

# A COMPARISON OF SIX ENVIRONMENTAL IMPACT ASSESSMENT REGIMES

**The United States  
The Czech Republic  
Slovakia  
The European Community  
The World Bank  
The European Bank for Reconstruction and Development**

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## **Introduction**

On Jan 1, 1970 the U.S. National Environmental Policy Act (NEPA) was signed into law.<sup>1</sup> NEPA's principal, and most innovative, feature was its requirement that an environmental impact assessment (EIA) be prepared for every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.<sup>2</sup> Since NEPA's enactment, many other EIA laws and policies have been adopted, but the regime created by NEPA remains one of the most comprehensive and far-reaching in existence.

In 1985 the European Community Council issued a Directive requiring all EC Member States to institute EIA procedures for certain categories of public and private projects.<sup>3</sup> The purpose of the Directive was to harmonize the environmental policies of the Member States and to lessen any economic or trade imbalance that might result from the adoption of individual EIA laws by Member States. The World Bank, largely in response to pressure from environmental and development groups, adopted EIA procedures in 1989 and revised them in 1991.<sup>4</sup> In February 1992 the new European Bank for Reconstruction and Development (EBRD), also at the urging of the environmental and development communities, implemented its own EIA policy based largely on the World Bank policy.<sup>5</sup> The Czech Republic enacted its EIA law on April 15, 1992. A draft law written for Slovakia is scheduled to go into effect July 1, 1993. The Czech and Slovak laws have some features in common with the other laws and policies discussed here and a number of features that are unique.<sup>6</sup>

This paper analyzes these laws and policies in light of a variety of issues relevant to all EIA systems. It discusses such topics as establishing which activities require preparation of an EIA,

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<sup>1</sup> 42 U.S.C. §§ 4321-4370a.

<sup>2</sup> 42 U.S.C. § 4332(2)(C).

<sup>3</sup>The Council of the European Communities, Council Directive of 27 June 1985 on the Assessment of the Effects of Certain Public and Private Projects on the Environment [hereinafter cited as EC Directive].

<sup>4</sup> World Bank Operational Directive 4.01 [hereinafter cited as OD 4.01].

<sup>5</sup>European Bank for Reconstruction and Development, Environmental Procedures [hereinafter cited as EBRD Procedures].

<sup>6</sup>Act No. 244 of the Czech National Council, effective April 15, 1992 [hereinafter cited as Act No. 244].

preliminary assessment (screening) of proposed actions, timing and "scope" of the EIA, types of impacts to be considered, consideration of alternative actions, review and decision-making, and the role of the public. Each section begins with a short discussion of the issue under consideration, followed by descriptions of how the issue is treated in each of the six regimes. NEPA is discussed first because, while it is certainly not a perfect law, it is the most comprehensive and, together with its supplemental regulations, the most well-developed of the regimes considered in this paper. Thus, in many ways it provides a good "case study" of the application of the principles of EIA. The other laws and policies are discussed in the order of their importance to lawmakers and citizens in the Czech and Slovak Republics, beginning with the Czech and Slovak laws and followed by the EC Directive, the World Bank policy, and EBRD policy.

## 1. Types of Activities That May Require EIA

To determine whether an EIA is required, it is necessary to know what *types* of activities are subject to EIAs. For example, are *private actions* subject to EIAs or only *government actions*? Some laws apply directly to private projects, whereas others extend to private projects only if they require a permit, a license, or some other form of government approval.

A second question is whether, in addition to activities that alter the physical environment, the EIA regime applies to *programs, policies, and/or proposals for legislation*. For example, the EC Directive applies only to "construction works" and "other interventions in the natural surroundings and landscape." In contrast,<sup>7</sup> the NEPA regulations make clear that NEPA applies as well to programs, policies, and proposals for legislation.<sup>8</sup>

A third important question is whether the EIA law applies to both *future* and *existing* actions. Most regimes apply only to future actions, but some laws also cover certain categories of ongoing activities. For example, the Czech EIA law requires that some products be certified ) a process which requires an EIA ) even though they are already in circulation.<sup>9</sup>

**NEPA.** NEPA requires that the EIA document, called an Environmental Impact Statement (EIS), be prepared for and included in "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." Only *public* projects require preparation of an EIS,<sup>10</sup> but because public projects include any activity financed, assisted, or regulated by a federal agency, many "private" projects are considered public for purposes of NEPA.<sup>11</sup> NEPA regulations identify four broad categories within which "major Federal actions" tend to fall: (1) adoption of official policy, (2) adoption of formal plans, (3)

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<sup>7</sup> EC Directive, Art. 1, para. 2.

<sup>8</sup> 40 C.F.R. § 1508.18 (defining "major Federal action").

<sup>9</sup> Act No. 244, § 16, para. 4.

<sup>10</sup> 42 U.S.C. § 4332(C).

<sup>11</sup> 40 C.F.R. § 1508.18.

adoption of programs, and (4) approval of specific projects.<sup>12</sup> EISs are prepared only for new projects. A modification of an existing facility would, however, be considered a new project and would be subject to EIA, while a facility which continues to operate as it always has is not subject to EIA.

**Czech Republic.** EIAs are required for both public and private sector projects. Under the new Czech Act on Environmental Impact Assessment, EIAs are required in three different areas: (1) constructions (including changes to existing structures or their use), activities, and technologies;<sup>13</sup> (2) policies and programs ("concepts");<sup>14</sup> and (3) distribution of products.<sup>15</sup> Constructions, activities, and technologies listed in Annexes 1 and 2 of the Act require EIAs if they involve the quantities of resources specified in the annexes (e.g., 100,000 tons/yr of minerals, 5 hectares of forest, 100 MWt of energy).<sup>16</sup> For a construction, activity, or technology involving smaller quantities of resources, the "competent authority" (the governmental body with jurisdiction over the EIA) has the authority to require an EIA if it is to be carried out in a protected area.<sup>17</sup>

Policies and programs (concepts) in the areas of energy, transport, agriculture, waste treatment, mining and processing of minerals, recreation and tourism, territorial planning, and water development are subject to EIA if they require approval at the level of the central authorities of the State Administration.<sup>18</sup> EIAs for concepts are less comprehensive than EIAs for constructions, activities, and technologies.<sup>19</sup>

EIAs for products are performed at the discretion of the competent authority in cooperation with the Central Authority of the State Administration in charge of testing the product. An EIS may be required for both domestic and foreign products.<sup>20</sup> It may also be required for products already in circulation.<sup>21</sup> In this respect the Czech law differs from other EIA laws, such as NEPA, which apply only to new activities or changes in existing activities.

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<sup>12</sup> 40 C.F.R. § 1508.18(b).

<sup>13</sup> Act No. 244, § 2.

<sup>14</sup> Act No. 244, § 14.

<sup>15</sup> Act No. 244, § 15.

<sup>16</sup> Annex 1 lists constructions, activities, and technologies assessed within the jurisdiction of the Ministry of the Environment; Annex 2 lists constructions, activities, and technologies assessed within the jurisdiction of the District Authorities.

<sup>17</sup> *Id.*

<sup>18</sup> Act No. 244, § 14, para. 1.

<sup>19</sup> Act No. 244, § 14, para. 2.

<sup>20</sup> Act No. 244, § 15, para. 2.

<sup>21</sup> Act No. 244, § 16, para. 4.

**Slovakia.** The Slovak draft act applies to both public and private sector projects that affect the physical environment or which require government approval.<sup>22</sup> Projects in Annex I, part A of the act require an EIA. Projects in Annex I,<sup>23</sup> part B are subject to EIA at the discretion of the "review body" (the central administrative body with responsibility for the activity). Projects not listed in Annex I do not require an EIA, but one may be performed if the review body, the project developer, and the Ministry for the Environment all agree.<sup>24</sup> The draft act also applies to legally binding directives, policies, and statements of the Slovak government.<sup>25</sup> Unlike projects that affect the physical environment, however, directives, policies, and statements are subject only to an evaluation of expected impacts and proposed mitigation measures, not to a full EIA.<sup>26</sup> The draft act covers only new activities and changes in existing activities.<sup>27</sup>

**EC.** The 1985 EC Directive on EIAs applies to "public and private projects which are likely to have significant effects on the environment."<sup>28</sup> The Directive does not apply to policies and programs (although a new directive on that subject is being drafted). Projects to which the Directive applies are separated into two annexes. Annex I lists types of projects for which EIAs are required ) mostly large infrastructure projects which are widely known to always cause significant environmental effects. Annex II lists types of projects for which Member States *may* require EIAs.<sup>29</sup> Member States may exempt specific projects "in exceptional cases."<sup>30</sup> Projects, "the details of which are adopted by a specific act of national legislation," and projects serving national defence purposes, are not covered by the EC Directive.<sup>31</sup>

**World Bank.** The World Bank's operational directive on EIA applies only to public sector projects

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<sup>22</sup> Slovak draft act, § 4, para. 2.

<sup>23</sup> Slovak draft act, § 9, para. 1.

<sup>24</sup> Slovak draft act, § 9.

<sup>25</sup> Slovak draft act, § 51.

<sup>26</sup> *Id.*

<sup>27</sup> Slovak draft act, § 4, para. 1.

<sup>28</sup>The Directive defines *project* as "the execution of construction works or of other installations or schemes" and "other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources."

<sup>29</sup> EC Directive, Article 4.

<sup>30</sup>If a project is exempted, the Member State is required to inform the Council and the public of the reasons for the exemption.

<sup>31</sup> EC Directive, Art. I, paras. 4 and 5.

financed by the Bank.<sup>32</sup> It covers specific projects that are likely to have "significant adverse impacts that may be sensitive, irreversible, and diverse."<sup>33</sup> It also covers changes in World Bank policy at the sectoral level.<sup>34</sup> Although technically the Bank's EIA procedures apply only to projects funded after those procedures have been implemented, the Bank has applied its EIA procedures retroactively in cases of public controversy.

