



COMMISSION OF THE EUROPEAN COMMUNITIES

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96/304 (SYN)

Amended proposal for a
COUNCIL DIRECTIVE
ON ASSESSMENT OF THE EFFECTS OF
CERTAIN PLANS AND PROGRAMMES ON THE ENVIRONMENT

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

Amendments accepted by the Commission

Amendments of the recitals:

1.1. Recitals 1a(new)(*amendment 2*), 2 (*amendment 3*), 3a(new) (*amendment 4*) and 7 (*amendment 7*) were accepted by the Commission because they introduce elements which underline the importance of sustainable development being a key objective of the EU, which make explicit that the procedure foreseen in the Proposal is a minimum one and which highlight the benefits of carrying out strategic environmental assessments for the economic sector by providing a more consistent framework in which to operate. The introduction of appropriate time frames intend to limit the consultation procedure to a reasonable time and to allow for sufficient time for consultation of the public concerned and the environmental authorities concerned (recital 12 which is merged with recital 15c(new); *amendments 9 and 14*) which is in line with the Commission's intention. Recital 15 (*amendment 11*) proposing a first review of the application and effectiveness of the Directive five years after its entry into force and then at seven year intervals is accepted by the Commission because such reviews give an important feedback and basis for possible necessary improvements of the system introduced by the Directive.

Recitals 1, 5, 9, 11a and 14 were adapted or introduced by the Commission taking account of changes done in the corresponding Articles 2 (*amendment 17*), 8 and 12 (*amendment 32*)(see below).

Amendments of Articles:

Article 1 (*amendment 16*) takes on board as objective of the Directive the need for progress towards sustainable development and some technical adaptations deemed necessary by the Commission for the purpose of coherence between recitals and articles.

Article 2 (*amendment 17*) consisting of several elements concerning the scope and definitions of the Proposal was changed in order to clarify and improve it by incorporating proposals of the European Parliament and by making some technical changes deemed necessary by the Commission. Article 4 paragraph 4 bis (*amendment 19*) was added because the public concerned should get a possibility to know why some types of plans and programmes were exempted under Article 4 paragraphs 3 and 4.

The amendments suggested by the European Parliament to Article 5 (*amendment 22*) were incorporated into the annex (see below) which is linked to this article and into Article 12 because they better fit into these provisions. The changes done to this article by the

Commission are of a technical nature and intend to make the article clearer and coherent with other provisions of the Proposal.

The addition of appropriate time frames intending to limit the consultation procedure to a reasonable time and allowing sufficient time for consultation to Article 6 (*amendment 27*) corresponds to the change in recital 12 (*amendments 9 and 14*) above. The changes done by the Commission in Article 8 are of a technical nature in order to make it coherent with other changes in the text. The change in Article 11 (*amendment 31*) is related to recital 15 (*amendment 11*) above.

In Article 12 (*amendment 32*) a new deadline for the implementation of the Directive and a date for communicating a list of plans and programmes to be submitted to the Directive by the Member States to the Commission is introduced. The same date will apply for the publication of this list by the Commission. A period of two years for these purposes seems appropriate to the Commission. Additionally one part of the amendments suggested by the European Parliament to Article 5 (*amendment 22*) is introduced into Article 12 paragraph 1a. This change as well as new recital 11a reflect the importance of ensuring the quality of the environmental statement, being an important factor for the success and usefulness of environmental assessment, by asking the Member States to communicate to the Commission how they ensure its quality.

Amendment of the annex:

In the annex to the Proposal several improvements coming from the European Parliament concerning the information to be given in relation to the environmental statement are incorporated (*amendments 33 and 22*). Apart from technical adaptations done by the Commission - like moving the non-technical summary from Article 5 paragraph 4 to the annex or introducing a new order of subparagraphs - these concern the inclusion of a description of the 'zero-option' and reasonable alternatives, the consideration of secondary, cumulative, synergistic, short, medium and long-term, permanent and temporary, positive and negative effects of the plan or programme and of a statement outlining how the assessment was undertaken. In a footnote to this annex introduced by the Commission as technical improvement it is referred to the possibility of using any relevant and current information available on environmental effects of plans and programmes obtained at other levels of decision-making or through other Community environmental legislation which should avoid duplication of work.

