

Consultants in the Belgian environmental assessment systems

Necessary and useful ?

EA-consultancy in Belgium

General :

- EA-quality
- -> quality of the report
- -> improves decision making
- -> influences decision making
- -> effectiveness

EA-consultancy in Belgium

General :

- EA-process influences quality
- -> stages:
 - Informal contacts
 - Screening
 - Scoping
 - Drafting
 - Review of the report
 - Consultations & public participation
 - prior to scoping, review and/or final decision
- -> efficiency

EA-consultancy in Belgium

General :

- Stake holders
- different interests in EA process:
 - Developer/proponent
 - Competent authority
 - Other administrations
 - Consultants & experts
 - The public

-> different expectations

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General :

| <u>Participant in EA-process</u> | <u>Major EA-expectations</u> |
|----------------------------------|---|
| • Developer/proponent | Certainty of outcome Cost effectiveness Timing concerns |
| • Public | Right to know Right to be informed Right to be heard Right to object |
| • Decision makers | Timing and information concerns |

-> Appropriate information : accurate, necessary, manageable

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General :

Major positions and interests of stakeholders in EA-process reflect different orientations that are socially shaped:

- **Developer/proponent** **entrepreneurial disposition**
 » ? **Governmental initiative**
- **Public** **egalitarian tendency**
 » ? **NIMBY**
- **Decision makers** **hierarchical concern**
 » ? **Perfect democracy - governance**

Distrust

Appropriate information must create trust by building “bridges” (process)

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General :

EA-process:

"administrative negotiation process"

Basic legislation :

*** UNECE: Espoo Convention & SEA Protocol**

*** EU-directives**

-> no explicit quality requirements

-> no provisions on the use of consultants

-> information : product of negotiation process but needs to fulfill minimum requirements

-> need for "expertise" & "objectivity"

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Quality at stake within the EU:

- > provision in SEA directive but no willingness to agree with a more profound provision in SEA Protocol and rather poor guidance**
- > 5 years review : recommendation**
- > EIA guidance exercise focuses also on quality assurance:**

Certification or accreditation of experts is a mechanism for making the chance larger for good quality of the EIS. However, the accreditation system must also have its own quality control mechanism.

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Belgium

- > federal state**
- > division of competencies related to environmental policies**
- > differentiated EA-systems at different levels**
 - * federal**
 - * regional**

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Belgium

-> federal level

- * Protection against ionising radiation from nuclear installations (1994/2001): consultant must be approved by FANC
- * Protection of the marine environment (1999/2003) : EIA-co-ordinator may be employee
- * SEA for certain Plans and programmes (2005): if external consultant: assure independency
- * (Protection of Antarctica)

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Belgium

-> regions

- * Brussels : quite elaborated EIA-system:
 - accreditation for natural and legal persons by BEI based on advice from
 - for certain activities
 - for max. 15 years
 - can be withdrawn or changed if the consultant does not stick to the accreditation conditions or delivers poor quality
 - before sanction: right to be heard

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Belgium

-> regions

- * Wallonia : quite elaborated system later amended:
 - report has to be done by an accredited consultant proposed by developer
 - the consultant can loose the accreditation temporarily or definitely after being warned about poor quality work and after advising authorities have been consulted
 - in case of an “independency problem” the consultant can be challenged
 - procedure has been trimmed down which makes it rather ineffective (timing, awareness)
 - court case SC N° 44.022 (15/09/1993) lack of impartiality and independence of consultant makes EIA procedure void

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Belgium

-> regions

*** Flanders : only basis in present legislation, need for further regulations:**

- report has to be done by an accredited consultant proposed by developer

- accreditation in principle for 5 years (renewal is possible)

- SEA : only accredited co-ordinator (team members might be employees of developer)

- EIA co-ordinator and all team members have to be accredited

- consultant needs to be independent, no conflict of interest

- the consultant can lose the accreditation if accreditation conditions are no longer fulfilled or independency lost

- no procedure to challenge in case of an “independency problem”

- real sanction: refusal to renew accreditation (SC N° 107.445 06/06/2002)

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Belgium

-> regions Flanders : reflections

- internal “Flemish” market
- internal “Belgian” market
 - * practice: e.g. wind farms
 - * institutional: co-operation agreement
- “transboundary issues” : Dutch system (EIA-commission) French system

- economic effects (export of expertise?)

- consultants’ efficiency within the EA processes
- using consultants : an effective way to improve quality?

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-> regions Flanders : reflections

-> major problem: dependency of consultants on contract(s) with developer influence the application of the legal requirement of “independency”

- * example of environmental “market mechanism” ?
- * legal fiction ?
- * acceptable within good governance ?
- * accountability of state practice
- * liability

-> proposal for framework legislation concerning the accreditation of consultants and laboratoria