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## **Analysis of the transposition and implementation of EC Directives concerning environmental impact assessment**

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*Note: Information from and experience of Hnutí DUHA (“RAINBOW Initiative”), Calla, Ochrana vod (“Protection of Waters”), Přátelé přírody (“Friends of Nature”), and Děti Země (“Children of the Earth”) have been used in this analysis*

### Legal Regulations Studied:

- Act No. 100/2001 of the Collection of Laws (“Coll.”), on environmental impact assessment (hereinafter referred to as the “EIA Act”)
  - Amendment to the EIA Act – Parliament Issue No. 1194, presented by the Government to the Parliament on 10 November 2005 and passed by the Parliament
  - Act No. 500/2004 Coll., Administrative Code, Act No. 50/1976 Coll., Building Law, Act No. 114/1992 Coll., on environmental and landscape protection, and other legal regulations concerning authorisation of projects having significant environmental effects
- Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC (hereinafter referred to as the “Directive” )
- Convention on access to information, public participation in decision-making, and access to justice in environmental matters, published in the Collection of International Treaties under No. 124/2004 of the Collection of International Treaties (hereinafter referred to as the “Aarhus Convention”)

### **1. Initial Comments**

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- The Directive is transposed into the Czech national legislation in particular via the EIA Act. However, the Directive regulates not only the environmental impact assessment of projects but also the follow-up binding consent/refusal decision-making process, incl. the possibility of judicial review. Even though the Directive does not stipulate that a binding decision must (directly) result from the EIA procedure, the “logic” of the Directive is based on that assumption. Since procedures conducted on the basis of the Czech EIA Act are not concluded by issuing a binding decision to grant or refuse the development consent for the project concerned but by issuing a non-binding opinion (or conclusion of the ascertainment procedure), also the regulations governing the follow-up administrative process must be considered as regulations transposing the requirements contained in the Directive. The Czech concept of an EIA opinion as non-binding information underlying the follow-up administrative procedure does not, in itself, contradict the requirements of the

Directive. However, the Directive's requirements would have to be integrated also into the regulations governing those follow-up procedures, which has not happened. Thus, there are still many discrepancies between Czech legislation and the Directive, mainly in terms of the regulation of administrative procedures following the EIA process and the possibilities of a review, before a court of law, of the decisions issued in those procedures.

- Another general problem consists in the fact that the Czech EIA Act or any other relevant legal regulation fails to define the expression "public concerned", even though it is a fundamental expression based on the Aarhus Convention, to which the entire mechanism of public participation in the environmental impact assessment, authorisation of projects, and judicial reviews is linked. Thus, Czech legislation in principle provides for a good level of public participation in the EIA process itself (with some specific objections as described below), however – due to non-existing links between the EIA process and the follow-up procedure – it causes substantial problems in the development consent and judicial review phases.
- A majority of the above-mentioned discrepancies have remained unchanged even in the current amendment to the EIA Act drafted by the Czech Ministry of Environment.
- This analysis deals only with environmental impact assessment, leaving aside the subject of strategic assessment, which is not regulated by the Directive.

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## 2. Faulty Transposition

### 2.1. Below-limit projects

- The Act links the assessment of category II projects (Annex No. 1) mostly to the capacity or size thereof, i.e. to a "limit" expressed in metrical units. However, Article 2 (1) of the Directive requires that also "below-limit" projects should be assessed, by virtue of their nature or location. In this part, the EIA Act is in conflict with the Directive.
- The Government is trying to eliminate the contradiction by amending the EIA Act, whereas Section 4 (1) of the amended version sets forth that also any below-limit category II projects shall be assessed provided that the ascertainment procedure establishes that they might have significant impacts on the environment. If the amendment is passed by the Senate and signed by President, the contradiction will be most probably eliminated.

### 2.2. Projects subject to cross-border assessment

- In accordance with Article 7 of the Directive, cross-border assessment applies to all projects that are likely to have significant environmental effects regardless whether they are included in the Annex to the Directive. The decision on whether assessment shall take place or not is based on two criteria. First, the country in whose territory the project is to be implemented is aware of the potential substantial effects; second, the state in whose territory may be substantially affected requests the assessment.
- The EIA Act refers to Annex No. 1 containing a list of projects also in the case of transboundary assessments. Thus, projects not listed in the Annex which are likely to have considerable environmental impacts in another state should not be assessed according to the Czech EIA Act, even though the Directive stipulates that they should be. The Czech regulation contradicts the Directive.

