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EslA programs must be supported by governance and regulatory frameworks for improved results and integrity through compliance promotion, compliance monitoring, and enforcement outcomes, seamlessly engaging other institutions at all levels.



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FASTIPS

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Compliance and Enforcement

A significant impediment to successful implementation of Environmental and Social Impact Assessment (EslA) is failure to incorporate in decision documents and related permits* the requirements, commitments, and conditions identified in the EslA process. Following EslA completion, enforceable conditions for approval—including avoidance, mitigation, and compensation—must be backed up by enforceable provisions before the project site is prepared, construction gets underway, operations begin, or the project is closed. In the absence of enforceable provisions, compliance monitoring, and enforcement, there is limited accountability. Society then bears the cost of impacts that should have been addressed, and public confidence is eroded when promised actions to avoid harm or enhance benefits have not been taken, jeopardizing acceptance of future projects.

Compliance and enforcement relate to every stage in the EslA process, including screening. Most countries and institutions implement a triage system to categorize projects as having low, moderate, or high potential impacts, reserving the development of full environmental and social impact assessment to those with the potential for “significant” impact. In the absence of concerted efforts to achieve compliance with requirements, projects may not only avoid screening entirely, but also avoid more rigorous levels of review by offering and then failing to implement promised avoidance, mitigation, or compensation measures. During the EslA process, assurance also is needed to secure the integrity of both information and professional credentials.

Government institutions often lack the resources, legally binding instruments, legal enforcement authorities, and institutional responsibilities to impose appropriate consequences or are limited by conditions that are drafted in unenforceable language. Implementation systems also fail to hold key actors accountable without the engagement of the public and other stakeholders with a “stake” in the outcome, empowered to offer both eyes and ears on the ground and to pursue action through the courts or operational grievance procedures.

This “FastTips” is a product based on a joint project of the International Association for Impact Assessment (IAIA)’s Governance and Implementation Systems Section and the International Network for Environmental Compliance and Enforcement (INECE). It reflects professional consensus on best practices identified in webinars and conferences hosted by these professional networks as well as regional workshops. It builds upon two internationally accepted frameworks: IAIA’s environmental and social impact assessment framework and INECE principles of environmental compliance and enforcement.

*“Decision documents” include conditions that are the basis for approval of a proposed project. “Related permits” encompass any mechanism countries or institutions might use to translate the basis for EslA approval into legally binding instruments. This might include licenses and contracts as well as permits.

FIVE IMPORTANT THINGS TO KNOW

1. Many EslA programs only review projects they or the project proponent determine might pose significant potential impacts and might only oversee them until they are built. This leaves gaps and avoidable damage due to misapplied screening and failed or absent commitments to avoidance, mitigation, and compensation.
2. Mitigation measures identified in EslA documents are not implemented if not translated into actual commitments within legally binding instruments and drafted to support accountability and enforcement.
3. Legal authorities and compliance strategies that typically focus on remediation of damages or restitution are ill suited to the preventive nature of EslA.
4. The public and other stakeholders cannot assure integrity and accountability when they lack early and continuing access to the process and to mechanisms that provide information, monitor compliance, and seek justice.
5. EslA data and documents and other mechanisms for integration and interpretation often are difficult to access, thereby diminishing EslA effectiveness and increasing costs of EslA preparation and review.

Want to know more?

www.iaia.org > Resources > Publications > FasTips

Do you have a suggestion or a request for a FasTip on a different topic?
Contact Maria Partidário (mpartidario@gmail.com), FasTips Series Editor.

FasTips Task Force: Maria Partidário (Chair), Jos Arts, Charlotte Bingham, Peter Croal, Richard Fuggle, Anita Mosby, Asha Rajvanshi.

FIVE IMPORTANT THINGS TO DO

1. Implement EslA programs within a broad regulatory framework. This will improve results and integrity through compliance promotion, compliance monitoring, and enforcement outcomes, and secure a more seamless engagement among institutions at all levels.
2. Integrate significant commitments into legally binding instruments that follow the life cycle of the project; adopt these in successive phases, contracts, ownership, and permits*; ensure they are independently drafted or revised as necessary to be enforceable by governments and institutions.
3. Ensure legal enforcement authorities and compliance strategies are both preventive and remedial, sufficient to deter violations, level the playing field, encourage a swift return to compliance, restore resources, and prevent further damage.
4. Empower the public and other stakeholders to advance EslA compliance through early and continuing engagement, a well-defined role in compliance monitoring, and access to information, justice, and operational grievance mechanisms to seek remedies and resolve compliance concerns.
5. Modernize and invest in administrative and IT support to facilitate transparency and access to project-related documents, processing status, location-specific geospatial data, and tracking of commitments, compliance monitoring, and enforcement.

FURTHER READING

"Principles and best practices for EslA compliance and enforcement: Requirements, commitments, and related permits." Under development by IAIA's Governance and Implementation Systems Section and International Network for Environmental Compliance and Enforcement (INECE).

IAIA (www.iaia.org) and INECE (www.inece.org) webinars and resource materials. See in particular those on follow up, public participation, and compliance and enforcement of EslA.

Morrison-Saunders, A.; Arts, J. & Jha Thakur, U. (forthcoming). Impact Assessment Follow-up entry for T. Fischer, S. Bice, U. Jha Thakur, M. Montano, B. Noble & F. Retief (eds.): *Impact Assessment Encyclopedia*. Edward Elgar, Cheltenham. (Accepted for publication 11 July 2022).

Bergamini, K; Perez, C.; Araya, G. (2021) Gestión del Cumplimiento Ambiental. RIL Editores. Colección Estudios Urbanos.