**EBRD.** Like the World Bank, the EBRD can apply its policy only to projects it funds. Unlike the World Bank, however, EBRD lends money to private developers as well as to governments.<sup>35</sup> Hence, its EIA policy applies to both public and private projects. An EIA is required for projects which have "the potential to cause diverse and significant impacts." An EIA may be required for the following types of projects:<sup>36</sup> (1) development of a greenfield site; (2) expansion of an existing facility onto undeveloped land; (3) public infrastructure projects; (4) projects with the potential to cause environmental impacts outside the area occupied by the project.<sup>37</sup> In its environmental policy statement, the Bank provides a list of project types that would normally be subject to a full EIA.<sup>38</sup> Projects not subject to a full EIA may be subject to more limited environmental analysis. The EBRD's EIA procedures apply only to new projects or modifications to existing projects.<sup>39</sup>

## 2. Preliminary Assessment (Screening)<sup>40</sup>

Once it has been decided that the activity under consideration is of a type that *may* require an EIA, a preliminary assessment is made to determine whether an EIA is in fact required. This process is often referred to as screening. Some laws screen actions strictly by category; if the action

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<sup>32</sup>The International Finance Corporation, the component of the Bank which funds private projects, has its own EIA procedures which apply to those projects.

<sup>33</sup>Examples of specific investment projects likely to require EIAs include: dams and reservoirs; forestry production projects; industrial plants; large-scale irrigation, drainage, and flood-control; land clearance and leveling; mineral development, including oil and gas; port and harbor development; reclamation and new land development; resettlement and all projects with potentially major impacts on people; river basin development; thermal and hydropower development; and manufacture, transportation, and use of pesticides or other hazardous and/or toxic materials.

<sup>34</sup> *Id.*

<sup>35</sup>As noted above, however, the Bank has a component, the IFC, which finances private investments.

<sup>36</sup> EBRD Procedures, at 6.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 9.

<sup>39</sup> *Id.* at 5-6.

<sup>40</sup>For a more detailed discussion of screening, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 28-31.

is among the types listed in the law an EIA is required. Other laws give the decision-making body discretion to decide whether a particular action requires an EIA, or in some cases a less thorough environmental evaluation. Some laws utilize both approaches, requiring an EIA for one category of actions and leaving the decision to the discretion of the decision-making body for others.

**NEPA.** Each federal agency excludes some projects from the EIA process by its own procedures, because experience has shown that they do not significantly effect the environment<sup>41</sup>. For all other proposed actions the agency prepares a preliminary assessment to determine whether an EIS is required.<sup>42</sup> The preliminary assessment should provide sufficient evidence and analysis to make this determination.<sup>43</sup> It should contain a brief discussion of the need for the proposed action, alternatives, and impacts.<sup>44</sup> If the agency finds the action will not significantly affect the quality of the human environment, it prepares a finding of no significant impact.<sup>45</sup> Otherwise the agency commences with preparation of the EIS.<sup>46</sup>

**Czech Republic.** Constructions, activities, and technologies are screened by category under the Czech law. Constructions, activities, and technologies listed in Annexes 1 or 2 are subject to an EIA.<sup>47</sup> Constructions, activities, and technologies located in protected areas that are of the *type* listed in Annexes 1 or 2, but that do not involve the quantities or resources specified in the annexes, are subject to EIAs at the discretion of the Ministry for the Environment or other competent authority.<sup>48</sup> No guidance is provided in the Act for how these agencies should determine whether to require an EIA.

Concepts are also screened by category. Concepts in the fields of energy, transport, agriculture, waste treatment, mining and processing of minerals, recreation, and tourism that require approval at the level of the central authorities of State Administration require an EIA.<sup>49</sup> Territorial

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<sup>41</sup>A "categorical exclusion" is a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of NEPA regulations.

<sup>42</sup> 40 C.F.R. § 1501.4(b) and (c).

<sup>43</sup> 40 C.F.R. § 1508.9(a)(1).

<sup>44</sup> 40 C.F.R. § 1508.9(b).

<sup>45</sup> 40 C.F.R. § 1501.4(e).

<sup>46</sup> 40 C.F.R. § 1501.4(d).

<sup>47</sup> Act No. 244, § 5.

<sup>48</sup> Act No. 244, § 2, para. 2.

<sup>49</sup> Act No. 244, § 14, para. 1.

planning documentation and the General Water Management Plan also require EIAs.<sup>50</sup>

Products are subject to EIAs at the discretion of the competent authority in cooperation with the Central Authority of the State Administration.<sup>51</sup> The Act provides no guidance for how these agencies should determine whether to require an EIA.

**Slovakia.** EIAs are required for all activities listed in Annex I, part A of the Slovak draft act.<sup>52</sup> EIAs for activities listed in Annex I, part B of the Act are performed at the discretion of the review body (the central administrative body with responsibility for the activity) with the agreement of Ministry of the Environment.<sup>53</sup> EIAs are prepared for activities not listed in Annex I only if the developer, the review body, and the Ministry for the Environment agree.<sup>54</sup> Any changes in activities listed in Annex I that would result in the activity exceeding threshold criteria by more than 50% also require an EIA.<sup>55</sup> For other changes to listed activities, EIAs are prepared at the discretion of the review body and the Ministry for the Environment.<sup>56</sup> For changes to non-listed activities, the developer must concur.<sup>57</sup> The following factors must be considered during screening: (2) location, bearing capacity, and applicable regulations; (3) the importance of expected impacts; (4) the written opinions of the affected municipalities, the competent authority, the Ministry of the Environment, and the public.<sup>58</sup>

**EC.** The EC Council Directive subjects projects to screening by category. Projects of the type listed in Annex I require an EIA.<sup>59</sup> Projects of the type listed in Annex II require an EIA if Member States consider that their characteristics make an EIA necessary.<sup>60</sup> Member states may screen Annex II projects by category or by establishing criteria and thresholds.<sup>61</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> Act No. 244, § 15, para. 2.

<sup>52</sup> Slovak draft act, § 9, para. 2.

<sup>53</sup> Slovak draft act, § 9, para. 2.

<sup>54</sup> Slovak draft Act, § 9, para. 3.

<sup>55</sup> Slovak draft act, § 10, para. 1.

<sup>56</sup> Slovak draft act, § 10, para. 2.

<sup>57</sup> Slovak draft Act, § 10, para. 3.

<sup>58</sup> Slovak draft act, § 17, para. 2.

<sup>59</sup> EC Directive, Art. 4, para. 1.

<sup>60</sup> EC Directive, Art. 4, para. 2.

<sup>61</sup> *Id.*

**World Bank.** World Bank EIA procedures call for screening of proposed projects to determine the type and extent of assessment required. Projects are assigned to one of three categories: projects in category A require a full EIA; projects in category B do not require a full EIA, but require environmental analysis; projects in category C require neither.<sup>62</sup> Classification of projects is based on type, location, sensitivity, and scale, as well as on the nature and magnitude of potential impacts.<sup>63</sup> Factors to be considered in determining whether to prepare a project-specific EIA include whether impacts will be comprehensive, broad, sector-wide, or precedent-setting, and whether they result from major components of the project and affect the area as a whole or an entire sector.<sup>64</sup>

Projects that may have less significant adverse environmental impacts may not require full EIAs, but may require "environmental analysis."<sup>65</sup> These projects would have impacts that, for the most part, are not irreversible or as sensitive, numerous, major, or diverse, and for which remedial measures can more easily be designed.<sup>66</sup> For specific projects which are smaller, are not in environmentally sensitive areas, and which present issues that are narrow in scope, well-defined, and well-understood, the inclusion of specific environmental siting or design criteria, construction or pollution standards, and/or inspection procedures may suffice.<sup>67</sup>

**EBRD.** Like the World Bank, EBRD assigns projects to categories. Category A projects have the potential to cause diverse and significant impacts and require a full EIA.<sup>68</sup> Category B projects are projects in which potentially significant impacts can be readily identified and remedial measures prescribed without the need of a full EIA. These projects require a Partial Environmental Analysis.<sup>69</sup> Projects with no apparent environmental impact normally require neither an EIA nor Partial Environmental Analysis and are designated category C.<sup>70</sup>

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<sup>62</sup> OD 4.01, Annex E at 1. Annex E contains examples of projects for each category.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Examples include small-scale agro-industries; electrical transmission; aquaculture and mariculture; small-scale irrigation and drainage; renewable energy; rural electrification; tourism; rural water supply and sanitation; watershed projects; small scale rehabilitation, maintenance, and upgrading projects.

<sup>66</sup> *Id.*

<sup>67</sup> OD 4.01 at 3.

<sup>68</sup> EBRD Procedures, at 5.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*



### 3. Who Conducts the EIA?<sup>71</sup>

Some EIA laws assign responsibility for preparing the EIA to the project proponent, while others make it the duty of the government agency with jurisdiction over the EIA process. Of course, where the agency is itself the proponent, there is no difference. Where, however, the project is proposed by a private party, the distinction is important.

There are advantages to having the proponent prepare the EIA. The proponent may have already acquired relevant information. Preparing the EIA should help the proponent better understand the nature of the environmental problems that must be addressed, which is important since any required mitigation measures will likely be undertaken by the proponent.

On the other hand, the proponent may not be as objective in assessing the project as the agency with jurisdiction over the process. It can also be argued that it is more important that the agency fully appreciate the nature of the potential environmental problems, since in many cases the agency makes the final decision whether to proceed with the project and what mitigation measures should be required.

Some laws permit, or even require, that the EIA be undertaken by a private consultant or "expert." This approach may provide an additional degree of expertise and objectivity, but lacks some of the advantages mentioned above.

