



GOVERNMENT OF MALTA

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## Government response to the Consultation on the Environmental Impact Assessment (Amendment) Regulations, 2020

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Marsa MRS 1441*

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# Executive Summary

## Introduction and overview

On the 18th september 2020, the Environment and Resources Authority (ERA) published the Environmental Impact Assessment (Amendment) Regulations, 2020 for public consultation. The main scope of the proposed amendments are to:

- i. Amend Regulation 6(2) of the principal regulations in order to ensure that the Environmental Impact Assessment (EIA) is integrated into the development consent procedure, in accordance with Articles 8 and 8A of the EIA Directive;
- ii. Amend Regulations 12(6) and 30 of the principal regulations in order to ensure that the competent authority as well as the permitting authority clearly indicate and clarify to the public, inter alia, which authorities are responsible for the EIA and the development consent decisions, and the nature of the decisions, in accordance with Article 6(2) of the EIA Directive;
- iii. Amend Regulations 16(5), 16(6) and 22(3) of the principal regulations in order to establish a time limit within which the competent authority must publish certain information in relation to the EIA report, in accordance with Article 6(3) of the EIA Directive;
- iv. Amend Regulation 19(2) of the principal regulations in order to ensure that the EIA report is made available to those public authorities and entities likely to be concerned by the project by reason of their specific environmental responsibilities, in line with Article 6(1) of the EIA Directive;
- v. Amend Regulation 23(1) of the principal regulations on the competent authority's responsibility to prepare its final assessment on the concluded EIA report; the amended sub-regulation provides, inter alia, that the authority shall take its decision in public, giving the opportunity to the applicant and the public to make comments and representations;
- vi. Amend Regulation 23(2) and addition of a new Regulation 32A(1) in the principal regulations in order to ensure that, in arriving at its final assessment and when making recommendations, the competent authority takes into consideration, inter alia, the feedback received from the public, in accordance with Article 8 of the EIA Directive;
- vii. Amend Regulation 32 of the principal regulations in relation to monitoring requirements in accordance with Article 8A(4) of the EIA Directive;
- viii. Addition of a new Regulation 32A(2) to the principal regulations which obliges the permitting authority to duly take into account the ERA's position and recommendations, and incorporate them into its decision-making process, as may be relevant, in light of the requirements under Article 8A(1) of the EIA Directive.
- ix. Other amendments found in the regulations, such as those to Schedule I, are minor or cosmetic in nature.

The Legal Notice was published for public consultation from 18th September 2020 to 16th October 2020. The objective of the public consultation was to invite the public to submit representations on the draft Legal Notice.

This consultation sought views on the proposed amendments to the draft Environmental Impact Assessment Regulations.

## Responses to the consultation and process used to seek stakeholder views

This document is the Government Response to this consultation and sets out the Government's decisions on these matters.

The consultation closed on 16th October 2020. The consultation document (i.e the draft Legal Notice) was available online and responses were accepted electronically. In total, there were 9 submission. These were received from the public and people in the industry. A list of respondents can be found in Annex A.

## Summary of responses and decisions

The following is a summary of the consultation responses received. We would like to thank all those who took the time to respond to the consultation and participate in stakeholder meetings around the consultation exercise.

### 1. Statistics.

- Total feedback received: 9
- Total feedback received by individuals: 2
- Total feedback received by organisations: 7<sup>1</sup>
- Total feedback received through email: 3
- Total feedback received through online form: X
- Total feedback received by post: X

Comments received mainly pertained to i) the Aarhus convention; ii) other specialised studies such as the social Impact Assessment; and iii) availability of documentation.

A number of the suggestions made through the consultation process are already addressed through the draft regulations. Nevertheless, certain suggestions made merit further considerations, whilst noting that a degree of legal safeguards are already built-in the current and amended regulations.

## Implementation

The final Legal Notice was published on 7th December 2020 as Legal Notice 455 of 2020.

## Contact Details

If you have any questions regarding this response, please contact: [era.policy@era.org.mt](mailto:era.policy@era.org.mt)

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<sup>1</sup> Note that this figure also includes multiple submissions made by the same organisation.

