Alþingi
Erindi nr. Þ 141/58
komudagur 8.10. 2012

SAMBAND ÍSLENSKRA SVEITARFÉLAGA

Umhverfis- og samgöngunefnd
Alþingis
b.t. Guðfríðar Lilju Grétarsdóttur form.n.
Austurstræti 8-10
150 Reykjavík

Reykjavík 24. september 2012

0702515SA AGB
Málalykill: 020

v. 87. mál

Efni: Ályktun sveitarstjórnarvettvangs EFTA um Evrópureglur um mat á umhverfisáhrifum

Sveitarstjórnarvettvangur EFTA hélt fimmta fund sinn á Íslandi, dagana 21.-22. júní sl. Vettvangurinn tók til starfa árið 2010 samkvæmt ákvörðun Ráðherranefndar og Fastanefndar EFTA til að tryggja þátttöku sveitarstjórnarstigsins í EES EFTA samstarfinu og koma á tengslum við Héraðanefnd ESB. Í honum eiga sæti kjörnir fulltrúar á sveitarstjórnarstigi frá Noregi og Íslandi.

Á þessum fimmta fundi voru samþykktar tvær ályktanir, annars vegar um Evrópureglur um mat á umhverfisáhrifum og hins vegar um stöðu EES-samningsins. Tilefni er til að koma þeirri fyrrnefndu á framfæri við umhverfis- og samgöngunefnd Alþingis þar sem nefndin mun á næstunni fjalla um frumvarp sem umhverfis- og auðlindaráðherra hefur lagt fram á Alþingi.

Það sem liggur að baki ályktuninni er sú endurskoðun á gildandi regluverki um mat á umhverfisáhrifum sem nú fer fram innanlands á grundvelli athugasemda Eftirlitsstofnunar EFTA við innleiðingu Evrópureglna um þetta efni í Noregi og á Íslandi. Á sama tíma stendur yfir endurskoðun á tilskipun ESB um mat á umhverfisáhrifum og er í ályktuninni lögð áhersla á að aðildarríki EES-samningsins og Eftirlitsstofnun EFTA verði að hafa hliðsjón af áherslum í þeirri vinnu við endurskoðun löggjafar einstakra aðildarríkja.

Í ályktun vettvangsins er hvatt til þess að löggjafinn innleiði ekki ESB löggjöf um skipulagsmál með óhóflega flóknum hætti og áréttað að tímafrestir séu nú þegar hæfilega langir og forðast eigi að lengja þá með nýrri löggjöf. Að auki er löggjafinn hvattur til að forðast gullhúðun þegar kemur að innleiðingu Evrópureglna, svo komið verði í veg fyrir óþarfa skriffinnsku og til að verja sjálfstjórnarrétt sveitarfélaga. Lagt er til að EES-EFTA-ríkin leiti ráða hjá ESA um það hvort það geti ekki samræmst tilskipun ESB um mat á umhverfisáhrifum að sveitarfélög leggi eftir atvikum sjálf mat á það hvort umhverfisáhrif minniháttar framkvæmda séu líkleg til að vera það mikil að ástæða geti verið til að fram fari umhverfismat. EES-EFTA-ríkin og sveitarfélög eru hvött til að fylgjast náið með endurskoðun tilskipunar ESB um mat á umhverfisáhrifum, en brýnt er að skýra nánar ákvæði um gildissvið hennar, í samræmi við nálægðarregluna. Jafnframt er mælt með því að endurskoðun tilskipunarinnar hafi einföldun og skýrleika að leiðarljósi og taki sérstaklega á þáttum er varða matsaðferðir, þátttöku almennings og samspili við aðrar tilskipanir og stefnumið á sviði umhverfisverndar.

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Ályktuninni hefur verið komið á framfæri við viðkomandi stofnanir EFTA og ESB og er þess farið á leit að umhverfis- og samgöngunefnd, ásamt umhverfisráðuneytinu og Skipulagsstofnun, sem fá afrit af þessu bréfi og fylgigögnum með því, hafi ályktunina einnig til hliðsjónar í sinni vinnu.