**NEPA.** NEPA requires that the EIS be prepared by an agency of the federal government. The regulations permit agencies to hire outside consultants to prepare or assist in preparing the EIS, but the agency remains responsible for the scope and content of the EIS.<sup>72</sup> Developers and other parties with a financial interest in the project are prohibited from participating in preparation or even in the selection of outside contractors.<sup>73</sup> The regulations do permit project developers to prepare preliminary assessments, but as with EISs, the agency remains responsible for scope and content.

**Czech Republic.** The project applicant (the proponent and/or the building contractor) is responsible for ensuring that the EIA for a construction, activity, or technology is prepared and submitted to the competent authority.<sup>74</sup> The applicant is also responsible for submitting basic data on expected environmental impacts, such as energy use, consumption of raw materials, rates of pollution, and environmental damage.<sup>75</sup> The EIA document may only be prepared, however, by an expert possessing a "certificate of competence" issued by the Ministry of Environment after an examination and review of qualifications.<sup>76</sup> The project applicant selects the preparer from a list

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<sup>71</sup>For a more detailed discussion of EIA preparation, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 35-39.

<sup>72</sup> 42 U.S.C. § 4332(2)(C).

<sup>73</sup> *Id.*

<sup>74</sup> Act No. 244, § 5, para. 1.

<sup>75</sup> Act No. 244, § 5, para. 2(c).

kept by the Ministry.<sup>77</sup>

When a *concept* is submitted for approval, the submitting agency is responsible for ensuring that an EIA is included in the submission.<sup>78</sup> The Act does not specify, however, who may prepare the EIA. In particular, it does not require the preparer to have a certificate of competence.

EIAs for *products* are to be carried out under separate regulations, and the Act does not specify who is to prepare the EIA.<sup>79</sup>

**Slovakia.** While the proponent is responsible for the EIA process, including preparation and submission of the EIA document,<sup>80</sup> the document must be prepared by an authorized individual or organization.<sup>81</sup> To obtain authorization, an applicant must hold an appropriate degree, have six years of practice, and pass an examination.<sup>82</sup>

**EC.** The EC Directive requires the developer to prepare the EIA.<sup>83</sup> The developer is defined as "the applicant for authorization for a private project or the public authority which initiates a project."<sup>84</sup>

**World Bank.** While preparation of the environmental assessment or environmental analysis is generally the responsibility of the borrower, the Bank's Task Manager and the appropriate Regional Environmental Division assist and monitor the EIA process.<sup>85</sup> The Bank screens the project (decides whether to place the project in category A, B, or C) and, for category A projects, assists the borrower in determining the scope of the EIA and preparing the terms of reference.<sup>86</sup> For projects with potentially major adverse environmental impacts Bank procedures suggest, but do not require, that the borrower retain an advisory panel of independent environmental specialists not affiliated

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<sup>76</sup> Act No. 244, § 6, para. 3.

<sup>77</sup> Act No. 244, § 6, para. 5.

<sup>78</sup> Act No. 244, § 14, para. 2.

<sup>79</sup> Act No. 244, § 15, para. 4.

<sup>80</sup> Slovak draft act, § 24, para. 1.

<sup>81</sup> Slovak draft act, § 25, para. 1.

<sup>82</sup> Slovak draft act, § 25, para. 2.

<sup>83</sup> EC Directive, Art. 5, para. 2.

<sup>84</sup> EC Directive, Art. 1, para. 2.

<sup>85</sup> OD 4.01 at 4.

<sup>86</sup> OD 4.01, Annex D at 1.

with the project to advise on preparation of the EIA and implementation of its recommendations.<sup>87</sup>

**EBRD.** Project sponsors and promoters are responsible for preparation and submission of EIAs.<sup>88</sup> The Team Leader, a member of the Bank staff, is responsible for ensuring that the sponsors or promoters provide sufficient information for the Bank's Environmental Staff to carry out an environmental review.<sup>89</sup> The Bank defines the environmental standards the project must meet and provides guidance to the sponsors, if requested.<sup>90</sup>

#### **4. Who Pays for the EIA?**<sup>91</sup>

In principal, the costs incurred in preparing an EIA should be borne by the proponent of the project (i.e., the sponsor or developer). Thus, EIAs for private projects should not be paid for with public funds. In practice, however, preparation costs associated with private projects are frequently paid by the government agency. Even where the preparation costs are paid by a private party, the government agency is likely to incur costs of administering and supervising the EIA process.

**NEPA.** While federal agencies are authorized to enact regulations to recover the cost of preparing EISs for private development projects requiring licenses or permits,<sup>92</sup> only a minority of agencies have done so.<sup>93</sup> Thus, the federal government pays the costs of preparing the EIS in most cases. Of course, for government-sponsored projects and programs, public funds are used to pay all costs of the EIS.<sup>94</sup>

**Czech Republic.** The Czech Act makes the project applicant responsible for paying all the costs of preparing the EIA for a construction, activity, or technology.<sup>95</sup> EIAs for concepts are the responsibility of the submitting agency, so presumably the government pays for their preparation.

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<sup>87</sup> *Id.* at 4.

<sup>88</sup> EBRD Procedures, Annex 1, at 6.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 6.

<sup>91</sup> For a more detailed discussion of EIA costs, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 39-40.

<sup>92</sup> 31 U.S.C. § 9701.

<sup>93</sup> ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 40.

<sup>94</sup> *Id.*

<sup>95</sup> Act No. 244, § 12.

Preparation of EIAs for products is to be paid for by the producer or importer of the product.<sup>96</sup>

**Slovakia.** The Slovak draft act contains two alternative cost provisions. Alternative 1 would require the proponent to pay all costs. Alternative 2 would require the proponent to pay for the "announcement," the EIS, and the public meeting. Other costs would be paid by the review body.<sup>97</sup>

**EC.** The EC Directive does not specify who should pay for the preparation of the EIA. This is left to each Member State to decide.

**World Bank.** The borrower is responsible for paying for the EIA. The borrower may, however, request financial assistance from the Bank for preparation of the EIA through a Project Preparation Facility advance, from the Technical Assistance Grant Program, or from a trust fund.<sup>98</sup>

**EBRD.** The EBRD environmental policy statement is silent on the matter of costs incurred in preparing the EIA. Presumably, the project's sponsors or promoters must pay for preparation.

## **5. When Does the EIA Process Begin?**<sup>99</sup>

The process should begin as early as possible. Because EIA is an important planning tool, it should be integrated into all stages of the planning process. Careful and early evaluation of environmental concerns can prevent costly mistakes later. The truth of this statement is attested to by the many projects that have had to be delayed, redesigned, or abandoned late in the planning process due to the discovery of unanticipated adverse environmental impacts.

**NEPA.** NEPA regulations provide that "[a]gencies shall integrate the NEPA process with other planning at the earliest possible time, to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts."<sup>100</sup>

**Czech Republic.** The Czech EIA law does not specify when the EIA process is to begin.

**Slovakia.** EIA begins with the announcement that the proponent intends to undertake an activity which is, or may be, subject to an assessment. The announcement must contain: (1) a basic description of the activity; (2) environmental data on the site where the activity will be located and

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<sup>96</sup> Act No. 244, § 17.

<sup>97</sup> Slovak draft act, § 56.

<sup>98</sup> OD 4.01 at 5.

<sup>99</sup>For a more detailed discussion of the time when EIA begins, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 27-28.

<sup>100</sup> 40 C.F.R. § 1501.2.

any areas that may be affected; (3) information on environmental impacts; (4) an evaluation of the advantages and disadvantages of proposed alternatives; and (5) proposed measures to mitigate adverse environmental impacts.

**EC.** The EC Directive does not specify when the EIA process is to begin.

**World Bank.** EIA is supposed to start at the very beginning of the project cycle (the project identification stage).<sup>101</sup> It begins with the identification of key environmental issues and assignment of the project to a category by the Task Manager after consultation with the Regional Environmental Division.<sup>102</sup> The identified issues and project category are included in the Initial Executive Project Summary.<sup>103</sup>

**EBRD.** Environmental concerns are supposed to be integrated into all parts of EBRD's project preparation and approval process.<sup>104</sup> The EIA process begins at the project identification stage with a request for environmental information from the project proponent.<sup>105</sup> The project is then screened into an environmental category which determines the nature and depth of additional environmental information needed and guidelines against which the project will be reviewed.<sup>106</sup>

## 6. Scoping<sup>107</sup>

Scoping is more than simply determining the scope of the EIA document. It is the process of identifying issues, alternatives, and impacts that must be considered in preparing the EIA. It is an opportunity to determine which are the key issues that must be examined in depth, and which issues are of less importance and can be downplayed or disregarded. Scoping also provides an opportunity to allocate work assignments, determine timing of various stages of the process, set time or page limits for the EIA document, and generally plan the remainder of the EIA process. Scoping should occur *early* to avoid wasting time and money on tangential or secondary issues. It should also be *public* to ensure that issues of concern to the community are addressed, and because investigators may learn a great deal from citizens who often have first hand knowledge of local

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<sup>101</sup> WORLD BANK, ENVIRONMENTAL ASSESSMENT SOURCEBOOK (1991).

<sup>102</sup> OD 4.01, Annex D at 1.

<sup>103</sup> *Id.*

<sup>104</sup> EBRD Procedures, Annex 1, at 4.

<sup>105</sup> EBRD Procedures.

<sup>106</sup> EBRD Procedures, at 5.

<sup>107</sup>For a more detailed discussion of scoping, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 31-35.

conditions and resources.