### **2.3. Information concerning the development consent procedure**

- The Czech legal regulation provides for public access to information as well as public participation in the EIA procedure itself. However, it fails to sufficiently envisage informing the public about the follow-up development consent procedures.
- The Directive requests making available to the general public (not only the “public concerned”) information concerning:
  - a) the request for development consent in Article 6 (2) (including information concerning the nature of the development consent procedure, competent authorities, possible public participation in the procedure, deadlines, etc.)
  - b) the contents of the development consent in Article 9 (1)
- The applicable legal regulations fail to respect the requirements mentioned under a) and, thus, contradict the Directive. The amendment to the EIA Act, which is being discussed by the Czech Parliament, endeavours to eliminate this discrepancy partly, however it only envisages publishing some of the information required by the Directive (e.g. request for the development consent, a list of the follow-up decisions and competent authorities). Unlike the Directive, the EIA Act does not require publishing e.g. detail information concerning the course of the procedure (Article 6 (2) (c) of the Directive) or details concerning the manner of public involvement (Article 6 (2) (g) of the Directive). Even if the amendment is passed by the Parliament, it will not meet all the requirements contained in the Directive.
- The requirements mentioned under b) hereinabove are regulated by the Right to Environmental Information Act (Section 10a (5) (d), which – however – fails to be fulfilled in practice (see “implementation issues” below).

### **2.4. Documents/Information underlying the development consent**

- Pursuant to Article 8 of the Directive, the results of consultations and the information gathered during assessment must be taken into consideration in the development consent procedure.
- Pursuant to the provision of Section 10 (3) and (4) of the EIA Act, only the EIA opinion is considered in the follow-up administrative procedure. In practice, the Building Control Offices, which issue planning decisions or planning permissions, use – except in isolated cases – the EIA opinion as the only substantial document of the EIA process. On the other hand, environmental protection bodies very often use also other professional documents of the EIA procedure such as biological assessment, impacts on the territorial system of ecological stability, on surface and underground waters, etc. in their administrative decisions issued in line with Act No. 114/1992 Coll. and Water Act. Nevertheless, as standard practice, the investor submits only the EIA opinion to administration bodies apart from other documents.
- The amended EIA Act does not eliminate the problem.

### **2.5. Participation of the public concerned in development consent procedures**

- Public participation pursuant to the Directive is constructed identically with the definition thereof in the Aarhus Convention. Some of the fundamental rights are granted to every natural and legal person or, in other words, to the public. The so-called “public concerned” is able to enter into assessment and consent procedures to a wider extent. The “public concerned” is defined as the public affected or likely to be affected, or having an interest in, the environmental decision-making procedure. Non-governmental organisations promoting environmental protection are deemed to have an interest in the decision-making procedure.

- Due to the fact that the Czech legal regulations fail to define the term “public concerned” or use the term otherwise, the following problems are encountered:
  - a) The legal regulations link the participation of individuals in the follow-up consent procedures in the area of building activities to ownership of the property, not to whether they will be affected by, or have an interest in, the decision-making process (in particular the provisions of Sections 34 and 59 of the Building Act, which define the range of participants in planning (building) permission procedure).
  - b) Regarding mining operations, an equivalent defect exists in the mining area allotment procedure, where the participants of the consent procedures are also defined on the basis of a potential involvement of their ownership of or another title to the property (the provision of Section 28 (2) of the Mining Act). On the other hand, the definition of participation in a mining permission procedure (Section 18 (1) of Act No. 61/1988 Coll., on mining operations) does not link the participation to the ownership.
  - c) Participation in procedures in which the range of participants is governed by a general regulation, i.e. Administrative Code, is limited. Section 27 of the Administrative Code links the participation to an involvement of rights or obligations but fails to guarantee participation to persons having an interest in the decision-making process. Regarding the environmental protection, the aforesaid can occur in water-law procedures or air protection procedures.
  - d) Pursuant to the provision of Section 23 (9) of the EIA Act, participation of the public (the locally active unit of a civic initiative or non-for-profit society whose objects include the protection of public interests protected under special legal regulations or a municipality affected by the project) is limited by three requirements. Only one of the requirements complies with the Directive (the above-mentioned entities must submit their written comments to the notification, documentation, or opinion within the stipulated deadline). The other two (the competent authority has stated in its position pursuant to Section 10 (1) that the authority’s comments are partly or fully included in its position and the administrative body, as the decision-maker in the follow-up procedure, has not decided that the public interests promoted by the civic initiative are not affected by the follow-up procedure) are beyond the scope of the Directive and cannot be met by activity of the public, since they depend on the will of public authority.
- The amended EIA Act does not eliminate these problems.

