



NOTAT

28. februar 2025
2024-5428

Nabotjek af Holland, Tyskland og Sverige om implementeringen af VVM-direktivets og SMV-direktivets høringsregler

Nedenfor er indarbejdet de modtagne svar fra Holland, Tyskland og Sverige.

Holland

How are the directives implemented in your country?

There are several laws and regulations that ensure the harmonisation of EU Directives within the Dutch legal framework. Most details of the 'Directive on the assessment of the effects of certain plans and programmes on the environment' and 'the Directive on the assessment of the effects of certain public and private projects on the environment' are covered by article 16.4. 'Milieueffectrapportage' 'Omgevingswet'.

Furthermore, article 3.4 of the Algemene Wet Bestuursrecht (Awb) describes the conditions regarding the execution of 'zienswijze procedures' (mandatory consultation procedures).

Articles 3.5 and 3.6 are also of importance. The 'Algemene termijnenwet' describes all time limits related to mandatory consultation procedures in the Netherlands. The Algemene verordening gegevensbescherming (AVG) covers the regulations regarding the protection of personal data of participants.

What are the rules regarding how to make the draft plan or programme and the environmental report available to the public?

The environmental impact assessment is made in the preparation process of any plan or program and should be part of the discovery in which it is made visible as such. In case it is not part of a plan or



program yet, the EIA should be discovered during the 'terinzagelegging' (availability for inspection by the public). Furthermore, during the notification, the EIA report is mentioned again.

What rules specify how environmental report should be made available to the public?

Since the EIA needs to be part of the availability for inspection by the public, the report should be made available via a printed copy to the public by law. Furthermore, it needs to be attached during the notification of the plan or program.

Are there specific rules regulating the period of time the public shall have to express their opinion?

The public has a time frame of 6 weeks to express opinions unless there is a legal change to enlarge the period of time.

Regarding the Directive on the assessment of the effects of certain plans and programmes on the environment: Are there specific rules regarding public meetings where the plan or programme and the results of the environmental report are presented?

It has to be presented either:

- As integral part of the plan or project itself
- During the availability for inspection by the public (If it is not part of the plan or project yet, it needs to be presented).

Before the moment of availability for inspection by the public the related governmental body needs to present information regarding the plan or program in an official governmental journal. Furthermore, it needs to be shared during the official notification.

Regarding the Directive on the assessment of the effects of certain public and private projects on the environment: Are there specific rules setting out a requirement for presenting the environmental report at a public meeting?

No.



Tyskland

How are the directives implemented in your country?

In Germany the EIA-Directive and the SEA-Directive are essentially implemented through the Federal Environmental Impact Assessment Act (EIAA), (Gesetz über die Umweltverträglichkeitsprüfung - UVPG). Especially for the rules on public hearing the EIAA refers to the more general rules of the Administrative Procedure Act (VwVfG).

Some special rules on EIA and SEA follow from other (special) legislation on federal level and the level of the federal states (Länder).

What are the rules regarding how to make the draft plan or programme and the environmental report available to the public?

For the application for authorization of a project, which has to undergo an EIA:

Section 18 subsection 1 of the Environmental Impact Assessment Act (EIAA) reads as follows:

Section 18 Public participation

- (1) The competent authority shall ensure public participation with regard to the environmental effects of the project. In the context of such participation, the public concerned shall be given an opportunity to comment. Associations that are recognised in accordance with the Environmental Appeals Act (UmwRG) shall support the competent authority in a way that fosters environmental protection. The public participation procedure shall comply with the requirements of Section 73 subsection (3), first sentence, and subsections (5) to (7) of the Administrative Procedure Act (VwVfG).

Section 73 subsection (3), first sentence, and subsection (5) to (7) of the Administrative Procedure Act (VwVfG) reads as follows:

73. Hearings

- (3) Within three weeks of receiving the plan, the communities referred



to in subsection 2 shall make the plan available for inspection for a period of one month. (...)

(5) Those communities in which the plan is to be made public shall give advance notice of the fact according to local custom. The announcement shall state:

1. where and for what period the plan is open to inspection;
2. (...);
3. (...)
4. that:
 - a) those persons who lodge objections may be informed of the dates of meetings for discussion by public announcement,
 - b) (...)

(6) Following the closing date for lodging objections, the hearing authority shall discuss those objections made to the plan in good time, and the opinions of the authorities with regard to the plan, with the project developer, the authorities, the persons affected by the plan and those who have lodged objections to it. The date of the meeting for discussion must be announced at least a week beforehand in the manner usual in the district. The authorities, the project developer and those who have lodged objections shall be informed of the date set for discussion of the plan. If apart from notifications to authorities and the project developer more than 50 notifications must be sent, this may be replaced by public announcement. Public announcement shall be effected, notwithstanding sentence 2, by publishing the date of the meeting for discussion in the official journal of the hearing authority, and also in local daily newspapers with wide circulation in the district in which the project may be expected to have its effect. The period referred to in the second sentence shall be calculated from the date of publication in the official bulletin. In other respects, the discussion shall be governed by the provisions concerning oral hearings in formal administrative proceedings (section 67, subsection 1, third sentence, subsection 2, nos. 1 and 4 and subsection 3, and section 68) as appropriate. Discussion shall be concluded within three months of the closing date for lodging objections.