**NEPA.** As early as practicable after deciding to prepare an EIS, and before beginning the scoping process, the agency must notify the public of its intent to prepare an EIS.<sup>108</sup> Affected federal, state, and local agencies, Indian tribes, the proponent of the action, and other interested persons (including those who might oppose the action on environmental grounds) are invited to participate.<sup>109</sup>

The agency with jurisdiction over the project determines the scope of the EIS.<sup>110</sup> The agency makes this determination only after it has thoroughly explored the relevant issues with the public and other affected governmental and nongovernmental parties.<sup>111</sup> NEPA regulations define the "scope" as the range of actions, alternatives, and impacts to be considered in an environmental impact statement.<sup>112</sup> To determine the scope, the agency must consider three types of actions: connected actions,<sup>113</sup> cumulative actions,<sup>114</sup> and similar actions;<sup>115</sup> three types of alternatives: the proposed action, other reasonable courses of action, and "no action"; and three types of impacts: direct impacts, indirect impacts, and cumulative impacts.<sup>116</sup> In addition, the agency is to, *inter alia*, identify issues which are not significant or have been covered by prior environmental review, allocate assignments among agencies, identify timing issues, and decide whether to set page or time limits.<sup>117</sup>

**Czech Republic.** The Czech Act does not discuss scoping procedures, nor is there any provision for public participation in any required activities similar to scoping. The scope of the EIA for a

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<sup>108</sup> 40 C.F.R. § 1501.7.

<sup>109</sup> 40 C.F.R. § 1501.7(a)(1).

<sup>110</sup> 40 C.F.R. § 1501.7(a)(2).

<sup>111</sup> See, generally, Council on Environmental Quality, Memorandum: Scoping Guidance (April 30, 1981).

<sup>112</sup> 40 C.F.R. § 1508.25.

<sup>113</sup> Actions are connected if: (1) one action automatically triggers another action which will require EIA, (2) an action cannot proceed unless other actions are taken previously or simultaneously, (3) they are interdependent parts of a larger action and depend on the larger action for their justification.

<sup>114</sup> Cumulative actions are actions which, when viewed with other proposed actions, have cumulatively significant impacts.

<sup>115</sup> Similar actions are actions which, when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.

<sup>116</sup> For a definition of direct, indirect, and cumulative impacts, see section 7 on impacts, at \_\_\_.

<sup>117</sup> 40 C.F.R. § 1501.7(a) and (b).

construction, activity, or technology is defined in article 3 of the Act. The EIA must include a description and evaluation of the expected impacts; measures to decrease or eliminate adverse impacts; an evaluation of the consequences should the construction, activity, or technology not be implemented; and, if required by the competent authority, a comparison of proposed alternatives and selection of the best alternative.<sup>118</sup> In assessing impacts, the EIA should consider development, operation, and eventual removal of the construction, activity, or technology; local conditions; and potential impacts resulting from both normal use and emergency situations.<sup>119</sup> A more detailed description of the scope of the EIA is given in Annex 3 of the Act.

**Slovakia.** Scoping is undertaken by the review body, the competent authority, and the Ministry for the Environment.<sup>120</sup> While the public does not participate directly in the scoping process, the comments of the public made in response to the announcement of the project must be considered.<sup>121</sup> The scope of the EIA is determined by Annex 3 of the Act, but can exceed Annex 3 if necessary to protect the environment.<sup>122</sup>

**EC.** The EC Directive on EIA does not discuss scoping. It does, however, give some indication of the expected scope of the EIA. It must contain, at a minimum, a description of the project, including a description of the site, design, and size of the project; a description of measures designed to reduce or remedy significant adverse effects; and data required to identify and assess the project's main environmental effects.<sup>123</sup> In addition, a Member State may require certain additional information if it decides the information is relevant to a given stage of the consent procedure and to the specific characteristics of the project and the environmental features likely to be affected, and that it is reasonable to require the developer to compile the information in light of current knowledge and methods of assessment.<sup>124</sup> Additional information that may be required includes, *inter alia*, the main alternatives studied by the developer, the reasons for his choice, and a detailed description of the impacts on population, fauna, flora, soil, water, air, climate, architecture, and landscape resulting from the existence of the project, the use of natural resources, and the production of pollutants, nuisances, and waste.<sup>125</sup> The EIA must also contain a non-technical

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<sup>118</sup> Act No. 244, § 3.

<sup>119</sup> Act No. 244, § 5.

<sup>120</sup> Slovak draft act, sec. 20, para. 1.

<sup>121</sup> Slovak draft act, sec. 20, para. 2.

<sup>122</sup> Slovak draft act, sec. 20, paras. 4 and 5.

<sup>123</sup> EC Directive, Art. 5, para. 2.

<sup>124</sup> EC Directive, Art. 5, para. 1.

<sup>125</sup> EC Directive, Annex III.

summary of the information provided.<sup>126</sup>

**World Bank.** World Bank procedures do not explicitly provide for public participation early in the scoping process, when key decisions are made. The Bank does, however, encourage borrowers to consult with "affected groups" and nongovernmental organizations shortly after the EIA category has been assigned (screening). Scoping is done partly internally within the Bank and partly in consultations between the Bank and the borrower. After consultation with the Regional Environmental Division, the project Task Manager indicates in the Initial Executive Summary the key environmental issues, the project category, the type of environmental work needed, and a preliminary EIA schedule.<sup>127</sup> The Bank then discusses the scope of the EIA with the borrower and assists the borrower in preparing the terms of reference for the EIA. The terms of reference are to provide for "adequate interagency coordination and consultation with affected groups and local nongovernmental organizations." For category A projects, Bank staff are advised to attend scoping meetings.

**EBRD.** Scoping of EBRD projects is primarily the responsibility of the project sponsor, although the Bank may play a role in establishing the scope of the EIA.<sup>128</sup> The extent of the Bank's involvement depends on the complexity of the project and the competence of the project sponsor to conduct the EIA. During scoping the sponsor is supposed to identify concerns of interested groups including local communities, NGOs, and government institutions, and set up meetings between interested parties to discuss the EIA. However, there is no process established for ensuring participation of the public, and no mechanism to ensure that citizens are provided with detailed information concerning the project (although they will receive notification of the project). During scoping the sponsor is also to prepare the terms of reference for the EIA and select experts to undertake the EIA.

## 7. What types of impacts must be considered?<sup>129</sup>

A thorough understanding of the environmental impacts of the proposed action and its alternatives is essential to the success of the EIA process. Three types of impacts should be considered for each alternative: *direct*, *indirect*, and *cumulative impacts*. NEPA defines *direct impacts* as impacts that are caused by the action and occur at the same time and place.<sup>130</sup> It defines *indirect impacts* as impacts that are caused by the action but are later in time or farther removed in

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<sup>126</sup> EC Directive, Art. 5, para. 2.

<sup>127</sup> OD 4.01, Annex D at 1.

<sup>128</sup> EBRD Procedures, at 30.

<sup>129</sup> For a more detailed discussion of impacts, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 43-45.

<sup>130</sup> 40 C.F.R. § 1508.8(a).



distance.<sup>131</sup> *Cumulative impacts* are defined by NEPA as impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.<sup>132</sup>

**NEPA.** NEPA requires that the EIS include information on: (1) the environmental impact of the proposed project; (2) any adverse environmental effects which cannot be avoided should the proposal be implemented; (3) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (4) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.<sup>133</sup> NEPA regulations require that these impacts be discussed for all alternatives identified in the EIS.<sup>134</sup> The EIS must consider direct impacts, indirect impacts, and cumulative impacts.<sup>135</sup> It must also discuss possible conflicts between the proposed action and objectives of other government agencies; energy requirements and the conservation potential of various alternatives and mitigation measures; natural or depletable resource requirements and the conservation potential of alternatives and mitigation measures; and urban resources and the design of the built environment.<sup>136</sup>

**Czech Republic.** EIAs for constructions, activities, and technologies must include a definition, description, and evaluation of the assumed direct and indirect impact of the construction, activity, or technology on climate conditions, ambient air, surface and ground water, soil, rock formations, manner of utilization of the landscape, protected areas, flora and fauna, functions and stability of the ecological system, population, utilization of natural resources, cultural monuments, and the town and community environment.<sup>137</sup> Annex 3 of the Act contains a more detailed list of information on impacts that must be contained in the EIA document.

For concepts, the EIA must contain a detailed description and assessment of the impacts listed in Annex 3, part C(3) and (4).<sup>138</sup> For products, the Act says only that properties of products are to be compared in terms of their environmental impact and the requirements specified by governmental regulations and technical standards.<sup>139</sup>

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<sup>131</sup> 40 C.F.R. § 1508.8(b).

<sup>132</sup> 40 C.F.R. § 1508.7.

<sup>133</sup> 42 U.S.C. § 4332(C).

<sup>134</sup> 40 C.F.R. § 1502.16(d).

<sup>135</sup> 40 C.F.R. § 1508.25(c).

<sup>136</sup> 40 C.F.R. § 1502.16(g).

<sup>137</sup> Act No. 244, § 3(a).

<sup>138</sup> Act No. 244, § 14, para. 2.

<sup>139</sup> Act No. 244, § 15, para. 1.

**Slovakia.** The EIA must identify, describe, and assess the direct and indirect impacts of the proposed activity and compare them with the consequences of taking no action (the "no action" alternative).<sup>140</sup> The impacts of other alternatives must also be considered, together with any measures that might contribute to a positive impact on the environment.<sup>141</sup>

**EC.** The EC Directive requires that the EIA identify, describe, and assess direct and indirect impacts on human beings, flora, fauna, soil, water, air, climate, landscape, and the interaction between them, and material assets and the cultural heritage.<sup>142</sup>

**World Bank.** World Bank EIA guidelines state that the EIA must identify and assess positive and negative impacts likely to result from the proposed project, identify any residual negative impacts that cannot be mitigated, and analyze alternatives and mitigation measures in terms of their potential environmental impacts.<sup>143</sup> The guidelines identify projects requiring full EIAs as those which are likely to have significant adverse impacts that may be sensitive, irreversible, and diverse, and are likely to be comprehensive, broad, sector-wide, and precedent-setting.<sup>144</sup> It notes that impacts generally result from a major component of the project and affect the area as a whole or an entire sector.<sup>145</sup> The Bank "encourages" consideration of adverse impacts on global environmental quality (e.g., ozone depletion, global warming, sea level rise, ocean dumping, pollution of international waters, transport of hazardous waste, biodiversity) "where relevant and feasible."<sup>146</sup>

The Bank guidelines also provide a list of areas that are to be investigated for impacts. These include, for example, agrochemicals, biological diversity, cultural properties, indigenous peoples, industrial hazards, land settlement, tropical forests, and wetlands. Further guidance can be obtained from other Operational Directives on protection of wildlands, use of pesticides, tribal peoples, involuntary resettlement, international waterways, and other relevant topics.<sup>147</sup>

**EBRD.** The EIA document should identify and assess beneficial and adverse environmental impacts, including biological, physical, and sociological impacts.<sup>148</sup>

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<sup>140</sup> Slovak draft act, § 12, para. a.

