for national land-use plans, regional waste management plans, national nature conservation plans, regional development plans and for traffic network plans in the capital area of Helsinki.

3. What kind of authority (local, regional, central) is responsible for performing the duties arising from the SEA-directive?

According to the Finnish SEA Act, the authority responsible for the plan is also responsible for the assessment. The plans to be assessed are national or regional. Therefore, responsible authorities are national authorities (ministries and central agencies) or regional authorities (Regional Councils responsible for planning and development, regional State authorities). Local authorities are not excluded, but due to the scope of the plans that fall under the SEA Act, they are not likely to be responsible for an assessment.

4. Does the competent authority normally ask other authorities on different administrative levels in the process of a strategic environmental assessment for their opinion or consultation?

Considering whether an assessment is to be made or not and the scope of the assessment, the responsible authority shall consult regional authorities (*Centres for Economic Development, Transport and the Environment* responsible for regional development tasks of the state administration), as well as local Council environmental and health authorities and other authorities in the area affected.

THE AUTHORITY DRAFTING THE PLAN SHALL EVALUATE THE THE SOCIAL AND ENVIRONMENTAL EFFECTS OF THE PLAN. IN A PUBLIC HEARING, THE AIMS OF THE PLANS, THE DRAFT PLAN AND THE EVALUATION ARE MADE PUBLIC ON THE AUTHORITY WEBSITE, BY PUBLIC NOTICE AND THROUGH NEWSPAPER NOTICE. IN THE HEARING, ALL AUTHORITIES CONCERNED MAY COMMENT ON THE PLAN.

5. WHAT TYPES OF DECISION ARE RESULTING FROM A STRATEGIC ENVIRONMENTAL ASSESSMENT PROCEEDINGS?

SEA IS TO BE MADE FOR CERTAIN PLANS AND PROGRAMS LAID DOWN BY LAW (SEE QUESTION A2). THE FUNCTION OF THE SEA IS TO IMPROVE THE PLANNING PROCESS AND TO OPEN IT UP TO THE PUBLIC. THEREFORE, THE ASSESSMENT AS SUCH RESULTS IN NO DECISION BUT INSTEAD, ASSESSES THE ENVIRONMENTAL IMPACTS OF DIFFERENT PLANNING OPTIONS. ON THE BASIS OF THE ASSESSMENT, THE RESPONSIBLE PLANNING AUTHORITY MAKES THE FINAL PLAN OR PROGRAM. THE CONCLUSIONS OF THE ASSESSMENT ARE NOT BINDING.

6. HOW DOES THE AUTHORITY ENSURE THE PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION IN THE PROCEEDINGS BASED ON THE SEA-DIRECTIVE?

See question A4 above. Hearing is public and is announced by newspaper notice stating the matter and where the assessment documents are available. The assessment materials are also made available on the website of the responsible authority. Normally, the hearing is in writing, but hearing meetings can be arranged.

7. Who is authorized to take part in a strategic environmental assessment proceedings? What about for example people living in the neighbourhood, NGOs and authorities on different administrative levels (local, regional, national)? What legal rights do participants of the proceedings have?

PUBLIC PARTICIPATION IN SEA OR EIA IS UNLIMITED. ANY PARTY THAT IS AFFECTED BY THE PLAN IN QUESTION, OR RESIDENT IN THE AREA, OR JUST INTERESTED IS INVITED TO COMMENT ON THE ASSESSMENT. ALSO NGO'S, WHOSE GOALS OR ACTIVITIES ARE AFFECTED BY THE PLANS ARE INVITED. ALSO EVERY AUTHORITY ON THE NATIONAL, REGIONAL OR LOCAL LEVEL, THAT FEELS A CALL TO COMMENT MAY DO SO.

PARTICIPANTS IN THE EA PROCESS HAVE THE RIGHT OF OPINION AND OF HAVING THEIR COMMENTS RECORDED IN THE HEARING PROCEEDINGS. OPINIONS EXPRESSED IN THE PROCESS ARE NOT BINDING TO THE AUTHORITY.

8. TO WHAT EXTENT ARE THE SEA AND EIA PROCEDURES INTEGRATED IN YOUR COUNTRY? IF A NEW INDUSTRIAL PROJECT ALSO NEEDS A CHANGE OF THE BUILDING PLAN, CAN THE SAME DOCUMENTATION BE USED FOR THE ASSESSMENT OF BOTH THE PROJECT AND THE PLAN? ARE THERE PROBLEMS RELATED TO THE INTEGRATION OR THE LACK OF INTEGRATION FOR DIFFERENT ACTORS (SUCH AS THE PUBLIC, THE OPERATOR OF THE PROJECT, THE MUNICIPALITY OR AUTHORITIES)? CAN YOU GIVE EXAMPLES?

