



# EIA Directive Review

Addressing gaps related to the  
UFF exploration and extraction

February 2013

## I. Background

The purpose of Environmental Impact Assessments (EIA) is to ensure that a wide range of projects are planned with the project's environmental effects in mind. EIAs do not necessarily prevent projects with negative environmental impacts from happening, but can help to identify likely negative environmental effects and how they could be avoided, reduced or offset. By engaging in an EIA, project developers and decision-makers are made aware of possible environmental impacts, thereby reducing the overall risk to the environment and improving the overall quality of the project in question. Last but not least, EIAs also require public consultation, which allows nearby communities to deliver their input.

However, the current version of the European legislation regulating the use of EIAs has some serious shortcomings, particularly in how this legislation fails to appropriately cover the recent surge in unconventional oil and gas activities in Europe. The specificities of shale gas activities are currently not properly covered by the EIA Directive. As a result, such activities are not systematically subjected to a mandatory EIA prior to any new project, despite the major risks and known negative impacts on climate, environment and health. This gap in the existing EIA directive not only applies to shale gas, but also more broadly, to other unconventional hydrocarbons like shale oil, tight gas and coal bed methane.

The current version of the EIA Directive is phrased in such a way that unconventional fossil fuel (UFF) projects are not part of the Directive's Annex I, which identifies the activities subjected to a mandatory EIA. The decision on whether or not UFF projects require an EIA depends on the interpretation of Member States. A study, commissioned by DG Energy, identified a wide range of practices in a sample of EU Member States. These differences open the door to inconsistencies in how the EIA Directive is applied in different EU member states.<sup>1</sup>

The Annex I specifically mentions gas projects. It requires a mandatory EIA, in its paragraph 14. However, an EIA is only mandatory for activities that produce at least 500,000m<sup>3</sup> of gas per day. This fixed threshold of the daily production rate of each project fails to consider the specificities of shale gas, where initial production rates are much lower and decline rapidly. The use of this threshold of 500,000m<sup>3</sup> of gas per day also does not take the cumulative impacts of large-scale commercial exploitation of shale gas into account, which requires a high density of wells to be drilled in so-called shale plays.

All recent legal assessments (notably from various DGs of the European Commission), the two own-initiative reports of the European Parliament and scientific studies (listed below) have agreed that a mandatory EIA for UFF projects should be part of the 'best available practices' to be put in place. However, the current gap in the existing legislation opens the door to inconsistencies in how EU member states apply the EIA Directive. Some countries may not systematically require an EIA for shale gas projects. This could lead to a lack of understanding of the environmental risks in a specific shale gas project, as well as difficulties in identifying environmental degradation that could result from such a project. This is why we call on EU decision-makers to support the amendment suggested [below](#). By including UFF activities in Annex I of the EIA Directive, the EU can ensure that a mandatory and systematic EIA prior to any UFF projects.

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<sup>1</sup> As concludes the DG Energy – Philippe and Partners Study on the "relevant applicable European legal framework applied to the licensing/authorisation and operational permitting for prospection, exploration and production/exploitation of shale gas" ([http://ec.europa.eu/energy/studies/doc/2012\\_unconventional\\_gas\\_in\\_europe.pdf](http://ec.europa.eu/energy/studies/doc/2012_unconventional_gas_in_europe.pdf))

## II. Amendment's suggestion

### Motion for a resolution

Annex I – Paragraph 14 b (new) – About the projects which “shall be made subject to an EIA”:

<i>Original</i>	<i>Amendment</i>
<p>14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.</p>	<p>14 a. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.</p> <p>14 b. Exploration, appraisal and extraction of petroleum and/or natural gas trapped in strata of gas shales or other sedimentary rock formations with similarly low or lower permeability and porosity, independently of the quantity extracted.</p> <p>14 c. Exploration and extraction of natural gas from coal seams, independently of the quantity extracted.</p>

### *Justification*

- Why?
  - Considering the major impacts of production’s activities on people’s health and environment, any kind of unconventional fossil fuel should be subject to a mandatory EIA, whether it is a fossil fuel trapped in a porous and permeable rock formation (**shale gas, shale oil, tight gas**) and in coal seams (**coal bed methane**).
  - A mandatory EIA will require **baseline data** to be established before unconventional gas projects are allowed to proceed (as requested by [the two INI EP reports](#)). Apart from the mitigation of the worst impacts of an unconventional gas project, accurately determining e.g. the levels and origin of methane (biogenic vs. thermogenic), local air quality, water scarcity issues, etc. prior to drilling will help to establish potential causal links between a deterioration of environmental conditions and the arrival of the unconventional oil or gas project.
  - This impact assessment process has been considered as essential by all the most recognized legal studies made in Europe, from the [Tyndall Centre](#), the [UK Royal Society and The Royal Academy of Engineering](#) and the [German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety](#).
- How?
  - The [EC guidance regarding application of Environmental Impact Assessment Directive \(2011/92/EU\) to unconventional hydrocarbon projects](#) (EC, 2011 NPR) stated that unconventional fossil fuels (UFF) projects would be **subject to an EIA if it cannot be excluded**, on the basis of objective information, that the project will have significant environmental effects. The precautionary and prevention principles also imply that in case of doubts as to the absence of significant effects, an EIA must be carried out  
→ The combination of the current non-systematic application of the EIA for UFF projects in Europe (as shown in the [DG energy legal study](#)) and of the high environmental risks inherent in UFF project shows the need to explicitly require an EIA prior to any new UFF project.
  - Amendment which follows the [recommendations from the PETI Committee report](#): Given the important production variability and the cumulative effects of unconventional oil and gas projects, the production threshold (m<sup>3</sup>/day) is not adapted to these types of operation. This is why, following experts’ and MEPs’ main recommendations, this amendment’s suggestion calls on applying a systematic EIA to any new unconventional gas and oil project. It is added in Annex I, further to Article 4 (1) of the EIA Directive which states that an assessment is obligatory for certain projects mentioned in Annex I.