## **2.6. Review before a court of law**

- Pursuant to Article 10a of the Directive, the public concerned having a sufficient interest must have access to a review procedure before a court of law (or another independent and impartial body established by law) to challenge the substantive or procedural legality of decisions, acts or omissions (inactivity) concerning public participation in the assessment procedure. The Directive directly includes non-governmental organisations promoting environmental protection among the public concerned having a sufficient interest (Article 10a in combination with Article 1 (2) of the Directive). The review procedure before a court of law must be fair, equitable, timely and not prohibitively expensive.
- The Czech legal regulations (in particular Act No. 150/2002 Coll., on administrative procedures before courts of law) or, precisely, the accustomed interpretation thereof induces the following problems:
  - a) Non-governmental organisations can successfully challenge, before courts, only violation of their procedural rights. Any objections concerning “substantive unlawfulness” will fail.

b) An administrative action does not have suspensory effect automatically. Courts may decide on suspensory effect only if strict requirements are met and do so very seldom and practically never for actions lodged by NGOs. As environmental court proceedings have an average length of more than one year and as an action cannot be lodged immediately after the EIA opinion was issued but only against the issue of a consent (see below), the preparations of the project in question have, in a majority of cases, moved forward a great deal or, in the worse case, the project has been even completed by the time of the court's decision. And no substantial rectification is possible even if the court revokes the consent due to its unlawfulness. Thus, the court protection is neither fair nor timely, which is in conflict with the Directive.

c) Pursuant to Article 10a of the Directive, also the EIA opinion itself should be capable of being reviewed by a court of law, even though it is not a binding decision pursuant to the Czech legislation. Similarly, also the ascertainment procedure conclusion – at least in the cases it closes the EIA process (as implied by the EJC's practice) – should be capable of being reviewed. However, the first attempts to use the Directive for legal actions against an EIA opinion (extension of motorway D1 to six lanes in the Kývalka to Holubice section in the Brno area or construction of road R52 from Brno to Vienna in the Pohořelice-Mikulov section) have been rejected by the administrative court.

d) It is not possible to file a legal action for protection against inactivity regarding a procedure initiated by virtue of office where the competent administrative body fails to initiate the procedure even though it should do so by law. However, the Directive requires access of the public concerned to a review procedure before a court of law also in the event of omissions.

## **2.7. A short deadline for the preparation for public consultations**

- Pursuant to Article 6 (4) of the Directive, the public concerned shall be given early and effective opportunities to participate in decision-making procedures. Under Article 6 (4), reasonable time frames for the different phases shall be provided, allowing for the public concerned to prepare and participate effectively in the decision-making processes.
- Pursuant to the provision of Section 9 (9) of the EIA Act, public consultations on the documentation or opinion are held only if the competent body has received a dissenting standpoint concerning those documents. In line with the provision of Section 17, public consultations must take place not later than within 5 days after the expiry of the deadline for submitting standpoints. If the first dissenting standpoint is received on the last day of the deadline, the public is informed 5 days prior to the date of public consultations. Such a short time contradicts the Directive's requirement for providing a reasonable time frame for preparation and effective participation of the public in the process.