EIA ASSESSMENT SHALL BE MADE FOR A NUMBER OF INDUSTRIAL AND BUILDING ACTIVITIES LISTED IN THE FINNISH EIA DECREE, ALL OF WHICH REQUIRE AN ENVIRONMENTAL LICENSE OR WATER CONSTRUCTION PERMIT AND WHICH MAY REQUIRE ALSO OTHER PERMITS. THE EIA PROCEDURE IS LINKED TO THE ENVIRONMENTAL PERMIT PROCESS, AND MATERIALS PRODUCED IN THE EIA WILL BE USED ALSO IN THE PERMIT

PROCESS. THE SEA PROCESS, ON THE OTHER HAND, DOES NOT CONCERN PRACTICAL, PHYSICAL PROJECTS BUT ONLY AUTHORITY PLANS AIMING TO REGULATE THE FUNCTIONING OF SOCIETY ON A GENERAL LEVEL. THE TWO PROCEDURES, THUS, DO NOT MEET. THE MATERIAL PRODUCED IN ONE ASSESSMENT PROCESS CAN, OF COURSE, BE USED ALSO IN ANOTHER, IN ASSESSING POSSIBLE EFFECTS ON A NATURA 2000-SITE OR IN THE ENVIRONMENTAL PERMIT PROCESS.

BY THE LAND-USE AND BUILDING ACT (5. 2. 1999/132), SOCIAL AND ENVIRONMENTAL EFFECTS OF LAND-USE PLANS ARE TO BE EVALUATED. THIS PROVIDES FOR A FACTUAL ASSESSMENT OF ENVIRONMENTAL IMPACT EVEN WHEN A FORMAL EIA OR SEA IS NOT REQUIRED. IN THE CASE OF LARGE-SCALE BUILDING OPERATIONS FOR WHICH EIA OR SEA IS REQUIRED, THERE IS AN EXPLICIT PROVISION THAT THE EIA MATERIALS ARE TO BE USED ALSO IN THE PERMIT PROCESS.

EXAMPLES

RECENT EXAMPLES OF PLANS AND PROJECTS SUBJECT TO SEA ARE :

- REGIONAL WASTE MANAGEMENT PLANS (REGIONAL CENTRES FOR ECONOMIC DEVELOPMENT, TRANSPORT AND ENVIRONMENT, REGIONAL COUNCILS)
FINNISH LONG-TERM CLIMATE AND ENERGY STRATEGY (MINISTRY OF EMPLOYMENT AND THE ECONOMY)
NATIONAL LAND-USE PLAN (MINISTRY OF THE ENVIRONMENT)
NATIONAL WASTE MANAGEMENT PLAN (MINISTRY OF THE ENVIRONMENT)
REGIONAL DEVELOPMENT PLANS (REGIONAL COUNCILS)

ADDITIONALLY, THE MINISTRY OF THE ENVIRONMENT HAS UNDERTAKEN EVALUATIONS OF THE NATURE CONSERVATION ACT AND OF THE EIA ACT ITSELF. FORMALLY, SEA IS NOT REQUIRED FOR LEGISLATION.

PART B

1. HOW IS THE EIA-DIRECTIVE IMPLEMENTED IN YOUR COUNTRY? WHAT IS THE SCOPE OF ITS IMPLEMENTATION?

THE EIA ACT (10. 6. 1994/468, MAJOR REVISION 8. 6. 2006/458) LAYS DOWN THE PROCEDURE, THE RESPONSIBLE AUTHORITIES AND THE RULES OF APPEAL. THE LIST OF ACTIVITIES SUBJECT TO EIA IS GIVEN IN THE GOVERNMENT EIA DECREE (17. 8. 2006/713).

THE ACTIVITIES FOR WHICH AN OBLIGATORY EIA IS REQUIRED, ARE LARGE SCALE INDUSTRIAL AND BUILDING OPERATIONS ALL REQUIRING ENVIRONMENTAL PERMIT (AS WELL AS OTHER PERMITS). THE LIST CORRESPONDS

TO THAT OF THE EIA DIRECTIVE. ADDITIONALLY, THE RESPONSIBLE AUTHORITY MAY *IN CASU* REQUIRE EIA ALSO FOR PROJECTS NOT ON THE DECREE LIST, BUT WHICH MAY HAVE A SIGNIFICANT NEGATIVE IMPACT ON THE ENVIRONMENT. IN DECIDING WHETHER EIA IS REQUIRED, THE ENVIRONMENTAL AUTHORITY (REGIONAL CENTRE FOR ECONOMIC DEVELOPMENT, TRAFFIC AND THE ENVIRONMENT) AND THE ADMINISTRATIVE COURTS ARE TO OBSERVE THE RULINGS OF THE EUROPEAN COURT OF JUSTICE

2. WHAT TYPES OF PUBLIC AND PRIVATE PROJECTS ARE SUBJECT TO AN ENVIRONMENTAL IMPACT ASSESSMENT IN ACCORDANCE WITH EIA-DIRECTIVE?

