



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.01.1996
COM(95)720 final

94/0078 (SYN)

Amended proposal for a

COUNCIL DIRECTIVE

AMENDING

**DIRECTIVE 85/337/EEC ON THE ASSESSMENT OF THE EFFECTS OF
CERTAIN PUBLIC AND PRIVATE PROJECTS ON THE ENVIRONMENT**

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

Explanatory memorandum

In accordance with Article 130s, paragraph 1, of the EC Treaty, the Council consulted the European Parliament on the proposal for a Directive amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (COM(93) 575 final, 94/0078 (SYN)). At its Sitting of 11 October 1995 the European Parliament approved 58 amendments, 16 of which are accepted by the Commission, either in whole or in part¹. These amendments are discussed below and included in the present modified proposal.

Amendments accepted by the Commission

Amendments of the recitals: Relevant background matters like the Fifth Action Programme on the Environment and Conclusions of the Dublin European Council are now included in the recitals as well as an indication of the Commission's intention to incorporate the main principles of the Espoo Convention into the Directive (amendments 2, 5, 11 and 15). An amendment on a "high" level of protection and "similar" criteria is in line with the purpose of the Commission's proposal (amendment 3). As amended by amendment 8, recital 3 will better reflect the proposal, which will alter to some extent the scope of Member States' obligations.

Amendment of articles of Directive 85/337/EEC: As amended in line with the first part of amendment 32 it is made clear in the directive that projects which require an assessment have to be made subject to a requirement for development consent. The Commission considers, however, that the amendment would fit better with the body of the Directive if the change is made to Article 2(1) instead of Article 6, as proposed by the Parliament.

In Article 3 the definition of the environmental factors covered by an assessment will be clarified (amendment 25). In Article 5 the minimum list of information to be gathered for an environmental impact assessment will be reintroduced. This will aid harmonisation within the Member States (amendment 28). Article 7 will be improved by inserting a new opening paragraph concerning the timetable for consultations in a transboundary context (the first part of the amendment 33).

In Article 9 a new final paragraph will be inserted indicating that the detailed arrangements for publishing a development consent decision are to be determined by Member States (the last part of amendment 34).

Amendment of Annex I of Directive 85/337/EEC: The scope of Annex I will be improved by adding a reference to projects relating to certain activities, for example the production and enrichment of nuclear fuel, installations for the incineration of waste, ground water abstraction, and certain intensive livestock installations (amendments 44 and 46 and points 9a, 9d, 9e, 9f, 9i, 9n and 9s of amendment 47).

Amendment of Annex II of Directive 85/337/EEC: The scope of Annex II will be improved by inserting a reference to extraction of minerals by marine dredging, to

¹ Minutes of the Sitting of 11 October 1995, provisional edition, PE 194.336.

windfarms, to permanent racing and test tracks, the storage of scrap iron and scrap vehicles and to cable cars (certain parts of amendments 50 and 51).

Amendments not accepted by the Commission

Amendments of the recitals: The amendments not accepted to the recitals generally do not fit in with the proposal, are linked with other amendments which are being rejected or overlap with other amendments. They concern the Fifth Action Programme on the Environment (amendment 1), "second expert opinions" (amendment 6), carrying out a cost benefit analysis before carrying out a project (amendment 9), avoiding distortions of competition (amendment 71), the definition of the environment (amendment 12), the need to pay particular attention to islands (amendment 13), mechanism for determining which projects are to be assessed (amendment 14) and the need to harmonise community law (amendment 17).

Amendment of articles of Directive 85/337/EEC: In general the proposed amendments not accepted to the Articles overlap with other Community proposals or legislation or do not fit in with the approach taken in the proposal. In the case of some amendments it is considered that the Directive is not an appropriate instrument for implementing the amendments proposed.

Regarding Article 1 it was suggested that a requirement for an assessment of programmes be inserted (amendment 19, as well as amendments 4 and 7 of the recitals), but this should be dealt with in a separate proposal. It was also proposed to amend the definitions (amendments 20 and 21). These proposals are already covered by the Directive or overlap with other amendments. Furthermore, it is not considered appropriate to include projects for national defence purposes (amendment 22). The exemption of projects adopted by specific acts of national legislation (amendment 23) is not in line with the objective of avoiding duplication which objective already is indicated in the Directive.

Concerning Article 2, it was suggested that new arrangements be inserted for applying the power to exempt specific projects in exceptional cases (amendment 24 and amendment 18 of the recitals); this is not considered necessary since this power is rarely used. As regards Article 4, the goal of the Commission proposal is to establish a clear and effective mechanism for determining which Annex II projects have to be assessed. In this context it is not considered that amendment 26 would improve the text of the proposal.