(7) Notwithstanding the provisions of subsection 6, second to fifth sentences, the date of the meeting for



discussion may already be fixed in the announcement in accordance with subsection 5, second sentence.

Section 27a of the Administrative Procedure Act (VwVfG) reads as follows:

§ 27a Announcement on the Internet

- (1) Where a public or local announcement is ordered by law, this shall be effected by making the content of the notice also accessible on a website of the authority or its administrative body. Unless otherwise provided by law, the provision of the notice on the internet in accordance with sentence 1 shall be decisive for compliance with a prescribed period.
- (2) Subsection 1 shall not apply if access on the Internet is not possible, in particular for technical reasons.

Section § 27b of the Administrative Procedure Act (VwVfG) reads in excerpts as follows:

§ 27b Access to documents to be displayed

- (1) Where the display of documents for inspection is ordered by law, it shall be effected by making the documents accessible to the public
 1. on a website of the competent authority or its administrative body, and
 2. in at least one other way.If publication of the documents to be displayed on the Internet is not possible, in particular for technical reasons, the ordered display is effected for inspection by the other access option according to sentence 1 number 2.
- (2) The announcement of the design shall state
 1. the period of display,
 2. the website on which the access is made available, and
 3. type and location of the other access option.
- (3) (...).
- (4) If the documents to be displayed contain secrets pursuant to section 30, the person who must submit these documents is obliged:
 1. to identify these secrets and



2. to submit to the authority for display purposes a presentation describing the content of the relevant parts of the documents without disclosing the secrets.

Section 19 to 20 of the Environmental Impact Assessment Act reads in excerpts as follows:

Section 19 Informing the public

In the announcement at the beginning of the participation procedure, the competent authority shall inform the public of the following:

1. the application for an approval decision or any other act by the developer to initiate a procedure for assessing the environmental impact,
2. the determination that the EIA obligation applies to the project in accordance with Section 5 and, if necessary, the need for transboundary participation in accordance with Sections 54 to 56,
3. (...),
4. (...),
5. the availability of an EIA report,
6. the description of the decision-relevant reports and recommendations relating to the project that are available to the competent authority at the beginning of the participation procedure,
7. where and for what period the documents in accordance with numbers 5 and 6 are displayed for inspection, and
8. (...).

(2) As part of the participation procedure, the competent authority shall display at least the following documents for public inspection:

1. the EIA report,
2. the decision-relevant reports and recommendations relating to the project that are available to the competent authority at the beginning of the participation procedure. (...).

(3) Additional information that may be of significance for the approval decision and that only reaches the competent authority after the beginning of the participation procedure shall be made accessible to the public in accordance with the federal and Land provisions on access to environmental information.



Section 20 Central web portals; authorisation to issue ordinances

(1) In order to make available on the Internet the contents of the announcement in accordance with Section 19 subsection (1) and the documents to be displayed in accordance with Section 19 subsection (2), the Federation and Länder shall establish central web portals. The contents of the announcement and documents shall be made available on the central web portal of the Federation if the approval authority is a federal authority. The Federal Environment Agency (UBA) shall be responsible for the establishment and operation of the Federation central web portal.

(2) The competent authority shall make available the contents of the announcement in accordance with Section 19 subsection (1) and the documents specified in Section 19 subsection (2), first sentence, numbers 1 and 2 via the relevant central web portal.

(3) – (5) (...).

For draft plans and Programmes / environmental report (relevant for implementation of SEA-Directive):

Section 42 EIAA Public participation

(1) Section 18 subsection (1) and Sections 19, 21 subsection 1 and 22 shall apply mutatis mutandis to public participation, except as otherwise specified below.

(2) The draft plan or programme, the environmental report and other documents that the competent authority feels it expedient to include shall be displayed for public inspection at an early stage for an adequate period of at least one month. With due regard to the nature and contents of the plan or programme, the display locations shall be determined by the competent authority in such a way as to ensure effective participation of the public concerned.

(3) The public concerned may comment on the draft plan or programme and on the environmental report. The competent authority shall set an adequate time limit for the submission of these comments of at least one month after the end of the inspection period. (...) A discussion of objections shall be held,



where this is prescribed by federal statutory provisions for certain plans and programmes.

What rules specify how environmental report should be made available to the public?

