Revision of the Environmental Impact Assessment (EIA) Directive
Updated position of the Non-Energy Extractive Industry Panel following the amendments adopted by the European Parliament in plenary session on 9 October 2013

November 2013

Non-energy extractive activities are already comprehensively regulated by the current EIA Directive 2011/92/EU. The mining sector has therefore acquired a practical knowledge of the application of this instrument. Since the publication of the proposal of the European Commission to revise the EIA Directive, the NEEIP has consistently called for streamlining the current EIA regime in order to achieve a clearer, more predictable and less costly legislation meeting high environmental standards.
The NEEIP is particularly concerned by a few but critical amendments introduced at parliamentary stage. If endorsed by the co-legislator, some of them could endanger the economic viability of the non-energy extractive industry in Europe without being justified by environmental considerations. Such a result would starkly contradict the objectives of the European Innovation Partnership (EIP) on Raw Materials aiming *inter alia* at making Europe a world leader in raw materials exploration, extraction and processing by 2020 as well as with the commitment of the European Union to deliver a "smart regulation".

1. Disproportionate extension of the scope of the EIA

The proposal of the European Commission did not modify annexes I and II of the Directive. As a result, there has been no impact assessment to measure the potential benefits but also the increase in terms of costs and resources needed that would ensue from the proposed extension of the scope of the EIA. The NEEIP is therefore firmly opposed to such extensions whose relevance and practical consequences have not been thoroughly assessed for sectors, such as the non-energy extractive industry, which are already falling under the scope of the EIA Directive.

Inclusion of exploration of mineral resources within the scope of the EIA

Requiring a full EIA or even a screening procedure – whose prescriptive nature has been considerably extended in the Commission's proposal – for exploration activities, including exploration of non-energy raw materials, would be disproportionate in the light of their low environmental impacts and because exploration involves large investments without any revenue generated. Such a requirement would also be discriminatory as those activities are usually carried by SMEs or by government geological surveys. It would in the vast majority of cases simply rule out exploration activities in Europe and therefore prevent the discovery of new valuable mineral deposits which would otherwise contribute to ensure a sustainable supply of raw materials to the European economy. It could also strongly affect the permitting of exploration carried out in underground mining aiming at expanding the lifespan of existing installations.

- **We therefore call for the rejection of the provisions introduced by the amendments n°36 and 80 of the European Parliament.**

Inclusion of all "open-air" mining activities in Annex I

The EIA Directive 2011/92/EU makes a consistent distinction between larger scale quarries and open-cast mining (>25 ha) listed in Annex I, point 19, subject to a compulsory EIA and smaller scale quarries and open-cast mining (i.e. <25 ha) listed in Annex II, point 2 (a), subject to a screening. **This distinction is deleted by point 4.a. of the joint amendments 79, 112 and 126, which provide that all "Open-cast mining and similar open-air extractive activities", regardless of the size of the operation, should be listed in Annex I and therefore subject to a compulsory EIA procedure. Such a requirement is also completely disproportionate and discriminatory as it would require an EIA procedure for small-scale mineral resource extraction, which is, by nature, a local activity – e.g. extraction of industrial minerals –, usually carried out by SMEs and has a lower likelihood of significant impact on the environment.**

- **We therefore call for the rejection of the provisions introduced by the joint amendments n°79, 112 and 126 of the European Parliament.**

2. Consistency of the EIA Directive, proper definition of criteria and transposition

Inclusion of "visual impact"

"Visual impact" is an overlapping criterion as the assessment of the effects on "landscape" or on "cultural heritage" is already required by the current EIA Directive. It should therefore be deleted for consistency purposes.

- **We therefore call for the rejection of the provisions introduced by the amendments n°6, 11 and 45 of the European Parliament.**

Inclusion of subsoil

Assessing the effects on "soil" is sufficient as this generic criterion already covers the protection of soil including subsoil. Generic factors must be preferred to open-ended lists of environmental factors, which would require developers and public authorities to consider either overlapping criteria or impacts that a given project will not even trigger.

