The EUFJE Questionnaire on the SEA- and EIA-directives for the annual conference in Warsaw in October 2011

Answers from Sweden

Anna-Lena Rosengardten, technical judge at the Land and Environment Court of Appeal

General information

In may 2011 there was a reorganization of the Swedish environmental courts. Before, the environmental courts were not involved in matters concerning the Planning and Building Act, but since then they tries appeals concerning detailed development plans and building permits according to that legislation. As a consequence of this reorganization, the courts have also changed names so that the Environmental Courts are now Land and Environment Courts and the Environmental Court of Appeal is now the Land and Environment Court of Appeal. In the answers and cases below, only the new names are used.

Part A

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

General background, adequate for both the SEA- and the EIA-directives

In Sweden, important parts of the environmental legislation are compiled in the Environmental Code. The Environmental Code – together with ordinances issued by the Government - covers different subject areas and implements important parts of the European Union environmental law. For example the directives on environmental quality standards, Natura 2000-areas, IPPC-industries, waste and chemicals are all implemented by the Code and its ordinances. In some cases, for instance when it comes to the SEA- and the EIA directives, the directives are only partly implemented by the Code and the full implementation is achieved by a combination of the Code and other environmental legislation on special subjects that is not included in the Code. Some important acts that together with the Code complete the implementation of the SEA- and EIA directives are for example the Planning and Building Act, the Road Act, the Act on Certain Pipelines, the Railway Act, the Act on Electricity and the Act on Nuclear Plants. These acts all contain references to the Environmental Code, so that the Code is to be applied together with the special regulation.

Mainly, chapter 6 of the Environmental Code gives the rules that concern the environmental report (the SEA-directive) and the Environmental Impact Statement (the EIA-directive). Both the content of these documents and the proceedings to produce them – including consultations – are regulated in this chapter. The legislation on the adoption of plans and programmes and on development consents of projects is found in other parts of the Code or in special legislation.

The SEA-directive

The SEA-directive is mainly implemented by chapter 6 of the Environmental Code.

You find special regulation that complements chapter 6 of the Environmental Code, and also references to the general rules of this chapter in legislation concerning certain kinds of plans and programmes. This is the case when it concerns for example the Planning and Building Act that regulates the land use planning and building, and it is also the case in the specific chapter of the Environmental Code that regulates programmes of measures to achieve environmental objectives in accordance to the water framework directive (2000/60/EG) and air quality standards.

There is a governmental ordinance that is common to environmental assessments both of plans and programmes and of projects. The ordinance regulates details on the environmental assessment. Parts of the annexes to the SEA- and EIA-directives are for example implemented by the ordinance.

Furthermore, the National Swedish Environment Protection Agency has published guidelines on the application of the regulation on environmental assessments of plans and programmes.

There are no obvious differences between the scope of the directive and its implementation in Swedish law.

The information required in the environmental report according to the Swedish legislation is also the same as what is required according to annex I in the SEA-directive.

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

A strategic environmental assessment shall be carried out when an authority or a municipality changes or adopts a plan or programme that is required by law or other statutes, if this is likely to have significant environmental effects.

The following types of plans or programmes are always considered likely to have significant environmental effects:

- plans and programmes that involves measures that are likely to have a significant effect on a Natura 2000-area

- plans and programmes that sets the conditions for certain kinds of listed projects (the list is mainly conform to the list of projects in annex II of the EIA-directive) and constitutes

    - a comprehensive plan for the land use of a municipality,

    - a municipal plan on supply, distribution and use of energy,

    - a municipal waste plan,

    - a programme of measures to achieve environmental quality standards (including environmental objectives in accordance to the water framework directive),

- a regional plan for roads, railways and other transportation infrastructure, or

- other plans and programmes for agriculture, forestry, fisheries, energy, industry, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use.

A strategic environmental assessment is also required for detailed development plans - if they do not concern small local areas only, and certain listed criteria (corresponding to annex II to the SEA-directive) are not fulfilled.