Virðingarfyllst

SAMBAND ÍSLENSKRA SVEITARFÉLAGA

Karl Björnsson framkvæmdastjóri

Fylgiskjöl: Ályktun sveitarstjórnarvettvangs EFTA um Evrópureglur um mat á umhverfisáhrifum frá 22. júní 2012 og bakgrunnsskjal

Afrit: Umhverfisráðuneytið og Skipulagsstofnun

EUROPEAN ECONOMIC AREA

FORUM OF LOCAL AND REGIONAL AUTHORITIES

Ref: 1114699

FIFTH MEETING OF THE EEA EFTA FORUM

Ísafjörður

21-22 June 2012

Opinion on European Rules on Environmental Impact Assessment

Rapporteur: *Ms Ásgerður Halldórsdóttir*

The EEA EFTA Forum of Local and Regional Authorities:

A. Noting the Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the EIA Directive COM(2009) 378 final.

B. Noting the Opinion of the Committee of the Regions on Improving the EIA and SEA Directives CdR 38/2010 final.

C. Noting the reinforced subsidiarity principle set out in the Lisbon Treaty and its explicit reference to the local and regional dimension and self-government.

D. Noting the role of the Forum as a body in the EFTA structure.

E. Acknowledging the impact of EU regulation on local and regional authorities in the EEA EFTA States through the EEA-agreement.

F. Welcoming the codified EIA Directive, published on 28 January 2012 as Directive 2011/92/EU.

G. Recognising that the Directive on Environmental Impact Assessment has proved to be a useful mechanism to minimize the risks for the environment in relation to major projects.

H. Mindful that revision of the EIA Directive is underway;

1. underlines that while Member States must address flaws in the implementation of the EIA Directive in national legislation, they must be mindful not to over-complicate planning legislation.

2. notes that the overall period for planning and issuing building or construction permits under the current legislation is already long. Legislative proposals which could cause a prolongation of that period should be avoided.

3. asks the EEA EFTA States to avoid 'gold-plating' when transposing EU legislation on environmental impact assessment to avoid unnecessary administrative burdens and complexity and to safeguard the right to self-government at the local and regional level.

4. proposes that the EEA EFTA States consult the EFTA Surveillance Authority on whether entrusting municipalities with the task of screening minor projects on a case-by-case basis would meet the requirements of the EIA Directive.

5. recommends that the revision of the EIA Directive include, inter alia, simplification and clarification of the screening mechanism and clarification of the provisions on public participation and coordination between EIA and other Directives and policies.

6. urges the EEA EFTA States and local and regional authorities to follow closely the revision of the EIA Directive, calling, in particular for clearer provisions on the scope of the EIA Directive in relation to screening, in accordance with the principle of subsidiarity.

EUROPEAN ECONOMIC AREA

FORUM OF LOCAL AND REGIONAL AUTHORITIES

Confidential Ref. 1114702

FIFTH MEETING OF THE EEA EFTA FORUM

Ísafjörður

21-22 June 2012

Background paper II for discussion under Agenda Item 5: **European rules on environmental impact assessment and implications for local and regional authorities**

THE EFTA SURVEILLANCE AUTHORITY'S DEMANDS FOR LEGISLATIVE AMENDMENTS IN ICELAND AND NORWAY

INTRODUCTION

Environmental impact assessment is a procedure that ensures that the environmental implications of construction projects – e.g. dams, motorways, airports, factories and energy projects – are assessed and taken into account before the relevant authority makes a decision on project approval. Developers can then adjust projects to minimise negative impacts before they actually occur, or the competent authorities can incorporate mitigation measures into the project approval. The common principles for the environmental assessment of individual public and private projects are defined in Directive 97/11/EC, which has been incorporated into the EEA Agreement. The Directive ensures early public participation in the environmental decision-making procedures. During the project assessment period, members of the public concerned must be kept informed and have the ability to comment on developers' proposals, thus enabling competent authorities and developers to make well-informed decisions.

With reference to recent judgements of the European Court of Justice, the EFTA Surveillance Authority (ESA) has carried out a review of the implementation of Directive 97/11/EC on the assessment of the effects of certain public and private projects on the environment, as amended by Directives 97/11/EC and 2003/35/EC (EIA Directive).