### 3. Faulty Implementation

#### 3.1. Low professional quality of the information

- Pursuant to the Directive's preamble, the best environmental policy consists in prevention of pollution or nuisance at source. In addition, the preamble stipulates that such preventive action can be achieved only through environmental impact assessment and that the assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question.
- Pursuant to Article 3 of the Directive, the assessment must identify, describe and assess in an appropriate manner the direct and indirect effects of a project on human beings, fauna, flora, soil, water, etc.
- In the Czech Republic it frequently happens that the assessment is based on faulty, incomplete, or otherwise deficient information. Thus, the assessment is conducted on the basis of e.g. obsolete information (such as field surveys of the occurrence of highly protected flora and fauna species and their biotopes); some information is missing at all, indirect and cumulative impacts (in particular the volume of traffic) or long-term impacts, etc. are not assessed at all.
- Thus, the assessment often fails to consider appropriate information and to be conducted in an appropriate manner, which contradicts the Directive.

#### **Examples:**

##### **Opatovice Incinerator**

*Regarding the planned construction of a municipal refuse incinerator in Opatovice, the Ministry of Environment – as the competent authority – failed to assess the manner of handling the produced fly ash and slag, being satisfied with the so-called “no conclusion”. Thus, the environmental impact assessment did not include e.g. the produced waste disposal and related volume of traffic.*

##### **D1**

*Already the current intensity of the traffic on motorway D1 leads, in several municipalities situated nearby, to a substantial excess of the noise and ash particle air pollution limits laid down by the applicable legislation. Moreover, the people in the villages of Troubsko, Ostopovice, Omice, in the Brno-Bosonohy city part, and in other villages and city parts south and southwest of Brno are likely to be exposed to even higher traffic volumes as a result of the construction of additional transport structures (in particular speedway R43 from the Troubsko junction of motorway D1 via a densely populated part of Brno (Bystrc), along the Brno water reservoir holiday resort, in the direction of Kuřim; and road R52 from Brno and then from Pohořelice to Mikulov and towards Vienna along the Pálava Protected Landscape Area, which is part of NATURA 2000, and a valuable vineyard region landscape). In spite of the aforesaid, the EIA process concerning the extension of motorway D1 to six lanes in the Kývalka – Holubice section (the Ministry of Environment's opinion was issued on 24 February 2005) did not take into consideration the combined impacts of all the said structures. Moreover, the assessment failed to take into account the risk of impairment of the local people's health by miniature ash particles (P 2.5), for which no immission limits have been defined by now.*

##### **R52**

*Also in this case, the impacts of the project failed to be assessed in combination with the impacts of the other structures, in particular heavier traffic (interference of transit truck transport with the Lednice-Valtice area and with the overloaded area southeast of Brno). The project's effects on the landscape character of Mikulov and its surroundings and on the “Lower Moravia” UNESCO biosphere reserve were not assessed sufficiently and objectively. In addition, the EIA opinion issued by the Ministry of Environment is in conflict with its own position concerning the “Proposed concept of development of transport networks in the Czech Republic by 2010” (“SEA” opinion) dated 24 June 1999, in which the Ministry recommends building a motorway D2 bypass around Břeclav up to the state border as a new four-lane road R55 (currently two lanes) instead of building a new road R52 in the Pohořelice – Mikulov section.*

### 3.2. Exceptional non-assessment

- Article 6 (3) of the Directive permits exemption of a project from the assessment procedure in exceptional cases.
- This is regulated in the provisions of Section 4 (2) and Section 23 (7) of the EIA Act, where the possible exemption from the assessment procedure is linked to several exceptional circumstances such as natural disasters, emergencies, etc.
- In line with both the Directive and the EIA Act, exemption of a project is subject to considering a substitute assessment and subject to appropriate information being supplied to the European Commission and public concerned.
- In practice, these provisions are abused in some areas:
  - a) they are not used in exceptional cases only but ordinarily to circumvent the Directive and the EIA Act;
  - b) no substitute assessment is considered or conducted;
  - c) the European Commission or the public concerned are not informed.
- In particular the area of repair and construction of flood control structures can be seen as problematic. The situation is even more complicated due to the fact that the provision of Section 137a of the Building Law permits the building of certain significant structures without a prior authorisation of the construction, on the basis of a notification of such projects (this provision in itself contradicts the Directive, which stipulates that all projects likely to substantially affect the environment shall be assessed; the project definition is not linked to the authorisation). However, the procedures are very frequently conducted on the basis of the Nature and Landscape Protection Act or other environmental regulations.