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

It is the municipality or the authority that is changing or adopting the plan or programme that is responsible for carrying out the duties. Since many of the plans and programmes for which the SEA-directive applies are municipal, it is often the authorities on the local level that are responsible.

IV. 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?

Before a municipality or an authority decides on the scope of an environmental report, it shall ask other municipalities and regional authorities (County Administrative Boards) that are concerned for their opinion. For plans and programmes on national level, the Environmental Protection Agency and other national authorities should be heard.

Before a plan or a programme is adopted or changed, the responsible municipality or authority shall make the environmental report and the proposal for plan or programme available to other municipalities and authorities that are concerned, as well as to the public. They shall be given appropriate time to express their opinion.

V. What types of decision are resulting from a strategic environmental assessment proceedings?

The decision is the adoption of the plan or the programme.

The plans and programmes can have different legal status. For example a comprehensive plan for the land use of a municipality is binding to neither authorities nor public, and the content of such a plan cannot be appealed. A detailed development plan on the other hand, is legally binding and can be appealed to the Land and Environmental Court.

A programme of measures to achieve environmental standards is binding to authorities but not to the public, and its contents cannot be applied.

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

How the environmental report and the proposal for plan or programme are made available to the public is generally decided from case to case. According to the guidelines published by the Environmental Protection Agency, it is often suitable to advertise in the media. Information on the consultation should at least be given on the website or on the notice board of the municipality or authority.

When it concerns special kinds of plans or programmes, the procedure concerning consultation can be regulated in detail. That is the case for plans (comprehensive plans for the land use of a municipality, and detailed development plans) according to the Planning and Building Act. In these cases the environmental report and the proposal for a plan is always advertised in newspapers. When it concerns comprehensive plans, the plan is exhibited for at least two months after the advertisement. Detailed development plans must be exhibited for at least three weeks and a copy of the advertisement is always sent to known parties.

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

There is no limitation as to which persons, organizations or authorities that can give their opinions on an environmental report and a proposed plan or programme.

Their right to appeal the final adoption of the plan or programme depends on the kind of plan or programme that is adopted. In some cases it is not possible to appeal the material content of a plan or programme at all.

The adoption of detailed development plans is an example where only people concerned by the plan have the right to appeal. The right to appeal is also limited to those that have given their opinion on the proposal earlier during the process. Which NGO:s that are entitled to appeal detailed development plans is stated in the Environmental Code. Thus, only NGO:s that according to their statutes have nature or environment protection as their main purpose, are not profitable, have been active in Sweden for at least three years and have at least 100 members can appeal.

VIII. To what extent are the SEA and EIA procedures were 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?

The SEA and the EIA directives are integrated in the sense that they are implemented in the same chapter of the Environmental Code. In many parts the requirements on the environmental report and the EIS respectively resemble. According to the Environmental Code, authorities and municipalities shall attempt to coordinate the reviews and descriptions when several environmental reports and/or EISs are required.

The impression is that in practice, when it concerns a project that also needs a new detailed development plan, the content does not differ much and the con-

sultation often involves the same authorities, NGO:s and persons. A difference is that while it is the developer that is responsible for the EIS, it is the municipality that is responsible for the environmental report (SEA).

When it concerns large projects, there is often one document produced that covers the demands for both an EIA according to the EIA-directive and an environmental report according to the SEA-directive.

In Swedish practice, there have been uncertainties when it regards the question if consultations according to the EIA- and the SEA-directives - involving for instance hearings with the public - can be carried out jointly.

When it concerns large projects, such as the building of Botniabanan (an almost 200 km long new railway in the north of Sweden) the number of consultations concerning different parts – bridges, tunnels, passages of protected areas and such – grows very large when separate consultations are made for each part, and also for every different piece of legislation that is involved. Besides that this is not always effective in the terms of time and economy for the developer and the authorities, it can also be confusing, not least for the public that does not know at which stage in the proceeding of what legislation their opinions should be given.