With regard to Article 5(1), a new scoping process is foreseen with consultations between the developer and the authorities. It was suggested that this be amended by inserting public involvement in the scoping phase (amendment 27). This provision is considered too far reaching. The rest of the suggested amendments to this Article are not considered to improve the Commissions proposal i.e. information to be available to the developer (amendment 29), a register of environmental impact assessment consultants (amendment 30) and civil liability (amendment 31).

Regarding Article 6, a proposal was made concerning the details of public consultations (the second part of the amendment 32) and on Article 7 on transboundary consultations a proposal was made to set out detailed procedural requirements (the majority of

amendment 33 and amendment 18 of the recitals). However the Commission considers that such details are best worked out by Member States themselves.

Regarding Article 9, the Commission proposed that the development decision should be notified to an affected Member State in a transboundary case. This should not be deleted as suggested in the first part of the amendment 34. Amendment 34 also suggested that environmental compensation would be dealt with here, but the Directive is not considered to be an appropriate instrument for dealing with this matter. Furthermore it was suggested that post-consent monitoring be included, (amendments 36, 37 and amendment 16 of the recitals), but this would overlap with other Commission proposals such as the draft Directive on Integrated Pollution Control. Regarding setting up an ad hoc committee to assist the Commission when reviewing the effectiveness of the Directive (amendment 38), the Commission already has regular contacts with Member States to discuss the Directive. Requirements on environmental impact assessment are also proposed in respect of projects outside of the EU which receive financing from the EU (amendments 39 and 84). This kind of assessment requirement is more appropriate to the relevant Community funding instrument.

Amendment of commencement provision: There are two suggestions regarding commencement provisions (amendments 40 and 41). However, the provisions of the Directive as adopted in 1985 should apply to all applications received before the date on which Member States have to comply with the provisions of the proposal.

Amendment of Annex I of Directive 85/337/EEC: Certain amendments have not been accepted because the definitions therein are too imprecise to be useful (amendments 42, 43, 45 and points 9b, 9c, 9g, 9h, 9j, 9k, 9l, 9m, 9o, 9p, 9q, 9r and 9t to 9w of amendment 47).

Amendment of Annex II of Directive 85/337/EEC: It was suggested that new types of projects be introduced to Annex II. However a large number of projects will not usually have significant environmental effects or are already adequately dealt with in the Directive (this applies to amendments 49 and the rest of the amendments 50 and 51 mentioned above, 52, 53, 54 and 65).

Amendment of the New Annex IIa of Directive 85/337/EEC: To the new Annex IIa two amendments have been proposed. However the "rational use of energy" proposal can be dealt with under the existing "use of natural resources" heading (amendment 55). In the other amendment the aim was to impose a requirement on the contents of land use plans, which are not covered by the Directive (amendment 56).

Amendment of Annex III of Directive 85/337/EEC: Two proposals have been made to amend Annex III concerning the information collected under Article 5. It is considered unnecessary to spell out in the Directive the definition of "alternatives" (amendment 57). It is not considered appropriate to refer to "insurance cover" in Annex III (amendment 67).

In accordance with Article 189 A paragraph 2 of the EC Treaty, the Commission modifies as follows the text of its proposal concerning environmental impact assessment in order to include the accepted amendments into its proposal.

**AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING
DIRECTIVE 85/337/EEC ON THE ASSESSMENT OF THE EFFECTS OF
CERTAIN PUBLIC AND PRIVATE PROJECTS ON THE ENVIRONMENT**

COM(93) 575 final, SYN 94/0078

(Submitted by the Commission pursuant to Article 189a (2) of the EC Treaty on***)

ORIGINAL TEXT

AMENDED TEXT

Recital 1

Whereas the main purpose of the environmental assessment procedure under Council Directive 85/337/EEC⁴ is to provide the competent authorities with relevant information to enable them to make a decision on a specific project in full knowledge of the facts regarding the project's probable impact on the environment; whereas the assessment procedure is therefore a fundamental instrument of environmental policy as defined in Article 130r of the Treaty;

Whereas the main purpose of the environmental assessment procedure under Council Directive 85/337/EEC⁴ is to provide the competent authorities with relevant information to enable them to make a decision on a specific project in full knowledge of the facts regarding the project's probable impact on the environment; whereas the assessment procedure is therefore a fundamental instrument of environmental policy as defined in Article 130r of the Treaty and of the Fifth Community programme of policy and action in relation to the environment and sustainable development;

Recital 2

Whereas a sufficient degree of environmental protection must be ensured at Community level by laying down a general assessment framework and criteria for defining those projects which must be submitted for an environmental assessment;

Whereas a high degree of environmental protection must be ensured at Community level by laying down a general assessment framework and similar criteria for defining those projects which must be submitted for an environmental assessment;

Recital 2b (new)

Whereas the conclusions of the Dublin European Council stipulate that the purpose of action by the Community and its Member States must be to guarantee their citizens the right to a clean and healthy environment.