<sup>141</sup> Slovak draft act, § 13, paras. b and c.

<sup>142</sup> EC Directive, Art. 3.

<sup>143</sup> OD 4.01, Annex B at 1.

<sup>144</sup> OD 4.01, Annex E at 2.

<sup>145</sup> *Id.*

<sup>146</sup> OD 4.01 at 3.

<sup>147</sup> OD 4.01, Annex A at 1-2.

<sup>148</sup> EBRD Procedures, Annex 5, at 1.

## 8. Must the EIA Consider Alternatives to the Proposed Action?<sup>149</sup>

The alternatives section has been called the heart of the EIA document because it organizes and clarifies the choices available to the decision-maker.<sup>150</sup> Alternatives can be generated by the proponent of the action, the agency overseeing the process, or even by the public. Alternatives should include the proposed action, alternative actions, and the "no action" alternative. Alternatives should present different ways of accomplishing the proposed action (e.g., by exploring different siting, size, or timing options) as well as different ways of accomplishing the purpose and need of the proposed action. It is important that the purpose and need not be defined so narrowly that environmentally preferable options are excluded. For example, if the purpose and need of a proposed power plant is defined as "to provide electricity," the alternative of satisfying new demand through energy conservation is precluded from consideration.

**NEPA.** NEPA requires that every EIS include a detailed statement on alternatives to the proposed action.<sup>151</sup> In addition, in any agency proposal involving conflicts concerning alternative uses of available resources, the agency must study, develop, and describe appropriate alternatives to the recommended course of action.<sup>152</sup> NEPA regulations state that the EIS should present the environmental impacts of the proposal and the alternatives in comparative form, providing decisionmakers and the public with clearly defined options from which to choose.<sup>153</sup> The agency must "rigorously explore and objectively evaluate all reasonable alternatives," including the alternative of no action, and identify its preferred alternative.<sup>154</sup> The EIS must state how alternatives considered in it and decisions based on it will achieve the requirements of NEPA and other environmental laws and policies.<sup>155</sup>

**Czech Republic.** For a construction, activity, or technology, the Act leaves it to the competent authority to decide whether alternatives should be included in the EIA.<sup>156</sup> If alternatives are

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<sup>149</sup>For a more detailed discussion of alternatives, see ELI, ENVIRONMENTAL IMPACT ASSESMENT, *supra* note 7, at 42-43.

<sup>150</sup> See 40 C.F.R. § 1502.14.

<sup>151</sup> 42 U.S.C. § 4332(2)(A)(iii).

<sup>152</sup>This requirement extends not only to proposals requiring EISs, but to all proposals involving such conflicts over use of resources.

<sup>153</sup> 40 C.F.R. § 1502.14.

<sup>154</sup> *Id.*

<sup>155</sup> 40 C.F.R. § 1502.2(d).

<sup>156</sup> Act No. 244, § 6, para. 3.

included, they must be compared and the "best alternative" selected.<sup>157</sup><sup>158</sup> The Act does not provide criteria for determining which alternative is best, however. For concepts and products the Act does not require that the EIA include a discussion of alternatives.

**Slovakia.** The EIA document must include an explanation and comparison of the advantages and disadvantages of the proposed action and its alternatives, including the no-action alternative.<sup>159</sup>

**EC.** Member States may decide whether alternatives must be included in the EIA.<sup>160</sup> If the Member State decides to include alternatives, the EIA must contain an "outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects."<sup>161</sup>

**World Bank.** World Bank guidelines require a systematic comparison of the proposed investment design, site, technology, and operational alternatives.<sup>162</sup> They are to be considered in terms of their potential environmental impacts, capital and recurrent costs, suitability under local conditions, and institutional, training, and monitoring requirements. For each of the alternatives, the environmental costs and benefits are to be quantified to the extent possible, and economic values attached where feasible. The basis for the selection of the alternative proposed for the project must be stated.<sup>163</sup>

**EBRD.** The EIA document should include a comparison of alternative options and approaches to the design, technology, location, size, and operations. Environmental impacts of each alternative should be considered, and an indication should be given of the main reasons for the choice being recommended.<sup>164</sup>

## 9. Must Mitigation Measures Be Discussed or Adopted?<sup>165</sup>

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<sup>157</sup> Act No. 244, § 3(b).

<sup>158</sup> Act No. 244, § 3(b).

<sup>159</sup> Slovak draft act, § 12, para. c.

<sup>160</sup> EC Directive, Art. 5, para. 1.

<sup>161</sup> EC Directive, Annex III.

<sup>162</sup> OD 4.01, Annex B at 1.

<sup>163</sup> *Id.*

<sup>164</sup> EBRD Procedures, Annex 5, at 2.

<sup>165</sup>For a more detailed discussion of mitigation, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 45-46.

The adverse impacts of a proposed activity can often be mitigated by limiting the size of the project, repairing or restoring aspects of the affected environment, performing maintenance activities during the life of the project, adding to or substituting for the affected environment, or by avoiding particularly harmful actions altogether.<sup>166</sup>

**NEPA.** The EIS must include appropriate mitigation measures.<sup>167</sup> The agency is not required to adopt mitigation measures, but it must state whether such measures have in fact been adopted, and if not, it must explain why they were not.<sup>168</sup> If mitigation measures are made a condition of the final decision, then the lead agency must ensure that those measures are implemented.<sup>169</sup>

**Czech Republic.** The EIA document must propose measures to reduce, eliminate, or compensate for adverse environmental impacts.<sup>170</sup> These measures must be reviewed by an independent expert,<sup>171</sup> but it is unclear whether they must be implemented.

**Slovakia.** The EIA must identify measures which prevent or mitigate the adverse environmental impacts, or contribute to a positive environmental impact.<sup>172</sup> Drafts of directives, policies, and statements must include proposals for measures to mitigate any adverse environmental impacts.<sup>173</sup>

**EC.** The EIA must contain a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.<sup>174</sup>

**World Bank.** The EIA document should include a mitigation plan that identifies feasible and cost-effective measures that may reduce potentially significant adverse environmental impacts to acceptable levels.<sup>175</sup> The plan should estimate the potential environmental impacts of those measures, their capital and recurrent costs, their suitability under local conditions, and related

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<sup>166</sup> 40 C.F.R. § 1508.20.

<sup>167</sup> 40 C.F.R. § 1502.14(f).

<sup>168</sup> 40 C.F.R. § 1505.2(c).

<sup>169</sup> 40 C.F.R. § 1505.3.

<sup>170</sup> Act No. 244, Annex III, part C IV.

<sup>171</sup> Act No. 244, sec. 9, para. 5(g).

<sup>172</sup> Slovak draft law, § 12, para. b.

<sup>173</sup> Slovak draft act, § 51, para. 1.

<sup>174</sup> EC Directive, Art. 5, para. 2.

<sup>175</sup> OD 4.01, Annex B, para. 2(g).

institutional, training, and monitoring requirements.<sup>176</sup> The Bank's decision to support a project will be in part predicated on the expectation that the mitigation plan will be executed effectively.<sup>177</sup>

**EBRD.** The EIA should contain a proposal of measures to avoid or mitigate adverse impacts and/or to enhance environmental benefits.<sup>178</sup> These measures must be described in the Environmental Review undertaken by the Bank's Environmental Staff.<sup>179</sup> While Bank guidelines do not stipulate that mitigation measures must be implemented, the Bank may incorporate environmental covenants requiring mitigation into its agreement with the project sponsors.<sup>180</sup>

## 10. When Must the EIA Document Be Completed?<sup>181</sup>

The purpose of EIA is "to help public officials make decisions that are based on understandings of environmental consequences, and take actions that protect, restore, and enhance the environment."<sup>182</sup> For this purpose to be accomplished, it is important that the EIA document be completed *before* decisions are made or actions are taken that might have an adverse environmental impact or would limit the choice of reasonable alternatives.

**NEPA.** NEPA regulations stipulate that no decision on the proposed action may be taken until 30 days after public notification that the EIS has been completed and filed with the Environmental Protection Agency.<sup>183</sup> The regulations also state that the EIS must be prepared early enough to contribute to the decision-making process and that the EIS may not be used to rationalize or justify decisions already made.<sup>184</sup>

**Czech Republic.** The Czech Act on EIA does not say when the EIA document must be submitted

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<sup>176</sup> *Id.*

<sup>177</sup> OD 4.01, Annex C, para. 4.

<sup>178</sup> EBRD Procedures, Annex 5.

<sup>179</sup> EBRD Procedures, at 7.

<sup>180</sup> *Id.*

<sup>181</sup>For a discussion of the end of the EIA document process, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 48-49.

<sup>182</sup> 40 C.F.R. § 1500.1(c).

<sup>183</sup> 40 C.F.R. § 1506.10(b)(2).