Additional remark:

One of the elements introduced by the environmental assessment system for certain plans and programmes is the consultation of the public concerned by giving this public the opportunity to comment on the draft plan or programme and the environmental statement, taking the comments made into account in decision-making and by informing this public of the decision taken. In this respect attention is drawn to the fact that these provisions of the Proposal correspond to the related provisions of the UNECE Convention on access to information, public participation in decision-making and access to justice in environmental matters signed in Aarhus in June 1998. This convention also contains an article on definitions which should be borne in mind when implementing the corresponding provisions of the Proposal.

Amendments not accepted by the Commission

The Commission cannot accept amendments 1, 5, 6, 8, 10, 12, 13, 15, 18, 20, 21, 28, 29 and 30.

Amendment 1 on the first recital splits the planning/programming decision making process as covered by the Proposal into several levels and deletes the linkage to 'subsequent development consents'. The Commission cannot accept this amendment because all relevant plans and programmes at all levels of the decision making process as covered by the Proposal should be included and considers it important to keep the linkage to future economic activities at the project level.

Amendments 5 and 8 concerning recitals introduce some terminology and additional elements concerning the scope of the Proposal. The Commission cannot accept these amendments since they bring neither improvement nor clarification with respect to the current text of the Proposal.

Amendments 6, 10 and 28 relate to transboundary consultations, introduce some terminological changes, an extension of the scope with regard to the inclusion of other states than Member States as well as the explicit inclusion of 'the public' in the related article. The Commission cannot accept these amendments since a Directive is addressed to Member States and regulates the relations between those. The terminological changes do not improve the Proposal and transboundary public involvement at the planning/programming level is considered to be too complicated in a first attempt of introducing this Directive.

Amendment 12 suggests introducing a new recital explaining that most sectoral plans and programmes would have a national territorial dimension going beyond local and regional planning. The Commission cannot accept such a statement because it does not correctly reflect the situation in the Member States.

Amendments 13 and 21 suggest a new recital referring to poor town and country planning and its possible consequences and put special focus on the risk of flooding. The Commission acknowledges that the risk of flooding can be an important factor to look at with regard to the environmental information necessary to be given in the environmental statement. If such a situation arises it is covered by the current Proposal. Separate amendments of this kind are not necessary and cannot be accepted.

Amendments 15 and 30 stress the need for control methods and monitoring instruments. The Commission acknowledges that control methods or monitoring are useful mechanisms. However, as revealed by a study carried out on monitoring the introduction of a requirement such as monitoring in a first phase of introducing a Directive on environmental assessment of plans and programmes might impose a too big burden on the Member States in terms of related costs which could be rather high and cannot be accepted by the Commission.

Amendment 18 suggests to broaden the current scope of the Proposal considerably to all kinds of plans and programmes of various areas without linking it to the additional

requirements of current Article 2 of the Proposal. In a first phase of introducing a Directive in the field of environmental assessment of plans and programmes a limited scope of application was chosen by the Commission. The Commission cannot accept an extensive broadening of the scope at the current time.

Amendment 20 suggests an exemption of the requirements of the Proposal for systems which apply the requirements of the project EIA Directive 85/337/EEC at the planning level. The Commission cannot accept an exemption of this kind since the requirements of environmental assessment at the project level are different to those at the planning level.

Amendment 29 suggests to insert additionally to the reference to Directive 85/337/EEC a reference to the amended EIA Directive 97/11/EC. Legally speaking such an addition is not necessary because quoting the original Directive would automatically include all future modifications. This amendment can for this reason not be accepted by the Commission.

**AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE ON ASSESSMENT OF THE EFFECTS OF
CERTAIN PLANS AND PROGRAMMES ON THE ENVIRONMENT**

ORIGINAL TEXT

AMENDED TEXT

Recital 1

Whereas Article 130r of the Treaty provides that Community policy on the environment is to contribute to the preservation, protection and improvement of the quality of the environment, the protection of human health and the prudent and rational utilisation of natural resources and that it should be based on the precautionary principle; whereas that necessitates, inter alia, the proper integration of environmental considerations into the plans and programmes which are adopted within Member States as part of the town and country planning decision-making process for the purpose of establishing the framework for subsequent development consents (in particular those to which Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment applies);

Whereas Article 130r of the Treaty provides that Community policy on the environment is to contribute to the preservation, protection and improvement of the quality of the environment, the protection of human health and the prudent and rational utilisation of natural resources and that it should be based on the precautionary principle; whereas that necessitates, inter alia, the proper integration of environmental considerations into the plans and programmes which are prepared and adopted within Member States for setting a framework for future development consents (in particular those to which Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment applies);

Recital 1 a (new)

Whereas sustainable development, being a key objective of the Community, depends on sound management of natural resources and on the preservation of the equilibrium of the different ecosystems so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs;

Recital 2

Whereas this Directive aims at a high level of protection of the environment through the attainment of the objectives provided for in Article 130r(1) of the Treaty and is of a procedural nature, setting out an environmental assessment procedure to be followed by the competent authority before the final decision is taken in relation to plans and programmes likely to have an environmental impact;

Whereas this Directive aims at a high level of protection of the environment and for progress towards sustainable development through the attainment of the objectives provided for in Article 130r(1) of the Treaty and is of a procedural nature, setting out a minimum environmental assessment procedure to be followed by the competent authority before the final decision is taken in relation to plans and programmes likely to have environmental impact;

Recital 3 a (new)

Whereas the adoption of environmental assessment procedures at the planning and programming level will benefit undertakings by providing a more consistent framework in which to operate, and contribute to economically more efficient or cost-effective solutions, leading to the inclusion of a wider set of factors in decision-making;

Recital 5

Whereas the different environmental assessment systems operating within Member States are deficient because they do not cover all of the core plans and programmes which establish the framework for subsequent consent decisions and because they do not always contain the minimum procedural requirements necessary to ensure a high level of protection of the environment;

Whereas the different environmental assessment systems operating within Member States are deficient because they do not cover all of the core plans and programmes which set a framework for future consent decisions and because they do not always contain the minimum procedural requirements necessary to ensure a high level of protection of the environment;

Recital 7

Whereas action is therefore required at Community level to establish a general environmental assessment framework which will remedy these deficiencies and thereby contribute to the pursuit of the environmental objectives set out in the Treaty;

Whereas action is therefore required at Community level to lay down a minimum environmental assessment framework which will remedy these deficiencies and thereby contribute to the pursuit of the environmental objectives set out in the Treaty;

Recital 9

Whereas the plans and programmes which should be assessed under this Directive are those plans and programmes which are adopted as part of the town and country planning decision-making process for the purpose of establishing the framework for subsequent development-consents, including strategic plans and programmes adopted in the energy, waste, water, industry (including mineral extraction), telecommunications and tourism sectors, and certain transport infrastructure plans and programmes;

Whereas the plans and programmes which should be assessed under this Directive are those plans and programmes which are prepared and adopted within Member States for setting a framework for future development consents, including strategic plans and programmes in areas such as energy, waste, water, industry (including mineral extraction), telecommunications, tourism, certain transport infrastructure plans and programmes, town and country planning or land use;

Recital 11a

Whereas, given the importance of the quality of the environmental statement being an important factor for the success and usefulness of environmental assessment, Member States shall communicate to the Commission how they ensure the quality of the environmental statement;

Recital 12

Whereas in order to ensure that the decision-making process is transparent and that the information supplied for the assessment is comprehensive and reliable, it is necessary to provide that authorities and/or bodies with relevant environmental responsibilities and the public are to be consulted during the assessment of plans and programmes;

Whereas in order to ensure that the decision-making process is transparent and that the information supplied for the assessment is comprehensive and reliable, it is necessary to provide that authorities and/or bodies with relevant environmental responsibilities and the public concerned are to be consulted during the assessment of plans and programmes, and that appropriate time frames are set, allowing sufficient time for consultations including the submission of comments;

Recital 14

Whereas the results of the assessment should be taken into account by the competent authority before it adopts the plan or programme or submits it to the legislative procedure, on the understanding that the

Whereas the results of the assessment should be taken into account by the competent authority in particular by making such alterations to the plan or programme as it considers appropriate before it adopts the plan

power of assessment and the final decision remain within the sole competence of this authority;

or programme or submits it to the legislative procedure, on the understanding that the power of assessment and the final decision remain within the sole competence of this authority;

Recital 15

Whereas the application and effectiveness of this Directive should be reviewed seven years after its entry into force;

Whereas a first report on the application and effectiveness of this Directive should be done by the Commission five years after its entry into force, and at seven-year intervals thereafter;

Article 1

The objective of this Directive is to provide for a high level of protection of the environment by ensuring that an environmental assessment is carried out of certain plans and programmes and that the results of the assessment are taken into account during the preparation and adoption of such plans and programmes.