Recital 3

Whereas the report on the implementation of Directive 85/337/EEC, as adopted by the Commission on 2 April 1993, shows that there are problems in applying the Directive; whereas certain provisions of the Directive should therefore be clarified so that the assessment procedure may produce greater benefits, but without altering the actual scope of the Member States' obligations under the Directive;

Whereas the report on the implementation of Directive 85/337/EEC, as adopted by the Commission on 2 April 1993, shows that there are problems in applying the Directive; whereas certain provisions of the Directive should therefore be clarified so that the assessment procedure may produce greater benefits,

Recital 4

Whereas it would, nevertheless, appear, necessary to introduce provisions designed to improve the rules on the assessment procedure;

Whereas experience acquired in environmental impact assessment makes it necessary to introduce provisions designed to improve the rules on the assessment procedure;

Recital 7

Whereas some of these measures bring the provisions of the Directive into line with the Convention on environmental impact assessment in a transboundary context (Espoo Convention), which the Community signed at the same time as the Member States on 25 February 1991,

Whereas it is necessary to incorporate in this Directive the main principles of the Convention on environmental impact assessment in a transboundary context (Espoo Convention), which the Community signed at the same time as the Member States on 25 February 1991,

Article 1 (1a) (new)

Article 2 (1) is replaced by the following:

Member States shall adopt all measures necessary to ensure that projects likely to have significant effects on the environment by virtue *inter alia* of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects.

These projects are defined in Article 4.'

Article 1 (1b) (new)

Article 3 is replaced by the following:

'Article 3

The environmental impact assessment will identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings (including their health and safety and quality of life), fauna and flora;
- soil, water, air, climate, and landscape;
- material assets and the cultural heritage (including historical monuments and buildings and other buildings);
- interaction between the factors mentioned in the first, second and third indents.'

Article 1 (4)

4. Article 5 (2) is deleted. Deleted.

Article 1 (8)

2. The Member States concerned shall enter into consultations, setting a reasonable timetable for:
2. The Member States concerned shall enter into consultations, and shall set a reasonable time limit for the length of the consultation period for:

Article 1 (10), final paragraph of Article 9 (new)

The detailed arrangements for such information shall be determined by the Member States.'

ANNEX (1)

3.(a) Installations for the reprocessing of irradiated nuclear fuel;

(b) Installations designed solely for the permanent storage or final disposal of radioactive waste storage installations for radioactive waste or irradiated fuel.'

3.(a) Installations for the reprocessing of irradiated nuclear fuel;

(b) Installations designed solely for the production or enrichment of nuclear fuels, the processing of irradiated nuclear fuels or other radioactive waste, the permanent or temporary storage and/or the disposal of radioactive waste or irradiated nuclear fuel;

ba) The dismantling of nuclear power stations.'

ANNEX (3a) (new)

Point 9 in Annex I is replaced by the following:

'9. Waste disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes, and installations for the incineration of industrial and domestic waste with a capacity of more than 300 tonnes per day.'

ANNEX (3b) (new)

The following points are added to Annex I:

10. Ground-water capture schemes where the annual volume of water captured is equivalent to or exceeds 10 million cubic metres.
11. Works for the transfer of water resources between river basins.
12. Waste water treatment plants with a capacity exceeding 300 000 population equivalents¹ including the management and treatment of the sludge.
13. Installations for the production of hydrocarbons at sea.
14. Dams and other installations designed for the holding back or permanent storage of water with a capacity of more than 100 Hm³.
15. Installations for the intensive rearing of poultry or pigs with more than:
 - 40,000 places for poultry;
 - 2,000 places for the production of pigs (over 30 kg), or
 - 750 places for sows.

¹ For the purpose of this Directive, one population equivalent is an organic biodegradable load having a five day biochemical oxygen demand of 60g of oxygen per day.

ANNEX (5a) (new)

The following new points are added under points 2 and 3 in Annex II:

2. Extractive Industry

Extraction of minerals by marine dredging.

3. Energy Industry

Large-scale installations for the harnessing of wind power for energy production (wind farms).

ANNEX (7)

Other projects

(a) Permanent racing and test tracks for cars and motor cycles.

(e) Storage of scrap iron.

11. Other projects

(a) Permanent racing and test tracks for motorised vehicles.

(e) Storage of scrap iron and scrap vehicles.

(j) Cable cars.

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