See answer above.

Are there specific rules regulating the period of time the public shall have to express their opinion?

Section 21 subsection 2 and 3 EIAA: the time limit for submitting comments shall end one month after expiry of the time limit for the display of documents. For projects for which a significant volume of documents have been submitted, the competent authority may determine a longer time limit for submitting comments.

Section 10 subsection 3 Federal Immission Control Act (Bundes-Immissionsschutzgesetz – BImSchG): two weeks after expiry of the time limit for the display of documents.

Regarding the Directive on the assessment of the effects of certain plans and programmes on the environment: Are there specific rules regarding public meetings where the plan or programme and the results of the environmental report are presented?

No, but see above section 42 subsection 3 last sentence EIAA: Similar to public meetings in procedures with EIA (see next question) some federal statutory provisions contain specific rules regarding public hearings, where the objections and other comments made by members of the public are discussed.

Regarding the Directive on the assessment of the effects of certain public and private projects on the environment: Are there specific rules setting out a requirement for presenting the environmental report at a public meeting?

For EIA there are specific rules regarding public hearings, where the objections and other comments made by members of the public are discussed (see section 73 subsection 6), but there are no rules regarding public meetings, where the plan or programme and the results of the environmental report are presented.



Sverige

How are the directives implemented in your country?

Both directives are implemented principally in chapter 6 of the Environmental Code (EC) and the environmental assessment ordinance (miljöbedömningsförordningen [2017:966]).

There is also sectoral legislation which contains specific rules for a certain sector, for example construction or transport. Many plans and programmes (for example spatial plans) are drawn up and decided upon according to the planning and construction act (plan- och bygglagen [2010:900], PBL).

What are the rules regarding how to make the draft plan or programme and the environmental report available to the public?

Ch. 6 section 3 of the EC states that certain plans and programmes which are required by law and drawn up or amended by government agencies or municipal authorities are subject to strategic environmental assessment if the plan or the programme or its amendment are likely to have a significant environmental effect. Initially it must be examined if ch. 6 section 3 of the EC applies to the plan or the programme. Then a screening may be necessary to examine if it is likely that the plan or the programme has a significant environmental effect (se ch. 6 section 5 of the EC and sections 2-5 of the ordinance). If screening is required, a consultation must also take place (se ch. 6 section 6 of the EC) which then results in a decision about the environmental effect (se ch. 6 section 7 of the EC). At this stage county board administration, municipal authorities and government authorities with specific responsibilities for the environment are to be consulted. There are no specific rules what the draft for the screening should include. The Swedish Environmental Protection Agency has a guidance (NFS 2009:1) about what a draft should include and how long a consultation should be. If it is appropriate the consultation for the screening can be coordinated with the consultation for the scouping (se ch. 6 section 10 of the EC). In order to avoid parallel processes, there are references in the sectorial legislation to the EC, e.g. in the PBL to ch. 6 sections 6, 9 and 10 of the EC.

Ch. 6 section 15 of the EC states that the municipal or the government authority which is responsible to draw up a draft plan or programme is also, as early as possible during the procedure, to prepare the environmental impact assessment report and make them



available to the public and relevant authorities. The responsible authority must also give information on how the draft plan or programme and the environmental impact assessment report are made accessible, as well as how and within what timeframe opinions can be submitted. The timeframe to comment must be appropriate.

It is not a general requirement that the draft plan or programme and the environmental impact assessment report must be publicly announced (kungörelse). The public can request to obtain documents and thereby have access to them according to the national legislation concerning public access to documents. In order to inform all parties concerned about consultations it is considered to be appropriate to provide information on the municipality's notice board and the municipality's or the responsible authority's website.

There are even rules in the sectorial legislation concerning the consultation procedure which applies to specific plans or programmes, for example spatial plans. The consultation in such cases should also fulfil the requirements for consultation for a certain type of spatial plans, see ch 5 sections 11–20 of the PBL on consultation and announcement of municipal detailed development plans. When drawing up a municipal detailed development plan even the public concerned is to be consulted (see ch 5 section 11 of the PBL). There are detailed regulations in the PBL about that some municipal detailed development plans must be publicly announced (kungörelse) and how this must be done (see ch 5 sections 11c and 11d of the PBL).

What rules specify how environmental report should be made available to the public?