**Examples:**

**Repair of the Odra River right bank protection between 10.0 km and 10.9 km in Ostrava Hrušov**

*The riverbank protection was destroyed after the 1997 floods, a natural bank being left. A part of the natural bank (900 m) was reinforced with stone during 2005. Different procedures, concluded by a water-law procedure, took place (Section 4 (2), Section 56 (1) of Act No. 114/92 Coll.). The structure was built and approved without any environmental impact assessment even though it was undoubtedly one of the flood-relief works as defined in the Directive .*

**Modifications of Ostravice River in Frýdlant nad Ostravicí**

*No decision in line with Section 4 (2) of Act No. 114/1992 Coll. is available for this project (the one available was revoked by a court of law). Similarly, no decision pursuant to Section 56 (1) of Act No. 114/1992 Coll. and no water-law decision are available for this project. In September 2000, the said modification of Ostravice River started without any prior administrative procedure. The presence of highly protected alpine bullhead, yellow-bellied toad, noble crayfish, and other species was demonstrated. On request from non-governmental organisation, the Czech Environmental Inspection stopped the construction due to absence of a binding opinion pursuant to Section 4 (2) of Act No. 114/1992 Coll. The opinion was later issued without any environmental impact assessment. The construction has been completed by now.*

### 3.3. Alternatives

- Pursuant to Article 5 (1) in combination with Annex IV to the Directive, the developer is required to supply, *inter alia*, “an outline of the main alternatives studies by the developer and an indication of the main reasons for his choice, taking into account the environmental effects”.
- Pursuant to the provision of Section 6 (2), Section 8 (1), Section 9 (2) and Annexes 3, 4 and 5 of the EIA Act, the notification, documentation and opinion shall include a summary

of the envisaged alternatives and the main reasons (taking into account also the environmental effects) for the selection/rejection thereof.

- In practice, the developer – with the consent of the competent administrative bodies – often submits the documents/information required by law:
- without indicating any alternatives;
- a) with indicating alternatives that contain only partial technical differences and fail to take into account any other possible locations, technologies, etc.

**Examples:**

**Speedway R52**

*Different feasible corridors of the Brno – Vienna transport connection, in particular the possibility to use the existing Brno – Břeclav motorway D2 and to build a sufficient-capacity bypass around Břeclav as R55, should have been considered and the environmental impacts as compared with a new R52 from Pohořelice to Mikulov should have been assessed in an EIA procedure. However, such assessment has never taken place. The failure to consider feasible alternatives of the Brno – Vienna connection is i.a. a breach of the EU directives concerning the protection of priority species and habitats, which stipulate that the Natura 2000 areas may be affected only if there is no other, environmental-friendlier alternative.*

**Hradec Králové Bus Station**

*Even though two alternatives had been considered for years (differing in terms of location: a locality near Koruna and a locality near the Employment Office), the developer presented only one alternative within the EIA procedure while other alternatives were not even mentioned.*

**Přelouč Locks**

*The Czech Directorate of Waterways intends to make Labe River navigable up to Pardubice, for which purpose two “green-field” navigation canals should be built along the trunk stream of Labe. One of the canals (with a length of 3.1 km) should cross Slavíkovy Islands, a significant landscape element and one of a few preserved blind branches of Labe. The construction of the canal will destroy the biotopes of highly protected fauna species (Slavíkovy Islands have 50 highly protected fauna species including large blue butterfly, which is protected Europe-wide). The EIA procedure, within which two alternatives that were designed identically in the section crossing the Slavík Islands were assessed, took place in 2000 and an EIA opinion was issued on 29 September 2000.*