## Annex A: Detailed overview of submissions and ERA's responses

Ref No.	Name of Stakeholder / Date	Comments Received	Response / Remarks
1	<p>Anna Spiteri Senglea Resident Integrated Resources Management Co Ltd, (IRMCo)</p> <p>01/10/2020</p>	<p>A serious amendment to the EIA regulations would be if the <b>process</b> described in the Aarhus convention would become part and parcel of the EIA process. The Aarhus convention passed through the Maltese Parliament and is therefore law. Every time it is being ignored it is in essence breaking EU and Maltese law.</p> <p><u>The Aarhus convention:</u></p> <p>The convention spells out that it is not just our citizens' right to know what is being planned in our community but playing an active role <b>in shaping</b> the environment of our own communities. That is NOT do a public consultation <i>after</i> the developers, the ministers, government and the Planning authority have already decided and then come to conduct what the PA calls a 'public consultation' to <i>inform</i> us what are the plans... The EIA process needs to encourage, promote, enforce <b>transparency</b> and not do away with the EIA process altogether, and abrogate responsibility when the issue is political, like in the case of the AUM. A monstrous project that is being rammed down the throat of all the Cottonera communities.</p> <p>'The Aarhus Convention is an international agreement which represents an important tool for protecting the environment in Malta. It is based on the belief that sustainable development can be achieved only with the involvement of <b>all</b> members of a society.</p> <p>The Convention grants rights to the public in regard to access to <b>environmental information</b>, public participation <b>in decision making</b> and <b>access to justice on environmental matters</b>.</p> <p>The provision of environmental information and increased opportunities for public participation is expected to lead to such benefits as <b>improved strategies for environmental protection, better decision-making by public bodies and more effective enforcement of enterprises</b>.</p>	<p>The EIA Regulations already take into account public participation in line with the Aarhus convention.</p> <p>Such comment goes beyond the scope of these amendments.</p>

		<p><b>Therefore the language in the EIA amendments should reflect the wording above and not take the stand that the local communities are a passive entity that require ‘clarification’ or just ‘feedback’ but must be considered as local actors participating throughout the EIA process.</b></p> <p><b>And from the questions presented by the architects and the EIA consultants it is glaringly obvious that the link with the local communities is not in their vocabulary, because it is not in the vocabulary of the EIA process</b></p>	
2	<p>Dr Michael Briguglio Sociologist</p> <p>13/10/2020</p>	<p>With reference to the above, I am hereby proposing that Environmental Impact Assessments comprise Social Impact Assessment (SIA) in accordance with international standards for example those set by the International Association for Impact Assessment, which is accessible from this link: <a href="https://www.socialimpactassessment.com/documents/IAIA%202015%20Social%20Impact%20Assessment%20guidance%20document.pdf">https://www.socialimpactassessment.com/documents/IAIA%202015%20Social%20Impact%20Assessment%20guidance%20document.pdf</a></p> <p>May I emphasize that a Social Impact Assessment is a comprehensive process, and not just a one-off survey.</p> <p>In this regard, please refer to my correspondence dated 31 May 2019 to the PA regarding SIAs. To date, I have not been informed of any policy update in this regard.</p> <p>A copy of my correspondence can be obtained from this link: <a href="https://mikes-beat.blogspot.com/2019/05/feedback-re-social-impact-assessment.html">https://mikes-beat.blogspot.com/2019/05/feedback-re-social-impact-assessment.html</a></p>	<p>Social Impact Assessments are requested, where relevant by the permitting authority (i.e. the Planning Authority).</p>
3	<p>Simone Vella Lenicker Kamra tal-Periti</p> <p>16/10/2020</p>	<p>The <i>Kamra tal-Periti</i> has no particular comments to make on the proposed amendments, which are primarily of a procedural nature and aimed at improving public participation and information in the EIA process.</p> <p>We note, however, that it is disappointing that these are the only changes being proposed, considering that there are various other, more serious issues, that require addressing. Nevertheless, we would like to make the following point:</p> <ul style="list-style-type: none"> <li>- The publication of the ERA report with the DPAR means that the applicant, and registered interested parties, will not have sufficient time to react to said report.</li> </ul> <p>All reports by statutory consultees are made available to the applicant as soon as they are issued, not at the point of issuance of the DPAR - this in fact contradicts the requirement included in the proposed amendments to the ERA regulations which require publication of the report within 15 days of its completion;</p>	<p>The ERA report on the EIA will continue to remain available on the ERA website, and in addition, it will also be appended to the DPAR.</p>