In particular, this review has pinpointed weaknesses in the national legislation of Iceland and Norway with regard to the screening of projects to determine whether they should be subject to an environmental impact assessment (EIA). As a result, ESA maintains that Iceland and Norway have not satisfactorily implemented the EIA Directive.

THE ICELANDIC GOVERNMENT'S REACTION

With regard to the prospects of legal action on behalf of ESA the Government of Iceland has presented a proposal to amend the Environmental Impact Assessment Act No. 106/2000, as amended (EIA Act). The proposal is currently being discussed by the Committee for Environment and Transport in Althingi.

The proposal aims to satisfy the detailed observations of ESA regarding various shortcomings in the current EIA Act. In particular, it is proposed that the Annexes to the Act should be completely rewritten. Currently, Annex 1 lists projects that must be subjected to environmental impact assessment (EIA) and Annex 2 lists projects that must be reported to the Icelandic National Planning Agency (NPA) for screening, while Annex 3 lists criteria which should be taken into account during the screening process according to Annex 2. It should be noted that Annex 3 is a direct translation of Annex III to the EIA Directive.

The amendments propose one Annex to replace Annexes 1-3, which would divide projects into three categories:

Category A:	Projects which must be subjected to EIA. These projects correspond to Annex I of the Directive, i.e. major projects which will normally have significant effects on the environment.
Category B	Projects which are normally below the thresholds in category A. These must be reported to the NPA for screening. The maximum time allowed for screening is 4 weeks after the NPA receives the necessary information about the project, which must be clear enough for interested parties to base their opinion on.
Category C	Projects below the thresholds in category B. These must be reported to the NPA for screening. The maximum time allowed for screening is 2 weeks. The NPA may ask for opinions from the authority which will issue a permit for the project or from other parties, in which case the screening period will be 3 weeks. In most cases there is no lower threshold for projects in this category, which means that very small projects would be subject to screening by the NPA. For example: • the planting of a forest as small as 0,5 hectares • a small brewery outside nature conservation areas • all new roads outside nature conservation areas which are shorter than 10 km.

The committee has received seventeen opinions from interested parties. These opinions show a very mixed reaction but some are very negative towards the proposal, in particular the

Association of Icelandic Local Authorities (Samband), the Confederation of Icelandic Employers, the Icelandic Road Administration and the Iceland Forest Service.

THE SITUATION IN ICELAND AND NORWAY

The University of Reykjavik[1] recently published the results of a research project on screening in Environmental Impact Assessment. The project analysed the screening decisions of the Icelandic NPA from 2004-2009 in order to gain an understanding of the effectiveness of the legal provisions for screening in the EIA Act.

The report concludes that only 8% of the 277 projects subject to screening in this period were made subject to EIA. Road projects are the most common project category subject to screening, followed by sea defence projects, energy projects, mining projects and fish farming. Out of these, road projects are least likely to be made subject to EIA as a result of the screening project.

The authors come to the conclusion that too many projects are subject to the screening project under the current legislation and the report indicates a need to review (and raise) the thresholds in the EIA Act for certain project types, there amongst road projects.

The report also identifies weaknesses in the administrative practice, both regarding the general overview over screening projects and regarding the length of the screening process.[2]

Based on their research the authors discuss the draft proposal which was the basis of the current proposal which is under discussion in Althingi. It is their conclusion that the new categorization in the proposal is neither feasible nor necessary with regard to the case law of the ECJ or publications from the EU Commission.

It seems likely that the main results of the report could also apply to the situation in Norway.

THE NORWEGIAN GOVERNMENT'S REACTION

The review carried out by ESA in 2008 showed that Norway's implementation of the EIA directive has some flaws and ambiguities. The criteria for deciding whether a project in Annex 2 should be assessed or not are imprecise and/or unsuitable, according to the review. Moreover, the demand for the assessment of certain impacts, including cumulative impacts, is ambiguous.

Another question raised by ESA, is whether the unilateral connection of plans in the Norwegian Planning and Building Act really ensures that all plans and programmes falling under the Directive are adequately covered; in particular, plans in waste management, water resource management, the transport sector, electricity sector and petroleum production.