**3.4. Assessment of parts of projects (the so-called “salami method”)**

- Pursuant to Article 1 (1) and (2), Article 2 (1) and Annexes II and III of the Directive, environmental effects of “projects” shall be assessed.
- Pursuant to Article 3 of the Directive, the direct and indirect effects of a project on the individual factors and components of the environment, including the interaction between them.
- Pursuant to the provision of Section 4 (1) and Annex No. 1 of the EIA Act, “plans” shall be assessed.
- Pursuant to Section 2 and Section 5 of the EIA Act, the direct and indirect effects on public health and on individual components of the environment and mutual interaction and links between them shall be assessed.
- Pursuant to the provision of Section 5 (2), the individual stages of long-time plans shall be assessed separately and within the context of the environmental impacts of the plan as a whole.
- However, only short sections are often assessed in practice, especially as regards line projects, which does not provide for a sufficiently comprehensive assessment

including evaluation of indirect impacts and interactions between the individual impacts. Moreover, the environmentally less questionable parts of projects are often “logically” authorised and built first, which in fact predetermines the following route of the project even across an ecologically valuable territory.

**Examples:**

**Construction of Motorway D8**

*The section crossing the České Středohoří Protected Landscape Area (section 0805) was most objectionable in terms of environmental protection. Therefore, the developer started with the construction of section 0806 between Ústí nad Labem and the edge of the Protected Landscape Area (the construction was commenced in 1984). Afterwards, section 0804 was authorised and led the motorway up to the edge of the Protected Landscape Area from the other side. Consequently, there was no other choice but to lead the motorway across the PLA (for which purpose the Ministry of Environment granted an exemption from the PLA protection).*

### 3.5. Failure to publish final consents

- Pursuant to Article 9 of the Directive, the content of the decision to grant or refuse development consent and any conditions attached thereto, the main reasons and considerations on which the decision is based, as well as a description of the main measures to avoid, reduce and offset the major adverse effects shall be published.
- Pursuant to the provision of Section 10a (5) (d) of Act No. 123/1998 Coll., on the right to environmental information, administrative decisions shall be actively published if the publication is conditioned by the issuance of an environmental impact assessment opinion pursuant to a special legal regulation.
- The above-cited provision of the Right to Environmental Information Act:
  - a) is not applied in practice
  - b) if interpreted literally (which method is in fact used most frequently), does not include consents where the procedure was closed with the conclusion that no assessment would be conducted.

### 3.6. Failure to conduct transboundary assessments

- Pursuant to Article 7 of the Directive, all projects likely to have significant environmental impacts regardless whether listed in Annex to the Directive or not shall be subjected to a transboundary assessment.
- In fact, the transboundary assessment frequently does not take place even if the neighbouring state wishes to participate in the assessment (which the Directive deems to be one of the possible “trigger” mechanisms – see Article 7).

**Example:**

**Speedway R 52**

*Even though the construction would have had immediate effects on Austria, the so-called “transboundary” EIA was not conducted, which was in conflict with the applicable legislation. The Austrian Federal Ministry for Agriculture and Forest Management, Environment, and Water Management submitted its position on behalf of the Republic of Austria, expressly citing Article 3 of the Espoo Convention. Besides, the letter contained a number of additional requirements and proposals concerning the subsequent assessment of the project and was concluded by a general request that the Czech Ministry of Environment take into account the positions of the Austrian Ministry and the public in its decisions and communicate the manner of doing the same. I.e., the Republic of Austria, as a party concerned (within the meaning of Article 1.3 of the*

*Espoo Convention) responded to the Notification in a manner clearly indicating its wish to participate in a transboundary assessment; in no case the letter implied the contrary. In addition to the Austrian Ministry's position, the Czech Ministry of Environment received comments from other Austrian administrative bodies, municipalities, and persons. Yet, the Ministry of Environment conducted the assessment procedure on the basis of a wrong and unjustified assumption that the project did not meet the requirements for transboundary assessment.*

## 4. Proposed action

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The analysis implies many drawbacks of the Czech regulations (transposition issues) or application practice (implementation issues), which need to be eliminated in order for the Czech Republic to meet the obligations arising from its EU membership. The specific actions in these areas emerge from the description of the issues.

In addition we should point out several problems that impair the overall effectiveness of the environmental impact assessment institute and that are not at all or only insufficiently regulated in the Directive. To rectify those problems, the Directive would have to be amended. The following part will outline two troublesome areas that were identified as very important during the analysis.