Comments submitted during stakeholder meeting on 1<sup>st</sup> October 2020

1	Simone Vella Lenicker Kamra Tal- Periti  01/10/2020	It was mentioned that interested parties will be notified about ERA's reports, however if I understood correctly this will happen when the EIA is still at screening stage. Therefore, interested parties would not have yet been registered. Clarification is requested how this will work in practice.	Comment has been noted.
		Do the amended regulations address the issue of salami slicing?	The current regulations already address this issue through Regulation 10(6).
		There are instances where there are multiple projects which require an EIA in the vicinity of each other. How will the amended regulations ascertain that the environmental impacts from the different projects are given due consideration in the EIA process of each projects?	Schedule IV of the EIA Regulations (S.L.549.46) request that the cumulation of the effects of the project with those of other existing and/or approved projects, taking into account existing environmental problems, areas of particular environmental importance likely to be affected, and the use of natural resources.
2	Anna Spiteri IRMCo Ltd  01/10/2020	<p>I am speaking as a resident living in the Senglea and Cottonera community. The Aarhus convention specifically states that local communities should have an active role in shaping the local environment. In recent years there have been many developments in Cottonera where the projects were carried out without the residents being consulted. The MIDI project 15 years ago resulted in the sudden loss of access to the sea front and whoever has a boat has to pay MIDI. Access to the waterpolo pitch was also removed. Now there is the large project of the American University which will take up 25% of the land of Senglea and Bormla which did not involve an EIA. ERA decided that this large project did not require an EIA, which is shocking.</p> <p>You are speaking about EIA process, however the Aarhus Convention which states that local communities should have an active role in what is happening in the community and a right in decisions taken in the country. The Aarhus Convention also considers access to justice as regarding environmental matters. In this area there is no evidence that these are being carried out. Projects were always imposed on the local community.</p> <p>The terminology being used, such as 'clarify to the public', implies that the community is still being given a passive role. What is done after feedback is</p>	<p>The EIA Regulations already take into account public participation in line with the Aarhus convention.</p> <p>Such comment goes beyond the scope of these amendments.</p>

		requested from the public? There is no mention if the rights of the local community in the decision making process. There is a dichotomy between the Aarhus Convention and the EIA process. The Aarhus Convention also passed through parliament and is in the national legislation, so it cannot be seen as distinct from the EIA process.	
3	Joe Doublet Consultant  01/10/2020	<p>It seems that these amendments mainly arise because of the split between ERA and PA, therefore some fine tuning of the respective legislation is required. ERA accepts PDSs from architects and other people who are not familiar with the EIA process. On the basis of such a PDS, which are often lacking in technical details, it is decided whether an EIA is required or not. The whole EIA process should be carried out by consultants and people who are familiar with this sector, rather than anyone who can make a PDS.</p> <p>There are instances where EIAs are carried out on the basis of plans which change by the time the project arrives at the development consent process. Often there are aspects which are not addressed by the EIA in such plans. ERA should be kept in the loop whenever plans are changed for projects requiring an EIA.</p> <p>Currently the process is split into two parts. In the revised legislation it seems that there is now a decision being taken by the ERA Board. This is something new which was not in previous legislation. I am not aware if there was already a decision being taken by the ERA Board, and ERAs involvement in the planning process was only the vote by the ERA chairperson on the Planning Board. These amendments seem to indicate that the ERA Board will start making decisions on the EIA process. I am assuming that ERA's position will be the same as that of ERA's chairperson on the PA Board. This is something which requires clarification.</p> <p>The amendments regulations refer to auditing of predictions and assessments. Such auditing is useless if significant material changes are made to the project plans after the EIA has been completed. ERA should be consulted in such cases, after which ERA should decide whether any revisions are necessary. It should be an iterative process rather than a two-part process.</p>	<p>Currently there are no requisites as to who can prepare a PDS, unlike for EIA report. The PDS should provide a description of the proposal in line with Schedule II of the EIA Regulations, therefore specific requirements are not needed to undertake a PDS.</p> <p>This suggestion merits further consideration, whilst noting that a degree of legal safeguards in this regard is already built-in the current regulations.</p>
		Reference is made to a 'draft decision' in the proposed regulation 30(e). It is unclear what this is referring to since decisions should not be regarded as drafts.	This refers to the recommendation of the PA case officer (DPAR).