BY SECTION 6 OF THE EIA DECREE, ENVIRONMENTAL IMPACT IS TO BE ASSESSED FOR THE FOLLOWING ACTIVITIES, WHEN PRODUCTION OR THE SCALE OF OPERATION EXCEEDS THE THRESHOLD VALUE SPECIFIED FOR EACH ACTIVITY:

1. LARGE-SCALE ANIMAL HUSBANDRY
EXTRACTION AND PROCESSING OF MINERALS (INCLUDING URANIUM), PEAT EXTRACTION AND PRODUCTION OF OIL

DAMS, ARTIFICIAL LAKES, REGULATION OF RIVERS, FLOOD CONTROL AND SURFACE WATER EXTRACTION

METAL INDUSTRY

PULP AND PAPER INDUSTRY

CHEMICAL INDUSTRY

PRODUCTION OF COMBUSTION OR NUCLEAR ENERGY

TRANSPORT AND STORAGE OF ENERGY

CONSTRUCTION OF ROADS, RAILWAYS AND AIRPORTS

MUNICIPAL WATER SUPPLY AND WASTE WATER HANDLING

WASTE MANAGEMENT

CHANGES IN PRODUCTION OR OPERATION OF THE ABOVE, WHEN THE MAGNITUDE OF CHANGE CORRESPONDS TO THE THRESHOLD VALUES SET FOR EACH ACTIVITY

THE NUMBER OF FINNISH EIA 'S IS 30-50 YEARLY AND THE MEAN TIME SPAN OF AN ASSESSMENT IS 1 - 1½ YEAR. THE BULK OF ASSESSMENTS IS IN WASTE MANAGEMENT (36% OF TOTAL NUMBER IN 1994-2008) AND MINING PROJECTS (19% OF TOTAL NUMBER). OF ALL ENVIRONMENTAL PERMIT CASES,

EIA IS MADE ONLY IN A SMALL FRACTION. IN 2000–2008, EIA WAS MADE IN 2,6% OF ALL ENVIRONMENTAL PERMIT CASES. (*EIA EVALUATION REPORT, JORMA JANTUNEN & PEKKA HOKKANEN 2010, THE FINNISH ENVIRONMENT 18/2010*).

3. WHAT ARE SELECTION CRITERIA THAT SHOULD BE APPLIED BY THE DEVELOPER OR THE COMPETENT AUTHORITY TO IDENTIFY PROJECTS REQUIRING AN EIA BECAUSE OF THEIR POTENTIALLY SIGNIFICANT ENVIRONMENTAL EFFECTS?

AS LAID DOWN IN SECTION 4 OF THE EIA ACT, AN ASSESSMENT IS TO BE MADE WHEN REQUIRED BY INTERNATIONAL TREATY (*J. A.* BY EU LAW OR THE ESPOO EIA CONVENTION), OR WHEN THE OPERATION MAY HAVE SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS DUE TO THE SPECIAL FEATURES OF FINNISH NATURE AND ENVIRONMENT. FOR THOSE ACTIVITIES REQUIRING OBLIGATORY EIA, THE CRITERIA FOR ASSESSMENT IS THE ACTIVITY AND THE SCALE OF OPERATION. *E. G.*, A NUCLEAR POWER PLANT WOULD ALWAYS REQUIRE EIA WHILE A COMBUSTION POWER PLANT REQUIRES EIA ONLY IF THE FUEL EFFECT IS AT LEAST 300 MW.

In the case of discretionary EIA, the Decree lists an number of criteria, which also illuminate the criteria behind the list of activities requiring obligatory assessment. Criteria to be considered are, *i. a.*, the scope of operations and joint effect with other projects, site of operation and size of the impact area as well as conservation values of the area.

4. WHAT KIND OF AUTHORITY (LOCAL, REGIONAL, CENTRAL) IS RESPONSIBLE FOR PERFORMING THE DUTIES ARISING FROM THE EIA-DIRECTIVE?