<sup>184</sup> 40 C.F.R. § 1502.5.

by the project applicant. The Act makes clear, however, that the project cannot be approved until the document has been submitted,<sup>185</sup> the public has had an opportunity to comment,<sup>186</sup> an expert opinion and public comments on the document have been obtained,<sup>187</sup> and the competent authority has issued a decision.<sup>188</sup>

**Slovakia.** The EIA document must be completed and submitted to the review body before the review body makes its decision and prepares the final record.<sup>189</sup> After the document is submitted, the competent authority, the affected municipalities, the Ministry for the Environment, NGOs, and the public have four months to submit their opinions ("standpoints") to the review body, before it makes its decision.<sup>190</sup>

**EC.** The EC Directive does not specify when the EIA document must be completed, but states that projects must be made subject to EIA before consent to proceed with the project is given.<sup>191</sup> Presumably, the EIA document must be completed before consent is given, since information gathered during the EIA process must be taken into consideration in the consent procedure.<sup>192</sup>

**World Bank.** The World Bank operational directive says the EIA document must be submitted to the Bank before the Bank's appraisal team leaves the project site ) in other words, before the project is appraised.<sup>193</sup> The EIA should be prepared as part of the overall feasibility study or project preparation, so that it can be incorporated into the project's design. For major projects, 6-18 months should be allowed for preparation of the EIA.<sup>194</sup>

**EBRD.** The project sponsors must prepare and submit the EIA document to the Bank before the Final Review of the project and before disbursement of funds.<sup>195</sup>

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<sup>185</sup> Act No. 244, § 5.

<sup>186</sup> Act No. 244, § 7.

<sup>187</sup> Act No. 244, § 9.

<sup>188</sup> Act No. 244, § 11.

<sup>189</sup> Slovak draft act, § 30.

<sup>190</sup> Slovak draft act, § 31.

<sup>191</sup> EC Directive, Art. 2, para. 1.

<sup>192</sup> EC Directive, Art. 8.

<sup>193</sup> OD 4.01, Annex D, at 2.

<sup>194</sup> *Id.*, at 1.

<sup>195</sup> EBRD Procedures, Annex 1, at 6.

## 11. How is the EIA Document Reviewed?<sup>196</sup>

After the EIA document has been completed, there is usually a period before the final decision is made for government agencies, the public, and in some cases independent review bodies to review and comment on the document.

**NEPA.** After the EIS has been completed, NEPA provides for a period during which agencies with jurisdiction, special expertise, or authority to develop and enforce environmental standards must comment on issues in the EIS within their areas of competence.<sup>197</sup> The public also has an opportunity to comment during this period. (The public's role is discussed in detail in the section on public participation, below.) The agency preparing the EIA must respond to comments by: (1) modifying alternatives including the proposed action; (2) developing and evaluating new alternatives; (3) supplementing, improving, or modifying its analysis; (4) making factual corrections; and/or (5) explaining why the comments do not warrant further response.<sup>198</sup> If a federal agency, after attempting to resolve its concerns about the EIS with the lead agency, remains convinced that an aspect of the EIS is "unsatisfactory from the standpoint of public health or welfare or environmental quality" the agency should refer the matter to the Council on Environmental Quality (CEQ).<sup>199</sup> The lead agency has 25 days to respond to the referral, and interested persons, including the applicant, may deliver their views in support of the referral or the response to the CEQ as well.<sup>200</sup> The CEQ may resolve the matter by: (1) concluding the process of referral and response has already resolved the problem; (2) mediating between the lead and referring agencies; (3) holding additional public meetings or hearings; (4) determining the issue is not one of national importance; (5) referring the matter back to the agencies for further negotiation; (6) publishing its findings and recommendations; and/or (7) submitting the matter, with its recommendations, to the President for action.<sup>201</sup>

**Czech Republic.** Immediately after the EIA document is prepared, the competent authority must

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<sup>196</sup>For a more detailed discussion of review, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 46-54.

<sup>197</sup>40 C.F.R. § 1503.2. The Environmental Protection Agency reviews all EISs. 40 C.F.R. § 1504.1(b).

<sup>198</sup> 40 C.F.R. § 1503.4(a).

<sup>199</sup> 40 C.F.R. § 1504.1.

<sup>200</sup> 40 C.F.R. § 1504.3.

<sup>201</sup> *Id.*



deliver copies to the concerned bodies of State Administration and the affected communities.<sup>202</sup> The affected communities must make the document available to the public, which has 30 days to review the document.<sup>203</sup> (The public's role is discussed in detail in the section on public participation, below.) The affected communities have 14 days after expiration of the 30 day public review period to deliver the public opinion and their own opinion to the competent authority.<sup>204</sup> The concerned bodies of the State Administration have 50 days from receipt of the EIA document to deliver their opinions to the competent authority.<sup>205</sup>

The competent authority assigns one of the authorized experts listed with the Ministry for the Environment to review the EIA document and issue an opinion.<sup>206</sup> The expert must not have participated in the preparation of the document.<sup>207</sup> The expert opinion must evaluate: (1) the completeness of the document; (2) the opinions of the public, the affected communities, and the concerned bodies of the State Administration; (3) the thoroughness with which environmental impacts have been identified; (4) the data and evaluation methods; (5) proposed technical solutions; (6) alternative solutions; and (7) mitigation measures.<sup>208</sup> It must also contain a proposal for a statement by the competent authority.<sup>209</sup> Within one month after receiving the expert opinion, the competent authority must arrange for public discussion (see below).<sup>210</sup>

**Slovakia.** The review body must deliver the completed EIA document to the competent authority, the affected municipalities, and the Ministry for the Environment for their opinions.<sup>211</sup> A summary of the document must be provided upon request to affected municipalities and NGOs dealing with environmental protection and conservation that have been registered in the Slovak Republic for more than three years.<sup>212</sup> The affected municipality must arrange a meeting between the public and the review body, the competent authority, and the Ministry of the Environment.<sup>213</sup> The competent

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<sup>202</sup> Act No. 244, § 7, para. 1.

<sup>203</sup> *Id.*

<sup>204</sup> Act No. 244, § 7, para. 3.

<sup>205</sup> Act No. 244, § 7, para. 4.

<sup>206</sup> Act No. 244, § 9, para. 1.

<sup>207</sup> Act No. 244, § 9, para. 3.

<sup>208</sup> Act No. 244, § 9, para. 5.

<sup>209</sup> *Id.*

<sup>210</sup> Act No. 244, § 10.

<sup>211</sup> Slovak draft act, § 26.

<sup>212</sup> *Id.*

<sup>213</sup> Slovak draft act, § 28.

authority, the affected municipalities, the Ministry for the Environment, NGOs, and the public have four months to deliver their opinions on the EIA document to the review body.<sup>214</sup>

**EC.** The EC Directive requires Member States to ensure that authorities with specific environmental responsibilities related to the proposed action are given an opportunity to express their opinion.<sup>215</sup> It is not clear, however, that this means their comments must be obtained after the EIA document has been completed. Similarly, the public must be notified of the project and must have an opportunity to comment, but not necessarily after completion of the EIA document.<sup>216</sup>

**World Bank.** For category A projects (projects requiring a full EIA) the EIA document is reviewed by the Bank's Task Manager. The Task Manager assesses the document to see whether it complies with the Terms of Reference and adequately takes into consideration the views of affected groups and local NGOs. The Regional Environmental Division also reviews the EIA document. If it is not satisfied with the document it may recommend that the appraisal be postponed. If the decision is made to proceed with the appraisal, the Appraisal Mission reviews the EIA document with the borrower and resolves any remaining issues. Once the Regional Environmental Division is satisfied all issues have been resolved, it gives formal environmental clearance, and negotiations can be authorized by the Regional Vice President.<sup>217</sup>

**EBRD.** According to the Bank's Environmental Staff Guidelines, the Staff must review the EIA document to make sure that national, regional, and local regulations are met, the Terms of Reference are followed, and all items required by the Bank's Environmental Policy are included.<sup>218</sup> The Environmental Staff then drafts an Environmental Review Memorandum which assesses the information contained in the EIA document, identifies outstanding issues, and explains how they will be addressed. The Staff also recommends any environmental covenants it thinks should be built into the agreement. Issues identified in the Environmental Review Memorandum are incorporated into the Investment Proposal. The Operations Committee discusses environmental issues addressed in the Investment Proposal during the Final Review. It may recommend that a project not be allowed to proceed if these issues are not properly addressed or if the impacts of the project are too great.<sup>219</sup>

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<sup>214</sup> Slovak draft act, § 31.

<sup>215</sup> EC Directive, Art. 6. para. 1.

<sup>216</sup> EC Directive, Art. 6, paras. 2 and 3.

<sup>217</sup> OD 4.01, Annex D at 2.

<sup>218</sup> EBRD Procedures at 46.

<sup>219</sup> *Id.* at 47.

## 12. How Is the Final Decision Made?<sup>220</sup>

After the EIA document has been reviewed, a decision is made whether to proceed with the proposed action. A key question is who decides? In the U.S. the decision is made by the agency that prepares the EIA. In other systems the decision may be made by the environmental agency or the institution financing the activity. The decision may impose conditions on the project proponent, requiring the proponent, for example, to adopt specific mitigation measures.

**NEPA.** After the period for comment and referral of any disagreements to the Council on Environmental Quality has expired, the agency that prepared the EIA decides whether to proceed with the action.<sup>221</sup> At this time it must prepare a public record of decision in which it must: (1) state what the decision was; (2) identify all alternatives under consideration and specify which alternative was considered environmentally preferable; and (3) state whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why they were not.<sup>222</sup> If mitigation measures are included in the record of decision, they must be implemented by the project proponent, and funding of the action must be conditioned on mitigation.<sup>223</sup>

**Czech Republic.** The competent authority issues the decision on the construction, activity, or technology in a statement based on the expert opinion and on the minutes of the public discussion.<sup>224</sup> If the construction, activity, or technology is for national defense, the competent authority must consult with the relevant military body before issuing its statement.<sup>225</sup>

**Slovakia.** No later than 30 days after the end of the comment period, the review body, with the agreement of the Ministry for the Environment, prepares the final record and makes its decision. The final record is based on the EIA document, the written opinions of the government agencies, NGOs, and the public, and the public meeting.<sup>226</sup> The final record must contain an evaluation of the consequences of proceeding with the activity, a risk assessment of adverse environmental impacts, and the proposed scope of post-project analysis.<sup>227</sup> The review body must deliver its

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<sup>220</sup>For a more detailed discussion of decision-making, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 48-49.