The Norwegian Ministry of Environment is currently making a detailed evaluation of these issues, and it is likely that the legislation on environmental impact assessment in Norway will be changed on several points.

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[1] Authors are Ásdís Hlökk Theodórsdóttir and Sigbjörn Þór Birgisson.

[2] The average length of the screening period was 11 weeks although the EIA Act stipulates that it should only be 4 weeks.

ISSUES OF PARTICULAR CONCERN FOR LOCAL AND REGIONAL AUTHORITIES

Samband has repeatedly stressed the importance of not over-complicating the administrative procedures regarding planning decisions. In particular, Samband has resisted proposals which would lead to a lengthening of the overall period for planning and issuing building or construction permits. The current proposal will lengthen this period by at least two weeks and place new administrative burdens for projects which have until now been exempted from the scope of the EIA Act.

In the opinion of Samband, both ESA and the Icelandic government have failed to consider more practical ways to address the flaws in the current EIA Act, having in mind the principle of subsidiarity. The Ministry has indeed confirmed that the possibility of leaving the screening procedure for minor projects to the planning authorities in each municipality was not discussed with ESA. Instead, the proposal for amending the EIA Act leaves responsibility for the screening process entirely to the National Planning Agency.

A practical solution to this problem which seems well worth exploring is to integrate the screening process of minor projects into the permit procedure. Therefore, Samband has suggested that it might be feasible to trust the planning authorities in each municipality to screen all projects which are below the thresholds in the current legislation on a case by case basis. If a given project raises considerations regarding its environmental impact, the planning authority should ask for the opinion of the National Planning Agency. In this way, the number of projects which must be reported to the NPA would not significantly increase as a result of amendments to the current legislation.

The above solution does not in any way seem to contravene the EIA Directive, as the Directive leaves it to the Member States to determine which competent authority should be responsible for screening.[3] The Directive also recognises that screening may be done by case-by-case examination.[4]

REVISION OF THE EIA DIRECTIVE

On 13 December 2011, the European Parliament and the Council adopted a codified EIA Directive, which was published on 28 January 2012 as Directive 2011/92/EU. Codification simply means the Commission has brought together all existing EU legislation governing environmental impact assessments. The original Environmental Impact Assessment (EIA) Directive and its three subsequent revisions have been combined to create a more compact, clearly translated and user-friendly version. This initiative is part of the review of the EIA Directive, a process which started in 2010 and aims to increase the Directive's environmental protection while reducing administrative burden.

The EU Commission also published a Roadmap early this year announcing the next steps in the revision of the EIA. These will concentrate on the content of the Directive, rather than its format

[3] Article 1.3
[4] Article 4.3

in order to improve environmental protection at national level by ensuring a more consistent and effective application of the principles of environmental assessment. This overarching objective has two sub-objectives, to:

1. Improve the functioning of the EIA Directive by:

- Increasing the degree of harmonisation of national laws.
- Simplifying existing EIA procedures (i.e. screening).
- Reinforcing the quality components of the EIA process (e.g. content of the report, alternatives, review of EIA information, monitoring, validity EIA).
- Clarifying legal and technical issues (i.e. ECJ case-law, quality of the EIA report).

2. Improve the synergies between the EIA Directive and other EU environmental legislation through:

- Ensuring consistency with the international obligations deriving from the Aarhus Convention and the Espoo Convention (including the Protocol on Strategic Environmental Assessment).
- Ensuring better coordination with sectoral policies and assessments required by other Directives (SEA, Habitats and Birds Directives, IPPC, Water Framework…) and simplifying existing assessment and permitting procedures, to the extent possible.

While ensuring that the EIA Directive is implemented effectively and consistently across the EU, it is also necessary to identify areas where improvements are needed, such as implementation gaps, potential for reducing regulatory and administrative burdens, overlaps with other pieces of legislation and inconsistencies with other EU policies. In this regard, the EIA Directive has been identified as a potential instrument for a future simplification exercise.

A Commission working paper will be published in July 2012. Although it may be years until amendments to the EIA Directive will be approved, Member States should take note of the Commission's proposals for amendments to the Directive and avoid taking steps in their national legislation towards increased complexity if such steps run counter to the Commission's proposals.