4	Rachel Xuereb Adi Associates Environmental Consultants Ltd  01/10/2020	Regulation 23(1) makes reference to the decision of the ERA Board. Clarification is requested as to what this decision is referring to. Will this replace the presentations which are eventually made to the PA Board?	The EIA coordinator will be requested to present the EIA report to the ERA board during the public meeting, as part of the EIA process. The ERA board decision will conclude the EIA process, and will then form the basis of ERA's formal reply to the Planning Authority.
		When there is a Board session on a decision concerning a major project involving an EIA, there are instances where the EIA coordinator is requested to give a presentation on the EIA, which includes very detailed information. However there are other instances where the EIA coordinator is not required to give a presentation. What should the procedure be when an application is presented to Board and is the EIA Report considered as enough information for the decision maker to make a decision?	The EIA coordinator will be requested to present the EIA report to the ERA board during the public meeting, as part of the EIA process. The ERA board decision will conclude the EIA process, and will then form the basis of ERA's formal reply to the Planning Authority.
		The PA has established procedures in place for operational monitoring. How is the monitoring required by ERA going to be streamlined with that already established by the PA as regards the conditions listed in the development permit? PA also requests a monitoring programme. Would this be the same programme requested by ERA?	Concern noted but extends well beyond the remit of these amendments.
		Does ERA agree that the applicant should be responsible for deciding whether the PA Board should be presented with the full EIA? It is subjective that the applicant decides.	This situation is not envisaged. The EIA coordinator will be requested to present the EIA report to the ERA board during the public meeting, as part of the EIA process. The ERA board decision will conclude the EIA process, and will then form the basis of ERA's formal reply to the Planning Authority.
5	Adrian Mallia Adi Associates Environmental Consultants Ltd  01/10/2020	The PDS is the first phase of the EIA process, which also involves the identification of the projects environmental impacts. Therefore it is important that ERA and PA should recognise EIA professionals within this context. The EIA process should start from the initial stages including at PDS stage. When consultants are involved in the beginning stages of projects, they are able to influence discussions regarding project design, and the assessments of the environmental impacts will be better. Therefore it is good practice that environmental consultants should be involved from the very beginning.	Currently there are no requisites as to who can prepare a PDS, unlike for EIA report. The PDS should provide a description of the proposal in line with Schedule II of the EIA Regulations, therefore specific requirements are not needed to undertake a PDS.

	In a previous version of the EIA regulations, there used to be a PDS and Scoping Statement where the PDS should be developed by the EIA consultant.	
	It was mentioned that the final ERA report is sent to the applicant and to the architect. It is not clear whether the ERA report will also be sent to the EIA coordinator. There have been instances where the ERA EIA report is finalized and published and the EIA coordinator is not aware. There is need for more feedback between ERA and the EIA coordinator.	There is no such reference in the EIA Regulations (in the current and amendments) whereby the EIA coordinator is excluded.
	Clarification is requested as to the role of the consultant during the presentation to the ERA Board including whether the consultant will be just listening or whether a more active role is required, as there often is in the case of the PA board.	The EIA coordinator will be requested to present the EIA report to the ERA board during the public meeting, as part of the EIA process. The ERA board decision will conclude the EIA process, and will then form the basis of ERA's formal reply to the Planning Authority.
	Reference is made to situations such as that which arose during the MIDI project EIA concerning consultants' conflict of interest. Is ERA considering developing guidelines to tackle such situations?	An ongoing exercise is being carried out as a separate process.
	This is an opportunity to formalize the procedures to make it more taxing on the applicant to consult ERA on changing of plans to ensure the EIA outcomes remain valid. I'm not sure whether ERA ever checked with consultants whether the EIA findings are still valid before a decision is taken by the PA Board. There is a need to formalize the procedure so that it is clear what should happen in such instances. This also applies for the monitoring required by both PA and ERA.	This suggestion merits further consideration, whilst noting that a degree of legal safeguards in this regard is already built-in the current regulations.
	Clarification is being requested on what is the role of the EIA coordinator during the Planning Board.	The EIA coordinator will be requested to present the EIA report to the ERA board during the public meeting, as part of the EIA process. The ERA board decision will conclude the EIA process, and will then form the basis of ERA's formal reply to the Planning Authority.
	The amendments refer to both monitoring and auditing. It is important that a distinction is made between these. There have been past situations where there was confusion between these, which also resulted in potential issues of conflict of interest. Monitoring of project is one thing, auditing of the EIA outcomes is another thing. There is nothing wrong with having the same consultant who carried out the	Agreed, this is already intended in the current Regulations. The proposed Regulation 32 actually seeks to clarify the distinction between case-specific monitoring and wider auditing.

		EIA also carry out the monitoring. However, auditing of the EIA should not be carried out by the same consultants and the relevant safeguard should be in place. It is recommended that monitoring and auditing should be mentioned in separate regulations.	
6	Sacha Dunlop AIS Environment  01/10/2020	Reference is made to the points mentioned regarding monitoring. I would like to ask on what ERA will be focusing mostly as regards monitoring. How will the monitoring which is required from other regulations, such as the Environmental Management Construction Site Regulations, be enforced during the development of the project? Often such regulations are mentioned as mitigation measures as part of the EIA, however they are not always followed through as regards consultations carrying out such monitoring.	There are no new requirements for monitoring. The actual requirements depend on the specific case merits and where relevant will continue to be enforced through permit conditions.