<sup>221</sup> 40 C.F.R. § 1506.10.

<sup>222</sup> 40 C.F.R. § 1505.2.

<sup>223</sup> 40 C.F.R. § 1505.3

<sup>224</sup> Act No. 244, § 11, para. 1.

<sup>225</sup> Act No. 244, § 11, para. 2.

<sup>226</sup> Slovak draft act, § 30, para. 1.

<sup>227</sup> Slovak draft act, § 30, para. 2.

decision to the proponent, the competent authority, the affected municipalities, the Ministry for the Environment, and NGOs if they request it.<sup>228</sup>

**EC.** The EC Directive does not specify who should make the final decision. It does, however, require the competent authority to take into consideration information obtained from the EIA and any opinions received from government authorities or the public when making its decision.<sup>229</sup> The competent authority must inform the public of the decision and any conditions which have been imposed on the proposed activity.<sup>230</sup>

**World Bank.** If the EIA document is satisfactory, and all issues have been resolved, the Regional Environmental Division chief issues formal environmental clearance for the project. The Regional Vice President can begin negotiations with the borrower once clearance is issued, but not before. In the negotiations, covenants to implement mitigation measures, monitor programs, correct unanticipated impacts, and comply with environmental conditionalities may be discussed and incorporated into the loan agreement.<sup>231</sup>

**EBRD.** If in the Final Review the Operations Committee decides that environmental issues raised in the EIA document have been properly addressed, it may recommend that the project be allowed to proceed to Executive Committee and Board Review. If the project is considered satisfactory by the Executive Committee and the Board, it may be approved. The agreement may contain clauses to ensure that environmental requirements, such as mitigation and monitoring, are met by the borrower.<sup>232</sup>

### **13. Must the Most Environmentally Sound Alternative Be Chosen?**<sup>233</sup>

In most cases one of the alternatives identified in the EIA will be selected in the final decision. While the decision-making body is not necessarily required to choose the most environmentally preferable alternative, it may be required to discuss all the alternatives identified in the EIA and explain why it chose the one it did.

**NEPA.** In its record of decision, the agency must identify all the alternatives under consideration

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<sup>228</sup> Slovak draft act, § 30, para. 3 and 4.

<sup>229</sup> EC Directive, Art. 8.

<sup>230</sup> EC Directive, Art. 9.

<sup>231</sup> World Bank, Environmental Assessment Sourcebook 10 (1991)

<sup>232</sup> EBRD Procedures 48 (1992)

<sup>233</sup> For a discussion of selection of alternatives, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 49.

and specify the alternative or alternatives considered environmentally preferable.<sup>234</sup> The agency is not required to select the environmentally preferable alternative, but it must explain its reason for the selection it made.<sup>235</sup>

**Czech Republic.** There is no requirement that the most environmentally sound alternative be chosen or that reasons be given why a particular alternative was selected.

**Slovakia.** The review body is not required to select the most environmentally sound alternative. It must, however, state the reasons for its decision in the final record.<sup>236</sup>

**EC.** The EC Directive does not require the competent authority to select the most environmentally sound alternative. The competent authority is required to state the reasons for its decision only if the Member State's legislation so provides.<sup>237</sup>

**World Bank.** The World Bank does not require borrowers to implement the most environmentally sound alternative.

**EBRD.** The EBRD does not require borrowers to implement the most environmentally sound alternative.

#### **14. Is Post-Decision Monitoring Required?**<sup>238</sup>

Post-decision monitoring is the weakpoint of many EIA regimes. Most do not explicitly require any monitoring. Monitoring is important in the initial stages of the project, during its operation, and after the project has been completed. Without monitoring there can be no guarantee that conditions imposed by the decision-making body on the project proponent are being implemented. Monitoring also provides an opportunity to assess the accuracy of impact predictions and the effectiveness of proposed mitigation measures, thereby contributing to the design of future projects and the improvement of future EIAs.

**NEPA.** NEPA is unclear on the subject of post-decision monitoring. While it is generally considered *not* to require monitoring, it says that "[a] monitoring and enforcement program shall be

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<sup>234</sup> 40 C.F.R. sec. 1505.2(b).

<sup>235</sup> *Id.*

<sup>236</sup> Slovak draft act, § 33.

<sup>237</sup> EC Directive, Art. 9.

<sup>238</sup>For a detailed discussion of post-decision monitoring, see ELI, ENVIRONMENTAL IMPACT ASSESSMENT, *supra* note 7, at 50-56.

adopted and summarized where applicable for any mitigation."<sup>239</sup> It goes on to say that agencies should provide for monitoring in important cases, and, upon request, must make available to the public the results of relevant monitoring.<sup>240</sup>

**Czech Republic.** Post-decision monitoring is not required in the Czech EIA law.

**Slovakia.** The draft Slovak law requires the project developer to monitor impacts on a regular basis and compare the observed impacts with the impacts predicted in the EIA document.<sup>241</sup> Where there is a discrepancy between predicted and observed impacts, the developer must take measures to make observed impacts more consistent with predicted impacts.<sup>242</sup>

**EC.** The EC Directive does not require post-decision monitoring. It does, however, require Member States and the Commission to exchange information on the experience gained in applying the Directive, suggesting that some kind of post-decision monitoring should be conducted.<sup>243</sup>

**World Bank.** The EIA document should include an environmental monitoring plan. It should specify the type of monitoring, who would do it, how much it would cost, and whether training or other forms of support would be required.<sup>244</sup> The Operational Directive also states that the loan may be made conditional on implementation of a monitoring program by the borrower.<sup>245</sup>

**EBRD.** Monitoring procedures are not clearly spelled out in the Bank's policy statement. During project execution and administration, the project sponsors are expected to monitor and report to the Bank on compliance with appropriate Bank standards. Where the Bank, through its own monitoring, determines that these standards are not being adhered to, the Bank may freeze disbursements and notify proper authorities, including other lending institutions. Upon completion of the project, environmental monitoring will continue "if justified."<sup>246</sup>

## **15. Public Participation.**<sup>247</sup>

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<sup>239</sup> 40 C.F.R. § 1505.2(c).

<sup>240</sup> 40 C.F.R. § 1505.3.

<sup>241</sup> Slovak draft act, § 52, para. 1.

<sup>242</sup> Slovak draft act, § 52, para. 2.

<sup>243</sup> EC Directive, Art. 11, para. 1.

<sup>244</sup> OD 4.01, Annex B, at 1-2.

<sup>245</sup> OD 4.01, Annex C, at 2.

<sup>246</sup> EBRD Procedures, at 8.

<sup>247</sup>For an excellent discussion of public participation, see ELI, REPORT OF THE INTERNATIONAL ROUNDTABLE ON

No aspect of the EIA process is more important than public participation. A process which is open to public scrutiny and responsive to public concerns is more likely to reflect diverse views, address key facts and issues, and ensure an outcome that is satisfactory both to the proponent and to the community. The public should be involved at every stage of the EIA process, but public participation in scoping and the review and comment stages are critical. It is also crucial that the public be fully informed, as well as have an opportunity for a full hearing of its views. Finally, there should be an opportunity for the public to challenge an EIA if it believes the EIA has not accomplished its objectives.

### **NEPA**

*When must citizens be informed about a project?* Agencies are not required to inform citizens about a project until after screening. If they intend to prepare an EIS, they must publish a notice of intent as soon as practicable and, in any case, before beginning scoping.<sup>248</sup> If after screening the agency decides not to prepare an EIS it must notify the affected public of its decision.<sup>249</sup>

*May citizens participate in the scoping process?* Scoping under NEPA is open to the public.<sup>250</sup>

*Do citizens have access to background information?* Because the scoping process is open to the public, the public has access to background information that will be considered during scoping.<sup>251</sup> The public also has access to all information developed during the course of the EIA and incorporated into the draft and final EISs, as well as all comments and underlying documents.<sup>252</sup>

*Do citizens have access to the EIA document?* The agency is required to circulate the entire draft and final EIS to any person or organization that requests it.<sup>253</sup>

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ENVIRONMENTAL IMPACT ASSESSMENT AND PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONMAKING (1992).

<sup>248</sup> 40 C.F.R. § 1501.7.

<sup>249</sup> 40 C.F.R. § 1501.4(e)(1).

<sup>250</sup> 40 C.F.R. § 1501.7(a)(1).

<sup>251</sup> 40 C.F.R. § 1501.7(a)(2).

<sup>252</sup> 40 C.F.R. § 1506.6(f).

<sup>253</sup> 40 C.F.R. § 1502.19(c).

*May citizens submit written comments concerning the project?* After preparing the draft EIS and before preparing the final EIS, the agency must request comments from the public.<sup>254</sup> While agencies are not required to solicit comments on final EISs, they must wait at least thirty days before making a final decision on the proposal. During this period the public may submit written comments on the EIS.<sup>255</sup>

*Must the agency or project proponent respond to those comments?* The agency must respond to comments by: (1) modifying alternatives, (2) developing and evaluating new alternatives, (3) supplementing, improving, or modifying its analysis, (4) making factual corrections, and/or (5) explaining why the comments do not warrant further agency response.<sup>256</sup>

*Is there a public hearing?* The agency should hold or sponsor public hearings or public meetings when there is substantial environmental controversy or public interest in holding a hearing.<sup>257</sup>

*Are citizens entitled to the reasons for making a decision?* In its record of decision, the agency must state what its decision was, identify all alternatives that were considered, and specify the environmentally preferable alternative. The agency must identify and discuss all the factors that it weighed in making its decision and state how those factors affected its decision.<sup>258</sup>

*When may citizens receive that information?* The record of decision must be prepared and made public at the time of its decision (no earlier than 30 days after publication of the EIS).<sup>259</sup>

*May citizens challenge the adequacy of the EIA?* Issues that are not resolved by comment and response can be referred to the courts (and in some limited circumstances, to the Council on Environmental Quality). Legal challenges have become an important means for citizens (and public interest organizations) to enforce NEPA. The U.S. Supreme Court has, however, largely limited the grounds for challenging EIAs to procedural matters. As long as agencies follow the procedures set out in the NEPA regulations, U.S. courts are unlikely to sustain a challenge to an EIA.