NORMALLY, IN AN EIA, THE AUTHORITY RESPONSIBLE FOR SUPERVISING THE ASSESSMENT IS THE REGIONAL ENVIRONMENTAL AUTHORITY (REGIONAL CENTRE OF ECONOMIC DEVELOPMENT, TRAFFIC AND THE ENVIRONMENT). IN CASE THE AUTHORITY ITSELF IS INVOLVED IN THE PROJECT TO BE ASSESSED, THE RESPONSIBILITY IS TRANSFERRED TO AN ADJACENT REGIONAL ETE CENTRE.

5. WHEN SHOULD AN ENVIRONMENTAL IMPACT ASSESSMENT TAKE PLACE DURING THE INVESTMENT PROCEDURE?

THE EIA PROCEDURE IS INTENDED AS PART OF THE GENERAL PLANNING PROCESS PRECEDING A COMPANY DECISION TO RUN A SPECIFIC OPERATION AND APPLY FOR AN ENVIRONMENTAL PERMIT. BY SECTION 9 OF THE EIA DECREE, THE ASSESSMENT SHALL BE MADE FOR ALTERNATIVE OPERATIONAL SOLUTIONS AND ALSO FOR NON-ACTION, *I. E.* REFRAINING FROM THE PROJECT.

In practice, the company may have already chosen the project alternative

to be pursued and operational planning may be well advanced at the time EIA is made. By Section 7 of the EIA Act, assessment shall be made before operation affecting the environment commences and before an environmental permit is issued for the project.

6. Does the decision resulting from an environmental impact assessment grant the final development consent?

EIA is made for operations requiring environmental permit. The assessment procedure ends with a statement by the supervising authority, stating whether the assessment is adequate and, as the case may be, listing open questions that need to be clarified before the environmental permit decision. The assessment, thus, is required when the application for an environmental permit is considered and confers no rights to the applicant. Hence, the assessment report or the supervising authority statement are not decisions against which appeals can be lodged.

7. How does the authority ensure the public access to environmental information in the proceedings based on the EIA-directive?

The EIA procedure comprises the following steps 1) approval of assessment plan by the supervising authority, 2) announcement of the project and the assessment plan, 3) public hearing, 4) announcement of the assessment, 5) public hearing and 6) evaluation statement by the supervising authority.

Upon submission of an assessment plan, the supervising authority makes the project plan and the assessment plan public by publishing them on the authority's website, by public notice in newspapers and by letter to concerned authorities. The public, including NGO's, as well as concerned authorities are invited to express their opinion on the project and on the adequacy of the assessment program.

When the assessment is completed, including a description of different project alternatives and a comparison of their impacts, a new public hearing is held as described above. The opinions expressed are stated in the final assessment report.

8. Who is authorized to take part in an environmental impact assessment proceedings? What about for example people living in the neighbourhood, NGO's

*and authorities on different administrative levels (local, regional, national)?
What legal rights do participants of the proceedings have?*

The public hearing described above gives private and legal persons and NGO's access to information about the project and the environmental impact and gives them the occasion to express their opinion, regardless of whether they would be considered parties in, *e.g.*, an environmental permit procedure for the same project. State and Council authorities responsible for environmental and health matters have specific standing in the EIA process. The supervising authority, on making the final evaluation of the assessment, also refers the opinions and statements that have been put forward in the proceedings. The applicant is not required to change his plans in response to the opinions expressed.

*9. IN WHAT WAY ARE QUESTIONS CONCERNING THE APPLICATION OF THE EIA-DIRECTIVE BROUGHT TO COURT?
PLEASE GIVE ONE EXAMPLE OF THE PROCEEDING AND THE JUDGEMENT.*

APPLICATION OF EIA IS BROUGHT TO COURT IN A NUMBER OF WAYS:

- THE APPLICANT MAY APPEAL TO THE REGIONAL ADMINISTRATIVE COURT AGAINST A DECISION BY THE REGIONAL ENVIRONMENT AUTHORITY THAT EIA IS *REQUIRED* A DECISION BY THE REGIONAL ENVIRONMENTAL AUTHORITY THAT EIA IS *NOT REQUIRED* MAY NOT BE CHALLENGED BY THE PARTIES AS SUCH. A CONCERNED AUTHORITY (OTHER THAN THE ONE DECIDING EIA IS NOT REQUIRED) MAY APPEAL AGAINST A PERMIT DECISION ON THE GROUNDS THAT EIA WAS NOT MADE
- APPEALING AGAINST A PERMIT DECISION UNDER THE ENVIRONMENTAL PROTECTION ACT OR WATER CONSTRUCTION ACT, PARTIES MAY IN BOTH CASES ABOVE CLAIM THAT EIA WAS NOT PROPERLY MADE AND THAT THE PERMIT DECISION THEREFORE SHOULD BE REPEALED.

