



**OGP Response to the Commission’s Proposal for a
“Directive amending Dir. 2011/92/EU on the assessment of the effects of
certain public and private projects on the environment”**

KEY MESSAGES

1. OGP acknowledges the *“Proposal for a Directive amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment”* (Proposal to amend the EIA Dir.). We share the objective to lower negative impact on the environment and avoid problems in the long term.
2. OGP welcomes the introduction of a clearer time frame for the various stages of the EIA process, as well as the principle of streamlining the various environmental assessments under a single procedure. OGP fully endorses the Commission’s objective to change the current EIA system into a “simplified and streamlined environmental assessment”.
3. Nevertheless, OGP considers that by not respecting the principle of “Smart Regulation” and the “Proportionality” principles (Art. 5 TFEU), a number of amendments jeopardize the objective of a coherent and realistic environment assessment. These elements are detailed in the following pages.

GENERAL REMARKS

1. OGP environment quality assurance

OGP shares with the Commission the objective to lower negative impact on the environment and the willingness to avoid problems in the long term.

This objective is reflected in concrete measures:

In addition to EU legislation requirements, and prior to most activities, operators carry out Environmental Baseline Studies (EBS) which are a subset of the EIA.

The industry’s practices are also driven by Environmental Management Systems (EMS) and Operational Management Systems (OMS) at the core of which is a commitment to continual improvement in environmental performance. The “Environmental Performance Indicators report” for instance, indicates that on a range of main environmental indicators OGP members “performance”¹ in Europe is broadly better than in other geographical regions of the world.

In addition, many of our industry guidance documents have been referenced and are used by national authorities and international bodies.

¹ The “Performance” is expressed as an indicator to production ratios. For the full set of indicators and the performance results by region, see “OGP Environmental Performance Indicators - 2011 data”, October 2012.

2. Importance of domestic oil and gas exploration and production for the EU

Today the EU imports more than half of the energy it uses and experts forecast that EU demand will continue to rise². From an economic and environmental viewpoint (infra Item 3 Climate Change) it is important to develop domestic oil and gas production in the EU. Therefore safeguarding realistic operational conditions for exploration and production projects is key for meeting the objective of smart and sustainable growth advocated by the Commission in its Memo³.

SPECIFIC REMARKS

1. **Definition:** OGP considers the extension of “Project” definition to “demolition” as inappropriate. If, on the one hand, the aim of the proposal is to request a full environment impact assessment for the life-cycle of a project - including decommissioning - at the early stage where the initial impact assessment is introduced, detailed information is unlikely to be available and undue projects delays could result. If, on the other hand, the aim is to consider “demolition” as a separate “project” this would then require a separate environment impact assessment when ‘demolition’ is being considered. This amendment needs to be clarified (Art. 1 a) at the light of the second interpretation.

➤ **Clarifying the definition of “project”.**

2. **One-stop-shop:** OGP fully supports the principle of streamlining the various environmental assessments under a single procedure (new Art. 2 §3) but we do not support the “one-stop-shop” approach *as it stands* in the proposal. The various pieces of input are not necessarily available in a timely fashion. If the developer is obliged to collect all data at the same time, irrespective of the timeliness of the data, the risk of causing project delays is real. We therefore wish to draw attention to the preliminary need for harmonisation and/or simplification of overlapping environmental assessments in order to guarantee the integration of a one-stop-shop approach within the new clear timeframe (new Art. 4 §6 and Art. 6§7).

➤ **Simplifying overlapping environmental assessments.**

3. **Climate Change:** OGP believes that the direct and indirect assessment of the potential effects of a project on Climate Change or on human health (new Art. 3b) will raise major difficulties. The potential impact of a project on climate change needs to be assessed in a wider, global context and not at individual project level. For example, the actual benefit of an energy switch from coal to gas on GHG reductions⁴ can only be assessed at a more regional or international level. The positive climate change contribution of a new domestic gas field cannot reasonably be assessed at the local level. Moreover, the assessment of impact on human health in the EIA process could be far reaching and very complicated. This could cause extensive debates and delay. We are of the opinion that there is no compelling reason to change the current definition.

➤ **Excluding Climate Change from the scope of an individual EIA**

² The IEA forecasts an increase of 63% of EU gas imports by 2035; International Energy Agency, World Energy Outlook 2012, November 2012.

³ Commission MEMO/12/809 on the Proposal for a Directive amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment”

⁴ The conversion from best performance CCGT power plants from coal and oil to gas could reduce power plants GHG by more than 50%. Major CO2 reduction from power plants wouldn't hence be possible without a reliable and affordable supply of EU domestically produced gas.

- **Keeping reference to the existing “human being”.**

4. **Screening procedure:** The option for Annex II developers to opt directly for a full EIA, without going through a screening procedure, should be maintained. OGP also believes that the *information* to be provided in the proposed new screening procedure for Annex II projects (new [Art. 4 §3](#) and new [Annex IIa](#)) duplicates or anticipates the information for the Environmental Report foreseen for Annex I projects only. The proposal actually extends a significant part of the scoping process into the initial screening phase of Annex II projects which is in conflict with Commission’s aim to suppress unnecessary administrative burdens.