Part B

I. How is the EIA-directive implemented in your country? What is the scope of its implementation?

For a general background, see the answer to question I in part A. As described there, the EIA-directive is partly implemented by chapter 6 of the Environmental Code. This chapter contains general regulation regardng when an Environment Impact Statement (EIS) is required, its content, how and with whom consultation concerning the EIS shall be carried out, how the EIS shall be advertised and finally how and by whom an EIS shall be accepted.

The requirement for an actual decision on whether a project is allowed to be carried out or not, follows by regulations on special kinds of projects. When it concerns EIA-projects that are also IPPC-plants and projects that involve building in water a permit is required according to the Environmental Code (chapter 9 and chapter 11 respectively). When it concerns roads, railways, pipelines and other infrastructural projects, there are special acts demanding different kinds of decisions that implements the EIA-directives requirement for development consent.

The scope of the implementation of the EIA-directive is wider in Sweden than is required by the directive. The procedure to gain a permit is the same for all IPPC-plants, whether it concerns a plant that is also an EIA-project or not. Earlier - ten years ago - the permit procedure for every IPPC-plant also fulfilled the EIA-directive. Since then there has successively been a change so that the demand on the IPPC-plants that are not also EIA-projects has decreased to some extent. Plants that are not EIA-projects still require an EIS, but the EIS in these cases does not need to be as comprehensive as for the EIA-projects. The scope of the consultation on the EIS can also be less wide. Otherwise the proceedings are the same for all IPPC-projects.

The required content of the EIS for the EIA-project is also more comprehensive than follows by the directive. In addition to what is required by the directive, an EIS in Sweden shall also contain

- information on how the project will contribute to fulfill environmental quality standards (including environmental objectives according to the water framework directive)

- information needed to assess the impact of the project on the management of land- and water areas and other natural resources

- an account for alternative locations of the project

II. What types of public and private projects are subject to an environmental impact assessment in accordance with EIA-directive?

In addition to what is required by the directive, also smaller IPPC-plants are subject to environmental impact assessments. Nowadays the requirements on the content of the EIS and the scope of the consultation on the EIS can be somewhat less strict for these plants than for actual EIA-projects. (See also answer to question B I.)

III. 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?

The criteria that should be considered are stated in a list in the Ordinance on Environmental Assessments. It is the same as the list in Annex III of the directive.

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

The decision to grant or refuse development consent has different shape and is issued by different authorities depending on the kind of project.

When it concerns IPPC-plants and projects that involve building in water, the decision has the form of a permit according to the Environmental Code. Permits concerning IPPC-plants are issued by either the County Administrative Board (a regional authority) or the Land and Environment Court, depending on the kind of plant and its capacity. (In a list of different kinds of plants, the larger and more complex ones are marked "A" and require a permit from the court, while the somewhat less complicated are marked "B" and require a permit from the County Administrative Board.) Projects involving building in water always require a permit from the Land and Environment Court. In these cases (both the IPPC-plants and the water projects) it is also the permit authority – the court or the County Administrative Board – that passes the EIS.

For other kinds of projects, there are other forms of decisions. When it concerns for example roads and railways, the decision has the form of an adoption of a plan (a road plan or a railway plan). Normally this adoption is made by the Transport Administration, the national authority that is responsible for transport infrastructure in Sweden. The largest road and railway projects also require de-

velopment consent from the Government. The procedure in cases concerning roads and railways involves an approval of the EIS by the County Administrative Board (the regional authority).

Still other kinds of projects – like the building of large pipelines or electric lines - are decided by the Government.

Some building projects which require an EIS, such as hotels, amusement parks etc are examined according to the Planning and Building Act and follow the same rules as for detailed development plans described in Part A.