The objective of this Directive is to provide for a high level of protection of the environment and for progress towards sustainable development by ensuring that in accordance with the provisions of this Directive an environmental assessment is carried out of certain plans and programmes which are likely to have environmental impact.

Article 2

For the purposes of this Directive :

(a) "plan" and "programme"

(i) refer only to town and country planning plans and programmes

- which are subject to preparation and adoption by a competent authority or which are prepared by a competent authority for adoption by legislative act, and

- which are part of the town and country planning decision-making process for the purpose of establishing the framework for subsequent development consents and

For the purposes of this Directive:

(a) "plans and programmes"

(i) refer to plans and programmes

- which are subject to preparation and adoption by a competent authority or which are prepared by a competent authority for adoption by a legislative act, and

- which set a framework for future development consents of projects by making reference to their location and, inter alia, their nature, size or operating conditions and,

- which contain provisions on the nature, size, location or operating conditions of projects.

(ii) include modifications of existing plans and programmes as described in point (I);

This definition includes town and country planning plans and programmes in sectors such as transport (including transport corridors, port facilities and airports), energy, waste management, water resource management, industry (including extraction of mineral resources), telecommunications and tourism;

(b) "competent authority" means the authority which the Member States designate as responsible for performing the duties arising from this Directive;

(c) "development consent" means the decision of the competent authority which entitles the developer to proceed with a project.

(e) "environmental assessment" means the preparation of an environmental statement, the carrying out of consultations and the taking into account of the environmental statement and the results of the consultations in accordance with Articles 5 to 8;

(ii) include modifications of existing plans and programmes as described in point (i);

This definition includes plans and programmes in areas such as transport (including transport corridors, port facilities and airports), energy, waste management, water resource management, industry (including extraction of mineral resources), telecommunications, tourism, town and country planning or land use.

(b) "competent authority" means the authority or authorities which the Member States designate as responsible for performing the duties arising from this Directive;

(c) "development consent" means the decision which entitles the developer to proceed with a project.

(e) "environmental assessment" means the preparation of an environmental statement, the carrying out of consultations, the taking into account of the environmental statement and the results of the consultations in decision-making and the information on the decision in accordance with Articles 5 to 9;

(ea) "environmental statement" means a document containing the information required in Article 5 and the annex;

Article 4

4b. The competent authority shall make available to the public concerned a statement of how and why the plan or programme was exempted under paragraphs 3 or 4;

Article 5

1. Where an environmental assessment is required under Article 4, the competent authority shall prepare an environmental statement containing the types of information referred to in the Annex.

2. The information included in the environmental statement prepared pursuant to paragraph 1 shall be in such detail as may reasonably be required for the purpose of assessing the significant direct and indirect effects of implementing the plan or programme on human beings, fauna, flora, soil, water, air, climate, landscape, material assets and the cultural heritage, taking into account the level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters can be more appropriately assessed at different levels in that process.

4. The environmental statement shall include a non-technical summary of the information contained in it.

1. Where an environmental assessment is required under Article 4, and for achieving the objectives set out in Article 1 the competent authority shall prepare an environmental statement containing the types of information referred to in the Annex.

2. In the environmental statement the significant direct and indirect effects of implementing the plan or programme on human beings, fauna, flora, soil, water, air, climate, landscape, material assets and the cultural heritage as well as the interaction between these factors shall be identified, described and assessed in an appropriate manner.

2a. The information included in the environmental statement prepared pursuant to paragraph 1 shall be in such detail as may reasonably be required taking into account the level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process.

Article 6

2. The environmental authorities and/or bodies concerned and the public concerned shall be given an opportunity to express their opinion on the draft plan or programme and the accompanying environmental statement before the adoption or submission to the legislative procedure of the plan or programme.