Ch 6 section 7 of the EC states that the responsible authority after a screening, if a screening was done, must take a decision on if a plan or a program is likely to have a significant environmental effect and make the decision available to the public. How the decision is to be made available to the public must be decided on a case-to-case basis. It is considered to be appropriate to make the decision available on the authority's website. The public can request to obtain documents from the responsible authority and thereby have access to the decision according to the national legislation concerning public access to documents. Ch 6 section 17 of the EC states that when a plan or a program which is subject to a strategic environmental assessment has been decided upon the responsible authority must inform the public and other relevant parties (municipal authorities and government authorities with specific



responsibilities for the environment) and make the plan or the programme together with the decision (what a decision must contain is detailed in ch 6 section 16 of the EC and) available. There are no general requirements about how the public and other relevant parties must be informed. It is considered to be appropriate to provide information on the responsible authority's notice board and its website or in newspapers. It is not a general requirement that the environmental report should be publicly announced (kungörelse). The public can request to obtain documents from the responsible authority and thereby have access to the report according to the national legislation concerning public access to documents. However, there are specific rules in the sectorial legislation concerning sectorial plans or programmes which include how the environmental report must be made available to the public, e.g. in the case of municipal detailed development plans (see ch 5 of the PBL).

Concerning projects, it is the responsibility of the developer to have a screening and a scoping consultation and prepare the environmental impact assessment report. The consultation documents both for screening and scoping are to be made available to the public concerned and the authorities concerned by the developer (see ch 6 sections 25 and 31 of the EC). The developer is to give a timeframe which is appropriate and makes the consultation meaningful for the procedure (see ch 6 sections 25 and 31 of the EC). What an appropriate timeframe is must be decided on a case-to-case basis. There are no specific rules as to how the consultation documents are to be made available to the public concerned. There is however a court judgement that states that the announcement/invitation to a consultation should be made in a way that the public concerned gets the information and understands what possible impacts the project might have (see MÖD 2022:27). After screening (and a screening consultation) the county administrative board must take a decision about the environmental effect of the project (see ch 6 section 26 of the EC).

According to ch 6 section 26 the county administrative board must after a screening, if a screening was done, take a decision on if a project is likely to have a significant environmental effect. In the memorandum "Ett förbättrat genomförande av MKB-direktivet" there is a proposed amendment of this section about that the county administrative board also must make the decision available to the public. The environmental impact assessment report is a part of the developer's application for a permit. Having received the application, the permitting authority is to let the public concerned express their opinion on the application and thereafter assess the environmental impact and give a permit or decline the



application (see ch 6 section 28 of the EC). If the environmental impact assessment report is complete and meets the requirements, the permitting authority must publicly announce (kungöra) it together with the application and leave an appropriate timeframe, but not less than 30 days, for the public to express their opinion (see ch 6 section 39 of the EC). According to ch 6 section 40 of the EC the public announcement must include information about how long the timeframe is for expressing an opinion, how and where the documents are accessible, where the opinions must be sent to and how new information about the case/the permitting procedure shall be announced or made available.

In the latest inquiry about changes to the Swedish permitting system (SOU 2024:98) there is a proposed amendment of ch 6 section 40 of the EC. It clarifies that the public announcement must refer to a certain website or a certain location where the documents are available to the public concerned. It also requires that a consultation meeting is arranged with the developer with details of time and place for the meeting.

In the latest inquiry (SOU 2024:98) there is a proposed legislation which makes it possible to regulate in detail how the public announcement of the permit application shall be made (an amendment of ch 6 section 39 of the EC).

Are there specific rules regulating the period of time the public shall have to express their opinion?

As mentioned above, ch 6 section 15 of the EC states regarding plans or programmes that the timeframe for the public to comment must be appropriate. What counts as an appropriate timeframe depends on the type or the complexity of the plan or the programme. According to the guidance of the Swedish Environmental Agency (NFS 2009:1), there should be a period of at least three weeks for the public to be able to express their opinion.

Ch 5 section 11 c of the PLB states that the consultation timeframe regarding the draft of certain municipal detailed development plans must be at least three weeks.

Regarding projects, see above about ch 6 sections 25, 31 and 39 of the EC.

**Regarding the Directive on the assessment of the effects of certain plans and programmes on the environment:
Are there specific rules regarding public meetings where**



the plan or programme and the results of the environmental report are presented?

There are no specific rules requiring a public meeting where the adopted plan or programme and the environmental report, are presented. However, there is a possibility to arrange a public meeting as a part of the consultation regarding the draft of certain municipal detailed development plans (see ch 5 section 11d of the PBL).

Regarding the Directive on the assessment of the effects of certain public and private projects on the environment: Are there specific rules setting out a requirement for presenting the environmental report at a public meeting?

There are no specific rules requiring a public meeting for presenting the environmental report either before or after the permitting process. Ch 6 section 44 of the EC states however that the permitting authority, when it has decided upon a permit that required an environmental impact assessment, must publicly announce its decision as soon as possible. The announcement must contain information about how the public can get access to the decision/permit which includes also the environmental report.

More detailed information and guidance about how the directives are implemented in Sweden are available on the internet website of the Swedish Environmental Protection Agency:
<https://www.naturvardsverket.se/vagledning-och-stod/miljobalken/miljobedomningar/>