

Case Study on the Implementation of the EIA Directive – Focus on Access to Justice

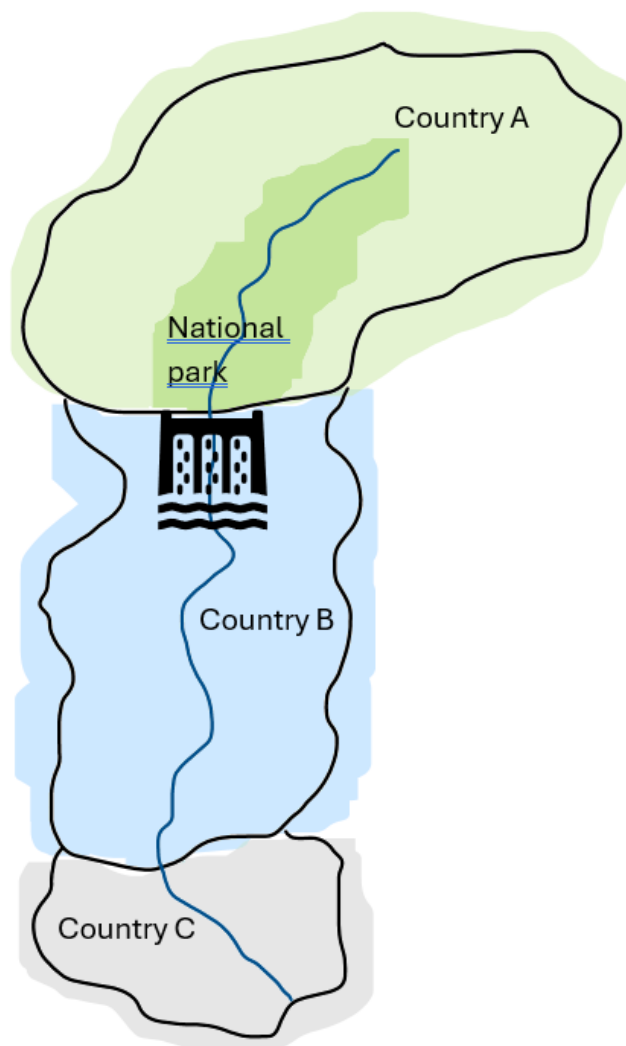
Introduction to the Case Study (10 minutes)

Background:

The project is a 40 MW hydropower facility situated on a transboundary river shared by three countries—A, B, and C. It includes a dam with a storage capacity of 9 million cubic meters and serves two primary purposes:

- Electricity generation
- Emergency backup water supply during summer months

The reservoir is located in Country B, on the border with Country A, where a national park safeguards fish species listed in Annex II of the Habitats Directive, requiring designated special conservation areas.



The EIA report, approved in 2013, concluded that the project would have no transboundary or significant biodiversity impacts, as the river flows from Country C into Country B. In 2015, a construction permit was issued with a six-year validity; however, the project was never built.

In 2021, the developer requested a renewal of the construction permit, asserting that the previously approved EIA remained valid since no changes had been made to the project. The competent authority approved the permit renewal.

In 2023, the project developer began construction. However, **local communities** quickly intervened, halting progress by blocking access to the site. They argued that they had not been adequately consulted during the planning process. In response, the developer filed a lawsuit against the locals for obstructing the construction.

At the same time, a **nongovernmental organization (NGO)**, registered in a municipality next to the project location, contested the renewal of the construction permit. The NGO also

challenged the 2013 EIA findings, citing concerns that critical habitats had not been properly assessed and that downstream impacts were insufficiently addressed. To support their claims, the NGO submitted a decade's worth of monitoring data, which suggested that the project could have significant adverse effects on local biodiversity.

Furthermore, an **NGO from the neighbouring Country A** filed a formal complaint against the renewal of the construction permit, arguing that a transboundary consultation process was necessary. The organization is also challenging the 2013 EIA findings, which concluded that the project would not have transboundary impacts.

National legislation in Country B defines the "public concerned" as including only citizens and NGOs registered in the municipality where the project is located.

[The competent authority, backed by an official letter from the government, has requested the dismissal of all cases, arguing that the project falls under a civil emergency exemption and is therefore not subject to the requirements of the EIA Directive.]

Working Groups: Discussion Points

(10 minutes for group division and explanation + 40 minutes for discussion)

Group 1: Transboundary EIA – “Is it, or isn’t it?”

- How should you process a complaint from civil society in a neighbouring Member State regarding non-participation in the EIA process, considering the restrictive definition of “public concerned”?
- How should discrepancies between national definitions of public participation be handled, and should national criteria limiting participation to NGOs within the same municipality be challenged under EU law?
- How would you assess the NGO's complaint from Country A to determine if the project requires a transboundary EIA under Article 7 of the EIA Directive, considering both Article 7 and Article 11, and what information would you need to evaluate the potential cross-border impacts while ensuring the interests of the neighbouring countries A and B are properly considered?
- Does the fact that the project is transboundary automatically mean there will be transboundary impacts, or can a project still have significant impacts without being located in both countries? Should the project's proximity to a national park in Country A trigger a transboundary consultation requirement?

Group 2: Contradicting environmental information – “Who is right?”

- The EIA report concluded no significant impacts, but CSOs have provided monitoring evidence showing adverse effects. How would you consider the information provided by the CSOs in the case, and how would you assess the conflicting environmental findings?
- How would you apply the precautionary principle in cases of scientific uncertainty, such as suspending works until a decision is made, especially considering that NGOs are not profit-driven? What factors would you consider in making this decision?

- What is the role of expert witnesses in environmental litigation and how would you evaluate their testimony when there are conflicting scientific findings in the case?

Group 3: Legal validity and time limits – “How long is just too long”

- How would you assess whether a 5-year or 10-year gap makes the original assessment outdated, while also considering legal certainty regarding the permit? Should the renewal of a construction permit require a new EIA or an updated impact assessment, and is a legal challenge to the permit renewal admissible given the time that has passed since the initial approval?
- How does Article 8a of the EIA Directive apply when extending project approval, and what factors should be considered when deciding if a new assessment is needed?
- Should the absence of changes to the project justify bypassing a new environmental assessment, or is it necessary to update the assessment regardless of any changes?

Group 4: Litigation in environmental disputes - “Can you handle SLAPP”

- How would you handle legal actions against local communities blocking the project claiming they haven’t been consulted, and what factors would influence your decision on whether to allow the project to proceed?
- Would you consider this under the SLAPP suits (strategic lawsuits against public participation) or intimidation lawsuits?
- Can local citizens seek injunctive relief to halt construction while the case is being reviewed, and what conditions would need to be met for this relief to be granted?

“Group 5: Emergency Exemptions – “When does emergency override assessment?”

- How would you assess the government's claim that the project qualifies as a civil emergency exemption under the EIA Directive? What legal criteria and procedural safeguards would you consider to ensure compliance with the EIA Directive?
- Does invoking a civil emergency exemption automatically remove the obligation to assess environmental impacts, or should proportionality and potential long-term consequences be considered?
- What role does judicial review play in balancing urgent public interests with environmental protection, and how you ensure that emergency exemptions are not misused to bypass legal safeguards?

Plenary Discussion (30 minutes)

Each group focal point presents their discussion, conclusions and reasoning in response to their assigned questions. This is followed by an open discussion where other groups provide input, challenge perspectives, and explore interconnections between the topics.