2. The environmental authorities and/or bodies concerned and the public concerned shall be given an opportunity within appropriate time frames allowing sufficient time for expressing their opinion on the draft plan or programme and the accompanying environmental statement before the adoption or submission to the legislative procedure of the plan or programme.

Article 8

The competent authority responsible for the adoption or submission to the legislative procedure of the plan or programme concerned shall take into consideration, prior to such adoption or submission, the environmental statement prepared pursuant to Article 5, any opinions expressed pursuant to Article 6 and the results of the consultations entered into pursuant to Article 7. The competent authority may, in particular, make such alterations to the plan or programme as it considers appropriate on the basis of the environmental statement and any such opinions and consultations.

The competent authority responsible for the preparation and adoption or submission to the legislative procedure of the plan or programme shall take into consideration, during the preparation and prior to such adoption or submission, the environmental statement prepared pursuant to Article 5, any opinions expressed pursuant to Article 6 and the results of the consultations entered into pursuant to Article 7. The competent authority may, in particular, make such alterations to the plan or programme as it considers appropriate on the basis of the environmental statement and any such opinions and consultations.

Article 11

2. Seven years after the entry into force of this Directive, the Commission shall send a report on the application and effectiveness of the Directive to the European Parliament and to the Council.

3. Where appropriate, in the light of the report referred to in paragraph 2, the Commission may submit to the Council a proposal containing amendments to this Directive.

2. Five years after the entry into force of this Directive, the Commission shall send a first report on the application and effectiveness of the Directive to the European Parliament and to the Council. A new evaluation report shall then follow at seven-year intervals.

3. Where appropriate, in the light of the reports referred to in paragraph 2, the Commission may submit to the Council proposals containing amendments to this Directive.

Article 12

1. Member States shall take the necessary legislative, regulatory and administrative provisions to comply with this Directive no later than 31 December 1999. Member States shall forthwith inform the Commission of the measures taken.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the types of plans and programmes which they will submit to an environmental assessment pursuant to this Directive.

1. Member States shall take the necessary legislative, regulatory and administrative provisions to comply with this Directive no later than two years after its entry into force. Member States shall forthwith inform the Commission of the measures taken.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The form of such reference shall be adopted by Member States.

1a. Member States shall communicate to the Commission how they ensure the quality of the environmental statement.

2. No later than two years after the entry into force of this Directive Member States shall communicate to the Commission a list of the types of plans and programmes which they will submit to an environmental assessment pursuant to this Directive.

By this date the Commission will make available such a list to the Member States.

Annex

Information on the following matters :

- (a) the contents of the plan or programme and its main objectives
- (b) the environmental characteristics of any area likely to be significantly affected by the plan or programme;
- (c) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;
- (e) the likely significant environmental effects of implementing the plan or programme;

Information on the following matters :

- (a.) the contents of the plan or programme and its main objectives
- (b.) A description of the 'zero-option' and reasonable alternatives (such as alternative types of development or alternative locations for development), including any modifications or mitigation measures considered, of achieving the objectives of the plan or programme;
- (c) the environmental characteristics of any area likely to be significantly affected by the plan or programme and its reasonable alternatives including, in particular, those relating to any areas of particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC, or qualifying for designation;
- (d) any existing environmental problems which are relevant to the plan or programme and its reasonable alternatives;
- (e) the likely significant effects of implementing the plan or programme and its reasonable alternatives on the environment, comprising those on the areas mentioned under c, including the consideration of secondary, cumulative, synergistic, short, medium and long-term, permanent and temporary, positive and negative effects ;

(f.) any alternative ways of achieving the objectives of the plan or programme which have been considered during its preparation (such as alternative types of development or alternative locations for development) and the reasons for not adopting these alternatives;

(g.) the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment of implementing the plan or programme;

(g.) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;

(ha) a statement outlining how the assessment was undertaken and the reasons for not adopting the alternatives considered;

(hb) a non-technical summary of the information provided under the above headings.

* Any relevant and current information available on environmental effects of plans and programmes obtained at other levels of decision-making or through other Community environmental legislation can be used for or form part of the information required in the annex.

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