## ***Czech Republic***

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<sup>254</sup> 40 C.F.R. § 1503.1(a)(4).

<sup>255</sup> 40 C.F.R. § 1503.1(b).

<sup>256</sup> 40 C.F.R. § 1503.4(a).

<sup>257</sup> 40 C.F.R. § 1506.6(c)(1).

<sup>258</sup> 40 C.F.R. § 1505.2.

<sup>259</sup> *Id.*



*When must citizens be informed about a project?* Under the Czech law, citizens must receive notification.<sup>260</sup>

*May citizens participate in the scoping process?* The Czech law does not provide for citizen participation in any scoping procedures.

*Do citizens have access to background information?* The Czech law does not require that citizens be provided with any information that is not in the EIA document.

*Do citizens have access to the EIA document?* Within five days of receiving the EIA document, the "affected community" must announce when and where the public may examine and copy the document. The EIA document must be made available to citizens for a period of thirty calendar days.<sup>261</sup>

*May citizens submit written comments concerning the project?* The public may submit a "public opinion" to the affected community, which must send the opinion, along with its own, to the competent authority within 14 days of the expiration of the thirty day examination period.<sup>262</sup>

*Must the agency or project proponent respond to those comments?* Neither the agency nor the project proponent is required to respond to the public opinion. The public opinion must, however, be considered by the expert in his or her review of the EIA document (the expert opinion).<sup>263</sup>

*Is there a public hearing?* Within one month after completion of the expert opinion, a public discussion must be held to consider the expert opinion, the public opinion, and the opinions of the affected communities and the concerned bodies of State Administration. Experts and citizens who can present important information on the project may be invited to participate.<sup>264</sup>

*Are citizens entitled to the reasons for making the decision?* After the public discussion, the competent authority must issue a statement containing its decision, the recommended alternative, and any recommended conditions it thinks should be imposed on the project. The statement must identify who prepared the EIA document, who prepared the expert opinion, and the results of the public discussion. The competent authority is not required to state the reasons for its decision, however.<sup>265</sup>

*When may citizens receive that information?* The Act does not specify when the competent authority must issue its statement.

*May citizens challenge the adequacy of the EIA?* There is no provision in the EIA law for legal challenges to the EIA. It may be, however, that a challenge can be brought under a different provision of the Czech legal system.

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<sup>260</sup> Act No. 244, § 5

<sup>261</sup> Act No. 244, § 7.

<sup>262</sup> *Id.*

<sup>263</sup> Act No. 244, § 9.

<sup>264</sup> Act No. 244, § 10.

<sup>265</sup> Act No. 244, Annex 4.

## ***Slovakia***

*When must citizens be informed about a project?* Within ten days of receiving the announcement of a proposed project, affected municipalities are required to notify the public and make the announcement available to the public for examination.<sup>266</sup>

*May citizens participate in the scoping process?* Citizens are not permitted to participate directly in the scoping process. During scoping, however, comments from the public made in response to the announcement of the project must be considered.<sup>267</sup>

*Do citizens have access to background information?* Some background information is contained in the announcement. The public is also informed by the project proponent about the scope and timing of the EIA.<sup>268</sup>

*Do citizens have access to the EIA document?* Within ten days of receiving the EIA document, affected municipalities must inform the public and make the document available for public inspection for 30 days.<sup>269</sup>

*May citizens submit written comments concerning the project?* The public may deliver written comments (standpoint) to the review body within four months of publication of the final summary of the EIA document.<sup>270</sup>

*Must the agency or project proponent respond to those comments?* The final record must consider comments from the public, but there is no requirement that the record specifically respond to comments from the public.<sup>271</sup>

*Is there a public hearing?* The affected municipality must arrange a public meeting in cooperation with the proponent. within the 30 day period for public inspection of the document. The review body, the competent authority, and the Ministry of the Environment must be invited to attend. The municipality, in cooperation with the proponent, must report on the meeting to the review body within 30 days.<sup>272</sup>

*Are citizens entitled to the reasons for making the decision?* (Annex 3, containing elements of final record, not available.)

*When may citizens receive that information?* Within 10 days of receiving the decision, the affected municipality must publish the decision.<sup>273</sup>

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<sup>266</sup>Slovak draft act, § 16.

<sup>267</sup>Slovak draft act, § 20, para. 2.

<sup>268</sup>Slovak draft act, § 21.

<sup>269</sup>Slovak draft act, § 28.

<sup>270</sup>Slovak draft act, § 29.

<sup>271</sup>Slovak draft act, § 30.

<sup>272</sup>Slovak draft act, § 28.

<sup>273</sup>Slovak draft act, § 31.

*May citizens challenge the adequacy of the EIA?* There is no provision in the Slovak draft act for legal challenges to the EIA. It may be, however, that a challenge can be brought under a different provision of the Slovak legal system.

## **EC**

*When must citizens be informed about a project?* Citizens must be informed of any proposal for a project requiring an EIA.<sup>274</sup> The timing of such notification, however, is left to the Member States to decide.<sup>275</sup>

*May citizens participate in the scoping process?* This is left to the Member States to decide.<sup>276</sup>

*Do citizens have access to background information?* Citizens are only entitled to receive information provided to Member States by the project developer as part of the EIA document.<sup>277</sup>

*Do citizens have access to the EIA document?* Citizens are entitled to receive the full EIA document.<sup>278</sup>

*May citizens submit written comments concerning the project?* The public must be given the opportunity to express an opinion before the project is initiated.<sup>279</sup> How opinions are to be submitted, however, is left to the Member States.<sup>280</sup>

*Must the agency or project proponent respond to those comments?* The Directive does not require the agency or the project proponent to respond to comments from the public.

*Is there a public hearing?* This is left to the Member States to decide.<sup>1</sup>

*Are citizens entitled to the reasons for making the decision?* Member States are only required to inform citizens as to the reasons for the decision if the Member States' own legislation contains such a requirement.<sup>2</sup>

*When may citizens receive that information?* This is left to the Member States to decide.

*May citizens challenge the adequacy of the EIA?* This is left to the Member States to decide.

## **World Bank**

*When must citizens be informed about a project?* The Bank suggests that the borrower consult with affected groups and NGOs shortly after screening (i.e., after the project has been assigned to a category).<sup>3</sup>

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<sup>274</sup>EC Directive, Art. 6. para. 2.

<sup>275</sup>EC Directive, Art. 6, para. 3.

<sup>276</sup>*Id.*

<sup>277</sup>EC Directive, Art. 6, para. 2.

<sup>278</sup>*Id.*

<sup>279</sup>*Id.*

<sup>280</sup>EC Directive, Art. 3.

*May citizens participate in the scoping process?* World Bank procedures do not require the borrower to include citizens or NGOs in the scoping process.

*Do citizens have access to background information?* The information provided to citizens or NGOs is normally quite limited, consisting in the initial stage only of a summary of the project description and objectives.<sup>4</sup>

*Do citizens have access to the EIA document?* The Bank suggests the borrower make the EIA document available at some public place accessible to affected groups and local NGOs.<sup>5</sup>

*May citizens submit written comments concerning the project?* The Bank suggests the borrower obtain comments from affected groups and NGOs.<sup>6</sup>

*Must the agency or project proponent respond to those comments?* The Bank does not require the borrower to respond to comments from citizens.

*Is there a public hearing?* The Bank's EIA Operational Directive calls for consultations with affected groups and NGOs, but not a hearing *per se*.<sup>7</sup>

*Are citizens entitled to the reasons for making the decision?* There is no Bank procedure for informing citizens of its decision.

*May citizens challenge the adequacy of the EIA?* There is no procedure for citizens to challenge the EIA.

## ***EBRD***

*When must citizens be informed about a project?* For all Category A projects, the Project Sponsor must notify citizens and NGOs of the nature of the project as soon as the project has passed Initial Review.<sup>8</sup>

*May citizens participate in the scoping process?* Bank procedures suggest that the public will have the opportunity to raise issues during scoping.<sup>9</sup>

*Do citizens have access to background information?* Release of background information to the public is determined on a case-by-case basis.<sup>10</sup>

*Do citizens have access to the EIA document?* The Bank requires the Project Sponsor to make publicly available any environmental assessment it has been required to carry out, in accordance with national legislation in the country concerned.<sup>11</sup>

*May citizens submit written comments concerning the project?* The borrower is expected to receive and consider comments from the public.<sup>12</sup>

*Must the agency or project proponent respond to those comments?* Bank procedures do not require the borrower to respond to public comments.

*Is there a public hearing?* There is no requirement for a public hearing.

*Are citizens entitled to the reasons for making the decision?* There is no procedure for providing citizens with reasons for the Bank's decision.

*May citizens challenge the adequacy of the EIA?* There is no procedure for citizens to challenge the adequacy of the EIA.

## *Endnotes*

1. EC Directive, Art. 6, para. 3.

2. EC Directive, Art. 9.

3. OD 4.01 at 5.

4. *Id.* at 6.

5. *Id.*

6. *Id.*

7. *Id.* at 5.

8. EBRD Procedures, Annex 4, at 1.

9. *Id.*

10. *Id.* at 2.

11. EBRD Procedures at 10.

12. *Id.*