The County Administrative Board, or in some cases the municipality, in its role as a supervisory authority always takes part in the preparation of the EIS. The supervisory authority advises the developer on the scope of the EIS, and on how and with whom consultation shall be carried out. The consultation on the EIS always involves the County Administrative Board. If the municipality is also a supervisory authority, consultation with the municipality is also mandatory. Specialized national authorities – specially the Environmental Protection Agency – might be consulted on the EIS too.

V. When should an environmental impact assessment take place during the investment procedure?

It is not formally stated when, during the investment procedure, the assessment shall take place. This is a decision made by the developer. Since the procedure is costly and time consuming for the developer, there has to be a high potential for the project to be carried out.

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

The decision resulting from an environmental impact assessment also constitutes final development consent and it is the only development consent needed when it concerns roads and railways. When it concerns IPPC-plants and building in water, a new detailed development plan and/or a building permit according to the Planning and Building Act can be needed in addition to the environmental permit.

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

According to the regulation the developer is obliged to consult with the public and the organizations that might be concerned on the content of the EIS.

The permit authority (when it concerns IPPC-plants and building in water) is obliged to advertise the application for permit and the EIS in the newspapers. When it concerns roads or railways the Swedish Transport Administration has the responsibility for the advertisement. The public is in the advertisement invited to give written comments on the project.

Normally, the permit authority (IPPC-plants and building in water) has an advertised public hearing, where representatives of the developer as well as representatives of national, regional and local authorities, organizations and the public par-

ticipate. Concerning roads and railways it is the municipality or the Transport Administration that organizes these public hearings.

The permit itself - when it concerns IPPC-plants and building in water - is also advertised in newspapers.

VIII. Who is authorized to take part in an environmental impact assessment proceedings? What about for example people living in the neighborhood, NGO's and authorities on different administrative levels (local, regional, national)? What legal rights do participants of the proceedings have?

Everybody – single persons and organizations alike - is entitled to take part in consultation on the EIS and in the proceedings in the first instance that decides on the development consent.

The right to appeal is limited to those concerned by the project (for instance neighbors to the project). Not all that have participated in the first instance are thus entitled to appeal. Which NGO:s that can appeal is stated in the Environmental Code. It is the same as was described above in the answer to question A VII, that is only NGO:s that according to their statutes have nature or environment protection as their main purpose, are not profitable, have been active in Sweden for at least three years and have at least 100 members can appeal.

IX. 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.

When it concerns the larger IPPC-plants and projects that involve building in water, the Land and Environment Courts are directly involved since they constitute permit authorities in these cases. That means that they decide on the development consent and on the approval of the EIS. Permits issued by the Land and Environment Courts can be appealed to the Land and Environment Court of Appeal, and further to the Supreme Court.

The proceeding of an application for a permit is presented in an attached scheme. The first part of the proceedings – the production of the EIS – takes place before the application and the EIS is delivered to the Land and Environment Court.

Infrastructural projects – roads and railways – often contain parts that involve building in water (such as bridges and tunnels) that requires a permit from the Land and Environment Court. They can also affect areas that are protected, for instance Natura 2000-areas – and in these cases a decisions or a permits is required from the County Administrative Board. The decision or permit can be appealed to a Land and Environment Court.

Infrastructural projects and other kind of projects that does not involve building in water or protected areas, are decided by national authorities or the Government. In these cases the procedure of the assessment can be tried by the Supreme Administrative Court. A question for the court is then whether the EIS has been sufficient and if the procedure in assessing the project has been correct.

A very common standpoint from the public and NGO:s is that the EIS is insufficient or inadequate, and that development consent of that reason cannot be granted. The courts have in many cases declared that a sufficient and adequate

EIS is a prerequisite for the proceedings for development consent. (A case is presented below.)

X. What are the specific characteristics of the transboundary environmental impact assessment of certain public and private projects?

The transboundary environmental impact assessments do not differ from the national assessments in any other way than that authorities, NGO:s and public from the neighboring country are also involved in the proceedings. For them however, the possibilities to appeal are restricted.