ORIGINALLY, THE FINNISH EIA ACT DID NOT ADMIT APPEALS AGAINST AN ENVIRONMENTAL AUTHORITY DECISION THAT EIA WAS *NOT REQUIRED* AND THE ADMINISTRATIVE COURT WAS NOT COMPETENT TO REPEAL SUCH A DECISION. THE ACT WAS REVISED IN 2006 IN ORDER TO COMPLY WITH THE AIMS AND PROVISIONS OF THE EIA DIRECTIVE.

Examples

DECIDING ON WHETHER AN APPLICANT FOR A STONE QUARRY PERMIT WAS TO MAKE AN EIA, THE REGIONAL AUTHORITY HAD DECIDED THAT ASSESSMENT WAS NOT REQUIRED. THE AC RULED THAT, ALTHOUGH THE QUARRY IN QUESTION WAS

SMALLER THAN THE THRESHOLD FOR OBLIGATORY EIA, THE NEED FOR ASSESSMENT WAS TO BE CONSIDERED TAKING INTO ACCOUNT ALSO TWO NEIGHBOURING QUARRIES AFFECTING THE SAME AREA. TOGETHER, THE QUARRIES WERE LIKELY TO HAVE SEVERE EFFECTS ON THE ENVIRONMENT AND THE IMPACT WAS TO BE ASSESSED. THE DECISION OF THE REGIONAL AUTHORITY WAS REPEALED. (*TURKU AC 22. 2. 2010 Nr 10/00138/1, CASE PENDING IN SAC*)

A PRIVATE COMPANY PLANNED AN OFFSHORE WIND POWER INSTALLATION CONSISTING OF 100–200 WIND TURBINES OF 5 MW EACH ON A BANK 10 KM OFF THE FINNISH COAST. THE REGIONAL ENVIRONMENTAL AUTHORITY DECIDED THAT EIA WAS REQUIRED. WIND POWER PRODUCTION WAS NOT THEN LISTED FOR OBLIGATORY EIA, BUT DUE TO THE SCALE OF OPERATIONS, THE ENVIRONMENTAL IMPACT WAS CONSIDERED COMPARABLE TO THAT OF OPERATIONS FOR WHICH EIA IS OBLIGATORY AND ASSESSMENT WAS, THEREFORE, REQUIRED. (*WEST FINLAND ENVIRONMENTAL CENTRE 5. 6. 2007*). NOTE: THE EIA DECREE WAS REVISED IN 2011, BRINGING WIND POWER PARKS OF AT LEAST TEN MILLS OR WITH A TOTAL EFFECT OF AT LEAST 30 MW ON THE LIST FOR OBLIGATORY EIA.

THE REGIONAL ENVIRONMENTAL AUTHORITY HAD DECIDE THAT EIA WAS NOT REQUIRED FOR A 90 KM LONG STRETCH OF GAS PIPE LINE WITH A DIAMETER OF 500 MM. THE THRESHOLD VALUE FOR OBLIGATORY EIA WAS 40 KM AND 800 MM. SAC DECIDED, THAT THE SCOPE OF THE PROJECT AND ITS IMPACT WERE COMPARABLE TO THOSE PROJECTS FOR WHICH EIA IS MANDATORY, AND REPEALED THE DECISION. BECAUSE EIA WAS REQUIRED, ALSO THE STATE COUNCIL DECISION ALLOWING THE COMPANY TO EXPROPRIATE LAND FOR THE PIPE LINE, WAS REPEALED. (SAC 3. 7. 2008/1633)

10. WHAT ARE THE SPECIFIC CHARACTERISTICS OF THE TRANSBOUNDARY ENVIRONMENTAL IMPACT ASSESSMENT OF CERTAIN PUBLIC AND PRIVATE PROJECTS?

IN CASE OF A PROJECT CAUSING SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACT WITHIN THE AREA OF JURISDICTION OF ANOTHER COUNTRY, THE APPLICANT SHALL INFORM THE MINISTRY OF THE ENVIRONMENT, WHICH IN TURN INFORMS ITS COUNTERPART IN THE OTHER COUNTRY. THE ASSESSMENT PROCEDURE IS CONDUCTED ACCORDING TO THE PROVISIONS OF THE FINNISH EIA LEGISLATION AND THE PROVISIONS OF THE ESPOO EIA CONVENTION OF 1991 (CONVENTION ON ENVIRONMENTAL IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT, ESPOO 1991).