- **We therefore call for the deletion of "underground" in Annex II A, point 1. a) as amended by the European Parliament, the deletion of "subsurface" from Annexes II A, III and IV, and the deletion of "subsoil" from Annex IV point 1 c).**

Definition of biodiversity by reference to the Natura 2000 Directives

The joint amendment 83 and 129 positively contributes to clarify the scope of "biodiversity" which is to be described "through its fauna and flora". However, **amendment 54** still refers to the Natura 2000 directive to define the scope of biodiversity ("with particular attention to species and habitats protected under Directives 92/43/EEC, 2000/60/EC and 2009/147/EC"). Defining biodiversity in relation to Natura 2000 Directives could amount to extend the scope of these directives which mainly apply in Natura 2000 areas (ratione loci). It is key to specify, as suggested below, that the Natura 2000 Directives shall apply "when applicable", as suggested below, as all projects requiring an EIA are not located in sites falling within the scope of the Natura 2000 Directives.

Article 3

(a) *population, human health, and biodiversity (…) , with particular attention, **when applicable**, to species and habitats protected under Council Directive 92/43/EEC and Directive 2009/147/EC.*

Baseline scenario

While the Report slightly improves the conditions surrounding the baseline scenario, its proposed definition, which requires the assessment of "the likely evolution of the existing state of the environment without implementation of the project", continues to remain unchanged in amendments 24 as well as 83&129. Obliging a developer to assess the likely evolution of the state of the environment without implementation of the project he/she promotes is not reasonable. If any, the baseline scenario description should, as a reference point, aim at describing the state of the environment "**before**" (instead of "without") the implementation of a project, which could then in turn be used to assess environmental impacts at the end of the project's life.

Ex-post monitoring and mitigation measures (article 8 of the EIA Directive)

The NEEIP maintains that including ex-post monitoring requirements in the EIA Directive is inappropriate as these requirements overlap with other binding sectorial EU instruments such as Industrial Emissions Directive, the Mining Waste Directive or BAT References. They already provide for adequate monitoring measures and stringent measures to mitigate environmental impacts. If kept, the EIA Directive must clearly include a "mutual recognition clause" to ensure that existing monitoring and mitigation measures provided under the relevant EU legislation must be taken into account / or even take precedence and deemed sufficient to meet such kind of requirements.

- **Joint amendments 109, 93 and 130 providing that monitoring measures shall be taken "on the basis of the relevant legislation" is a positive development to be preserved but this provision can be further improved to avoid any new duplication of obligations that will be confusing, burdensome and costly.**

Screening for demolition of project listed in Annex I (amendment 80)

Amendment 80 adds to the list of projects subject to a screening:

> *"'(aa) Any demolition of projects listed in Annex I or this Annex, which may have significant adverse effects on the environment"*

This provision makes little sense as it would require carrying out a screening and potentially an EIA for the demolition of annex I facilities whose decommissioning is carried out in accordance with rehabilitation plans **previously approved in the initial EIA** or in initial operating permits (i.e. before the construction of the facility at stake. This provision should be deleted as it would make the demolition of a facility, whose ultimate purpose is environmental protection, more complex and costly.

- **We therefore call for the rejection of this provision introduced by amendments n°80 of the European Parliament.**

Non-retroactive application of the revised directive

Legal certainty in the permitting process is crucial for developers. The NEEIP is therefore firmly opposed to any kind of retroactive application of the revised directive. Regarding transitional arrangements in particular, it is of utmost importance to ensure that projects for which the screening or scoping procedures, respectively provided by article 4(2) and 5(2) of Directive 2011/92/EU, have been initiated before the transposition of the amended EIA Directive are assessed and terminated on the basis of the current Directive 2011/92/EU, prior to its revision. *A fortiori*, the same obligation should apply to projects for which the environmental report referred to in article 5(1) was submitted before the period of transposition of the revised EIA Directive.