The scope of *criteria* to be used by the competent authority in the screening process ([Annex III](#)) for Annex II projects implies also that developers provide as much information as in the traditional Environment Report for Annex I projects. If this is the case, the objective to simplify and streamline the EIA will not be achieved.

Also the extensive scope of criteria and information to be provided under Annex III (e.g. information on subsurface conditions) could conflict with legislation on commercially sensitive information⁵.

- **Possibility for Annex II projects to opt directly for a full EIA;**
- **Eliminating anticipation or duplications within the screening and scoping processes;**
- **Safeguarding commercially sensitive information during the EIA process.**

5. **Scoping stage:** OGP is of the opinion that making the scoping mandatory is in principle beneficial ([Art. 5 §2](#)) as it allows for a determination of tailor-made criteria and information and the avoidance of irrelevant information. However, the proposed EIA process ([Art. 5 §1](#)) creates a major conflict between “adaptability” and “administrative burden”. Requiring the developer to provide a new inflexible, detailed list of information ([Annex IV](#)) in the Environment Report will jeopardize the flexibility provided by ([Art. 5 §2](#)) allowing the competent authority to determine the “level of detail” needed for the Environment Report (“scoping”): competent authorities are indeed best placed to judge the relevance of criteria and information. Also the absence of clear and proportionate time limits for the scoping phase could present a significant risk of unnecessary delays and runs counter to the intent of a streamlined environment assessment.

- **Making Annex IV information list indicative;**
- **Providing the scoping stage with a time frame, proportionate to the size and complexity of the project.**

6. **Competent expert:** OGP believes the requirement for accredited and technically competent experts ([Art. 5 §3](#)) as possibly redundant because this aspect would be covered by the new “coordinated” and “joint procedures” ([new Art. 2 §3](#)). Furthermore, OGP has concerns that “competent experts” availability in some Member States and/or within the consultancy community simply would not exist for certain issues, and this approach would ultimately weaken the quality of the EIA.

⁵ Cfr. The Transparency Regulation (Reg. EC/1049/2001) and the Transparency Directive (Dir. EEC/2003/4)

Should the legislator still consider the requirement for a “competent expert” as needed, existing and proposed EU legislation⁶ which requires equivalent intervention should then be taken into consideration. Consistent wording throughout EU legislation is a prerequisite for legal certainty. “Independent expert” would accordingly be more appropriate.

- ***Aligning verification requirements within current legislation;***
- ***Taking into consideration the potential shortage of experts;***
- ***Considering the ability for developer companies to provide “independent experts”.***

7. **Time frame:** OGP welcomes the introduction of stricter time frames in the Environment Impact Assessment process. However, the length of time for consulting the “public concerned” (between 1 and 3 months) in the new Art. 6 §7 introduces unnecessary uncertainty and ambiguity about the global timeframe foreseen for the Competent Authority’s decision (new Art. 8 §3).

- ***Foreseeing a clear time frame at all level of the EIA procedure.***

8. **Delegated powers:** If the EIA Directive, as per the Commission’s proposal, was to make scoping criteria (as defined in Annexes IIa, III and IV) mandatory and one-size-fits-all, then delegated powers to the Commission (Art. 12a) would not be the appropriate instrument to amend those Annexes. In that case those criteria would be an essential part of the Directive and should only be amended under the ordinary legislative procedure.

- ***Reconsidering the use of delegated powers or making Annexes criteria indicative.***

OGP CONCLUSION

OGP supports the Commission’s intent of reducing the risk of inconsistencies and overlaps within the EIA Directive. However, OGP believes greater clarity and legal certainty is needed in several areas. Harmonisation and simplification of information requested from the developers and the criteria to be used by Competent Authorities to assess these data are key elements for both the developers and the Competent Authorities. More complex procedures will bring no significant benefit to society.

For further information, please contact:

Rachel Bonfante
Interim Director EU Affairs
OGP Brussels
E-mail: rachel.bonfante@ogp.be
Tel. +32 (0)2 566 91 50

⁶ See for instance the draft Offshore Safety Directive, the Health Directive (Dir. 2011/24/EU) or the Industrial Emissions Directive (Dir. 2010/75/EU)

About OGP. *The International Association of Oil and Gas Producers (OGP) represents the interests of companies engaged in the exploration and extraction of oil and natural gas, as well as national and other related industry associations. OGP membership spans the globe and accounts for more than half of the world's oil output and about one third of global gas production. From our London office, we foster cooperation in the area of health, safety and the environment, operations and engineering, and represent the industry before international organisations, such as the UN, IMO and the World Bank, as well as regional seas conventions, such as OSPAR, where we have observer status. OGP Europe in Brussels represents before the EU OGP members who are active in Europe.*