

Report of the European Union for 2019-2021 on the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context (1991 Espoo Convention)

The European Union recalls its previous replies provided to the Espoo Secretariat in 2003¹, 2006², 2009³, 2012, 2015⁴ and 2019, regarding its competence to answer the questionnaires issued for the review of the Espoo Convention implementation. These responses remain valid and serve as a basis of the European Union's reply to the current questionnaire, subject to the below information.

1. Follow up of the Environmental Impact Assessment (EIA) Directive (Directive 2011/92/EU, as amended by Directive 2014/52/EU)

All Member States have transposed Directive 2014/52/EU, amending Directive 2011/92/EU. Following a thorough assessment of the transposition of the revised Directive into national legislation, infringement procedures for non-conform transposition have been launched against 23 Member States so far. For 3 Member States the procedures have been closed, for the rest – these are on-going.

2. European Commission's notice regarding application of the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU) to changes and extension of projects - Annex I.24 and Annex II.13(a), including main concepts and principles related to these (C/2021/8560)⁵

The aim of notice is to provide clarification to competent authorities and stakeholders on the application of the EIA Directive in the light of the latest case law as provided by the Court of Justice of the European Union (CJEU). In particular, the guidance focuses on changes and extensions of projects under Annex I and Annex II of the EIA Directive and dedicates a specific chapter to the nuclear sector.

In preparing the notice, the Commission took account of the Guidance document on the applicability of the Espoo Convention to lifetime extension of nuclear power plants.

The notice was published in the Official Journal of the EU on 3 December 2021.

3. Case law provided by the Court of Justice of the European Union

¹<http://www.unece.org/fileadmin/DAM/env/eia/documents/Review%202003-2005/Questionnaire%20-%202003%20-%20EC.pdf>

²<http://www.unece.org/fileadmin/DAM/env/eia/documents/Review%202003-2005/Questionnaire%20-%202003-2005%20-%20EU.pdf> and <http://www.unece.org/fileadmin/DAM/env/eia/documents/Review%202003-2005/Questionnaire%20-%202003-2005%20-%20EU%20-%20annex.pdf>

³http://www.unece.org/fileadmin/DAM/env/eia/documents/Review_2006_2009/Questionnaire2006_09_EU_en.pdf and http://www.unece.org/fileadmin/DAM/env/eia/documents/Review_2006_2009/Questionnaire2006_09_EU_reply_en.pdf

⁴http://www.unece.org/fileadmin/DAM/env/eia/documents/Review_2013-2015/Completed_EIA/EU_EIA_2012-2015_07.12.2015.pdf

⁵ [EUR-Lex - 52021XC1203\(01\) - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexuri/cs.do?uri=CELEX:52021XC1203(01):EN:EUR-Lex)

The CJEU is the judicial institution that ensures that the EU law is enforced, interpreted, understood and uniformly applied in all EU Member States.⁶ Thus the CJUE is the **only sources of definite interpretation of the EU law**.

In the period 2019-2021 the CJEU delivered several EIA-related judgments, including:

- **Case C-411/17**

Judgment of the Court (Grand Chamber) of 29 July 2019

Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres

Request for a preliminary ruling from the Cour constitutionnelle

Reference for a preliminary ruling — Environment — Espoo Convention — Aarhus Convention — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 6(3) — Definition of ‘project’ — Assessment of the effects on the site concerned — Article 6(4) — Meaning of ‘imperative reasons of overriding public interest’ — Conservation of wild birds — Directive 2009/147/EC — Assessment of the effects of certain public and private projects on the environment — Directive 2011/92/EU — Article 1(2)(a) — Definition of ‘project’ — Article 2(1) — Article 4(1) — Environmental impact assessment — Article 2(4) — Exemption from assessment — Phasing out of nuclear energy — National legislation providing, first, for restarting industrial production of electricity for a period of almost 10 years at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the date initially set by the national legislature for deactivating and ceasing production at that power station, and second, for deferral, also by 10 years, of the date initially set by the legislature for deactivating and ceasing industrial production of electricity at an active power station — No environmental impact assessment

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- **Case C-280/18**

Judgment of the Court (First Chamber) of 7 November 2019

Alain Flausch and Others v Ypourgos Perivallontos kai Energeias and Others

Request for a preliminary ruling from the Symvoulío tis Epikrateias

Reference for a preliminary ruling — Environment — Assessment of the effects of certain projects on the environment — Public participation in decision-making and access to justice — Date from which the time for bringing proceedings starts to run

[CURIA - List of results \(europa.eu\)](#)

⁶ Articles 251-281 of the TFEU describe the CJEU competences, including the type of proceedings it handles. The various types of proceedings of the Court of Justice include: references for preliminary rulings; actions for failure of Member States to fulfil obligations under EU law; actions for annulment; actions for failure to act; appeals; reviews.[See: https://curia.europa.eu/jcms/jcms/Jo2_7024/en/#competences]

- **Case C-535/18**

Judgment of the Court (First Chamber) of 28 May 2020

IL and Others v Land Nordrhein-Westfalen

Request for a preliminary ruling from the Bundesverwaltungsgericht

Reference for a preliminary ruling – Environment – Aarhus Convention – Directive 2011/92/EU – Assessment of the effects of certain projects on the environment – Public participation in the decision-making process – Irregularities vitiating the procedure for approval of a project – Access to justice – Limitations laid down by national law – Directive 2000/60/EC – EU action in the field of water policy – Deterioration of a body of groundwater – Arrangements for assessment – Right of individuals to take measures in order to prevent pollution – Standing to bring proceedings before the national courts

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