### 4.1. Alternatives

- Assessing feasible alternatives of a project in order to minimize the environmental impacts is one of the crucial aspects of an effective EIA process. The EIA procedure should contribute to the selection and authorisation of a project alternative being least harmful to the environment while technically and economically practicable. To this end, the individual alternatives must be analysed to a certain, comparable degree in order to allow reasonable comparison.

Despite the extraordinary importance of alternative-based assessments, the Directive pays insufficient attention to alternatives, stipulating only that the information submitted by the developer shall include *i.a.* an outline of the main alternatives studied by the developer with an indication of the main reasons for the selection of the assessed alternative, taking into account the environmental effects (Annex IV (2) of the Directive).

- The Directive does not clearly imply the developer's obligation to consider and – at least within the first phase – reasonably assess all possible alternatives. The current version of the Directive enables the developer to use only impracticable alternatives for reference (thanks to which the developer's original project is automatically selected as the most convenient one). In addition, the Directive does not make sure that the reference alternatives are analysed (regarding the technical, technological and constructional aspects thereof) in order to be comparable.
- Similarly, the Directive fails to lay down a clear authority (and obligation) for administrative bodies to require the developer to assess any existing feasible alternatives that the developer did not proposed as alternatives for assessment.

### 4.2. EIA / SEA links

- Regarding in particular infrastructure constructions (mainly transport structures) and other public service projects, problems consist in the fact that the assessment of a specific project (such as a motorway) is not preceded by a due assessment of the overall concept.
- Regarding public service projects (e.g. transport projects, energy supplies, waste disposal, water management), the studied (and prepared) alternatives must however include also alternatives concerning the overall solution of the problem in question. Thus, we should avoid situations when e.g. a municipal waste incinerator project is assessed without examining and assessing the possibilities of a reduction of waste production and other methods of waste disposal (recycling, composting, etc.). In many cases, the system alternatives can be most efficiently assessed within the assessment of concepts (see below). Nevertheless, if such concept assessment has not taken place (mainly due to the fact that no concept is available), the project should include also alternative solu-

tions of the problem in addition to the alternative solutions to the project (plan). Where such assessment of alternative solutions of the problem cannot be carried out within the project assessment due to a high complexity and wide scope of the problem, the project assessment and implementation should be put off until a concept is available and assessed. This applies in particular to projects financed from public budgets including that of the EU.

- The Directive does not in any way require linking the project and strategic assessment. No such obligation is laid down in Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment either. On the contrary, Article 11 of that Directive lays down that an environmental assessment carried out under that Directive be without prejudice to any requirements under the Directive. Similarly, Directive 2003/35/EC providing for public participation in respect of the drawing of plans and programmes other than those covered by Directive 2001/42/EC fails to stipulate the desirable linkage between project and strategic assessment, too.

**Example:**

**Speedway R52:**

*Pursuant to the provision of Section 9 (1) of the Building Law, major corridors within the transport and technical infrastructure are defined in the territorial plans of large territorial units. No valid territorial plan of any large territorial unit (LTU) contains speedway R52. At the moment, the process of acquisition of information and documents for the Břeclavsko LTU territorial plan is underway. The R52 project, if implemented, would undoubtedly become part of the transport infrastructure network of supra-local importance in the Region of South Moravia. It was assessed in an environmental impact assessment procedure in accordance with the provision of Section 4 et seq. of Act No. 100/2001 Coll. (the so-called "project EIA") despite the fact that the process of acquisition of the zoning and planning documentation of the LTU, which would define a corridor for the location of that project, had not been completed and despite the fact that no "opinion on the concept" in line with the provision of Section 10g of Act No. 100/2001 Coll. ("strategic EIA") had been issued. However, during the assessment of and consultations on the territorial plan, the developer and the Region of South Moravia, promoting the alternative recommended in the EIA opinion, refuse to assess any other alternatives of the Brno – Vienna motorway connection, citing the EIA opinion. As a result, such alternatives will be assessed neither in the SEA process nor in the EIA process.*

**Note:**

*This document has been drawn up with European Union financial assistance. The Environmental Law Service is solely responsible for the contents hereof and in no case this document can be construed as the European Union's standpoint.*