Some cases from the Environmental Court of Appeal

Example showing that an EIA is a prerequisite for the proceedings for development consent – the Scanraff case (MÖD 2003:95)

A refinery on the Swedish west coast had applied for a permit according to the Environmental Code to increase and change its production. The company had also asked for a building consent – that is a permission to start the building (but not the operation) of the new parts of the plant before the permit was issued.

The Land and Environment Court – the first instance – had given such a building consent, and this was appealed to the Land and Environment Court of Appeal by a NGO. The NGO claimed that no building consent should be given, since the EIS was not complete.

The Land and Environment Court of Appeal found that the EIS was insufficient, especially when it concerned alternative locations, the general impact on the seawater and the impact on a certain sea bay that constitutes a Natura 2000-area. The EIS was – according to the Court of Appeal – not sufficient, neither to assess the permissibility of the project as a whole nor to set the appropriate conditions for a permit. Although it concerned just a building consent - that the developer uses on his own risk – a complete EIS was prerequisite. Thus the Court of Appeal cancelled the building consent.

This case was noted in Sweden, since the developer had started the building, and the cancellation of the building consent implied large economic consequences.

Example showing the required scope of an EIA – the case of the Citybanan (MÖD 2007:50)

The Swedish Transport Administration was planning a new system of tunnels under the city of Stockholm to expand the railway system for commuter trains. The system consists of a main tunnel for the railway from the south to the north of Stockholm, and of a number of service tunnels, connected to the main tunnel, for building purposes.

The building of such a railway system needs a railway plan, according to the Railway Act. Since the building of tunnels affects the groundwater levels, a permit is also needed according to the Environmental Code.

The Transport Administration applied for permit according to the Environmental Code for one of the service tunnels and presented documentation on the impact of the tunnel on the groundwater levels. The Land and Environment Court issued a permit. This was appealed by owners of houses that could be affected by the tunnel.

The Land and Environment Court of Appeal found that the scope of the application and of the EIS was insufficient in two ways. First the geographical scope was insufficient, since the impact on the groundwater levels due to this service tunnel, would collaborate with the impact on the same groundwater levels by other parts of the tunnel system – for instance the main tunnel. Thus it was not possible to try just the service tunnel, separate from other parts of the tunnel system. Second, although the Swedish legislation ties the need for a permit for a tunnel to the impact on the groundwater level, the EIS cannot be limited to describe this impact. An EIS has to cover all relevant effects on the environment, such as – beside the impact on the groundwater level – also for instance the pollution of water and the noise and vibrations from the building of the tunnel. Since the EIS was insufficient, the Court of Appeal cancelled the permit.

The Transport Administration later applied for a permit concerning the whole northern part of tunnel system. The EIS connected to this application concerned all kinds of effects for the environment. This application was also tried by the Land and Environment Court of Appeal. This time the question was if all the different kinds of possible effects on the environment, presented in the EIS, could be subject for conditions for the permit, or if the conditions could only concern the impact on the groundwater levels. The court found in this case that the conditions could concern all relevant types of effects on the environment.

<u>An example where the content of an EIA has been tried - the Eslöv-Lund waste combustion plant (MÖD 2008:44)</u>

The two municipalities of Eslöv and Lund had applied for a permit for a new waste combustion plant. A permit was issued by the Land and Environment Court, but this was appealed to the Land and Environment Court of Appeal by neighbors to the planned plant.

The Land and Environment Court of Appeal found that the investigation on alternative localizations in the EIS was inadequate. The investigation was more than ten years old, and covered only the municipality of Eslöv. Since the investigation was done, circumstances had changed. Among other things, the pipeline system for heating the two municipalities by hot water had been expanded, and the two municipalities were now connected.

Since there were relevant objections to the localization chosen by the developer, the demands on the localization investigation in the EIS should be strict, and therefore the permit was cancelled by the Court of Appeal.

Scheme of the proceedings of an application for a permit for an IPPC-plant or a project involving building in water. (The public is involved in the steps that are underlined.)