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The reluctant modernization of the German EIA Law

Abstract

This contribution will (1) briefly summarize and discuss main issues of implementation of directive 2014/52/EU into German EIA regulations and (2) go into the details of the development of a central EIA registry in Germany.

The requirement for integrated EIAs will not be a focus here as it is already carried out in practice in Germany as permitting procedures work as one-stop-shop-approaches having coordinating function (Balla & Peters 2015, Geißler et al. 2013).

Central issues in implementing directive 2014/52/EU into German law

The transposition of directive 2014/52/EU in German law has been finalized by the passage of the “Act on the modernization of the Law on Environmental Impact Assessment” (UVPModG) amending the German EIA Act and other sectoral laws on July 22, 2017. Previously an amendment of the German Federal Building Code (May 4, 2017) had transposed the requirements of directive 2014/52/EU related to urban development. Overall the German government has chosen a 1:1 implementation of the directive reluctant to larger innovations of the law which had been called for by experts (e.g. Köppel 2016).

While the amendments have generally been appreciated, certain regulations are criticized quite heavily, with an official complaint against parts of the Federal Building Code pending. Subject of this complaint is the general exemption of certain urban development proposals from environmental assessment (§13b German Federal Building Code). Zoning plans for housing development located adjacent to existing urban areas and stay below a threshold of 10.000m² surface area are exempted from EIA. The impact of this regulation is regarded as being significant.

Another topic of discussion is the new Art. 16 (7) of the German EIA Act which implements Art. 5 (3) of the 2014 EIA-Directive. It plainly states that the “proponent must make sure by adequate means that the EIA report confirms with the requirements [described in the law]” and that “the responsible agency has to ask for improvements within an adequate timeframe, if the EIA report does not meet the requirements”. With this regulation, the German legislator argues that the requirement to ensure adequate quality of the consultants and agency staff is adequately covered. This has been criticized as not being helpful in improving EIA practice in Germany which often is characterized by deficits regarding completeness of the EIA report and adequate use of methods (UVP-Gesellschaft e.V. 2016). From the legal regulations, it cannot be expected

that any formal certification scheme or standards on the expertise of consultants and agency staff will be implemented in Germany and thus the chance to establish a system of quality control as called for previously (e.g. Günther et al. 2017) has been missed. It remains to be seen whether voluntary approaches will be successful.

Development of central EIA registries in Germany

Implementing the requirements from Art. 6 (5) of the revised EU directive, the German law provides regulations for central registries on federal or state level. The combination of the provisions of the new German EIA law and political interests lead to the establishment of several EIA registries, one on the federal level and, so far, 15 on the state level. They are online since June 2017, but with limited functionality and development of other functions still ongoing. The registries shall contain notifications about public display of procedural documents as well as the procedural documents in electronic format.

The federal and state registries use different technical standards and are not coherent in the information provided. This is based, inter alia, on different interpretations of what documents should be accessible and how long they should be available. Due to this heterogeneous background, there are no direct connections of information provided by each registry. Furthermore, none of the registries provides opportunities for the public to submit comments to lead agencies or project proponents directly through the website. The website provides contact information, but based on the interpretation of the legal regulations, comments still must be submitted in formally written form, which excludes for example E-Mails. The potential of tying relevant information across administrative boundaries and of simplifying public involvement through a multi-functional registry was mainly given away. Therefore, it comes as little surprise that no option for online commenting has been found to be in line with the law which is clearly possible in other countries.

Reluctance to early public involvement can also be seen in the timing of the publication of the results of a positive screening determination which according to the law can be made together with the announcement of availability of the EIA report for public review. Thus, the public may only learn about an ongoing EIA when the EIA report has been drafted.

Clearly the case of the central EIA registry in Germany shows relevant drawbacks of federalism and a system with multi-levels of governance overseeing implementation of the EIS directive's requirements. Thus the intended benefits of the initial idea will be outweighed by the fragmented practice so far. On the other hand, as no previous actions had been undertaken in Germany towards EIA registries, a step-wise enhancement and hopefully improvement of the relevant efforts to build more substantial registries might be upcoming.

Literature

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