



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DIRECTIVE
on the assessment of the effects of certain plans and programmes
on the environment

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. JUSTIFICATION OF PROPOSAL

Background

- 1.1 Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (the "EIA Directive") requires an environmental impact assessment to be carried out before development consent is given for projects which are likely to have significant effects on the environment. The EIA Directive does not, however, require an assessment to be carried out before the adoption of the plans and programmes which set the framework for such development consent decisions. Thus, for example, there is no requirement under Community law to carry out an environmental assessment prior to the adoption of a regional town and country planning plan. The objective of this Proposal is to provide for a high level of protection of the environment by ensuring that an environmental assessment is carried out and the results are taken into account during the preparation and adoption of such environmentally significant plans and programmes. This will complement the environmental assessment of projects under the EIA Directive, which takes place at a later stage in the decision-making process.

Scope of the Proposal

- 1.2 The Proposal sets out the environmental assessment procedure concerning the public plans and programmes defined in Article 2 of the Directive. It is thus restricted to the plan and programme level of decision-making. It does not apply to the more general policy level of decision making at the top of the decision-making hierarchy. Whilst it is important that general policy decisions take account of the environment, the procedural requirements of the present Proposal may not be a suitable way of achieving this goal. General policy decisions develop in a very flexible way and a different approach may be required to integrate environmental considerations into this process. The Commission is continuing to study this matter.
- 1.3 The Proposal is restricted to town and country planning plans and programmes and to plans and programmes which are adopted as part of the town and country planning decision-making process for the purpose of setting the framework for subsequent development consent decisions which will allow developers to proceed with projects. Such town and country planning plans or programmes define the use of land and contain provisions on nature, size, location or operating conditions of installations or activities in different sectors relevant to town and country planning. The Proposal will cover town and country planning plans and programmes including sectoral town and country planning plans in sectors such as transport, waste management, water resource management, industry, telecommunication, tourism or energy. The Proposal, however, only covers those plans and programmes that are adopted by a competent body according to a formal procedure. This does not mean that the Member States will have to establish formal adoption procedures to comply with the Proposal. It means that only plans and programmes that are subject to adoption by existing formal procedures will be covered by the Proposal. An example of a plan that would be covered is a mineral extraction development plan which contains, *inter alia*, provisions on the nature, size,

location or operating conditions of mineral extraction operations in a particular area. An example of plans which would not be covered, is an overall energy plan covering general issues such as energy resources, energy demand and supply or plans and programmes which concern economic subsidies or energy conservation. The Proposal is a further important step towards ensuring that environmental considerations are integrated into decision making within Member States. It is unlikely, however, to be the final step in this process. The operation of the Directive will have to be reviewed seven years after its entry into force (Article 11).

To make the scope of the Proposal clearer, below is an indicative list of some plans and programmes that might be covered:

- Germany: Landesraumordnungsprogramme/pläne; Landesentwicklungsprogramme/pläne; Regionalprogramme/pläne; Flächennutzungspläne
- Austria: Landesentwicklungspläne/programme; Sektorale Entwicklungsprogramme; Örtliche Raumordnungsprogramme; Flächenwidmungspläne
- Belgium:
Wallonia: Plan Secteur; Plan Particulier d'Aménagement (PPA); Schéma structurel; Schéma directeur;
Brussels: Plan de Développement Régional; Plan Régional d'affectation du Sol (PRAS);
Flanders: Ruimtelijk Structuurplan Vlaanderen; Gewestplan; Provinciaal Structuurplan
- Denmark: Regionalplaner; Kommuneplaner
- Spain: Plan nacional de ordenación; Plan director territorial de coordinación; Plan general municipal de ordenación urbana (PG); Programa de actuación urbanística (PAU)
- Finland: Asemakaava; Rakennuskaava
- France: Contrat de plan Etat-région; Directive territoriale d'aménagement (DTA);
- Greece: Chorotaxiko Schedio; Rythmistiko Schedio; Geniko poleodomiko schedio (GPS); Schedio poleos - Poleodomiki meleti
- Ireland: Development plans
- Italy: Piano territoriale di coordinamento & Piano territoriale Paesistico; Piano regolatore generale; Piano di recupero (Pdre); Piano degli insediamenti produttivi (PIP)
- Luxemburg: Plan d'aménagement général; Plan d'aménagement partiel; Plan d'aménagement particulier
- Netherlands: Vierde Nota Over de Ruimtelijke Ordening Extra; Streekplan; Stuctuurplan
- Portugal: Plano Regional de Ordenamento do Território (PROT); Planos Municipais de Ordenamento do Território (PMOTs); Plano Director Municipal (PDM); Planos de Urbanização
- United Kingdom: Structure plans & unitary development plans part one; Local plan & unitary development plan (UDP) part two
- Sweden: Översiktsplan (ÖP); Detaljplan (DP); Områdesbestämmelser

- 1.4 The restriction of the Proposal to plans and programmes which form part of the development consent decision-making process will mean that the new Directive will not apply to plans submitted to the Commission under the Structural Funds Regulations (Regulation (EEC) No 2052/88, as amended by Regulation (EEC) No 2081/93) because such plans are prepared in connection with the co-financing of regional development priorities rather than for development consent purposes. The Structural Funds Regulations, however, already require plans submitted under them to be accompanied by an environmental appraisal. In addition, the carrying out of the activities described in Structural Funds plans by Member States has to be in accordance with Community environmental law, including any environmental assessment requirements under the EIA Directive and, in the future, under the new Directive. The result will be that the environment will have to be taken into account both by the Commission during its consideration of Structural Funds plans and by Member States when adopting development consent plans and programmes and authorising projects for the purpose of carrying out Structural Funds activities. This should ensure a high level of environmental protection.
- 1.5 The Proposal only applies to plans and programmes which are subject to a formal adoption procedure, that is, to plans and programmes which are adopted or by public authorities or by an act of legislation. During consultations with Member States it became apparent that a small number of important plans and programmes are adopted by acts of legislation. For those plans and programmes the environmental assessment is completed by the competent authority before any decision is taken. This means that the Proposal does not interfere in the legislative procedure. The strategic environmental assessment presents the advantage that the decision-making body is better informed before taking its decision.

Environmental benefits

- 1.6 This Proposal will be an important step towards securing sustainable development across the Community. It will result in a better integration of environmental considerations into the formulation of plans and programmes. It will as such greatly contribute to the pursuit of the first three objectives of preserving, protecting and improving the quality of the environment as set out in Article 130r(1) of the Treaty (see paragraph 2.1 below). It is also clearly in accordance with the precautionary principle referred to in Article 130r(2) of the Treaty. Environmental assessment at the plan and programme level means that environmental targets will be defined early in the process and assessed in an interactive and comprehensive manner at the appropriate level. This again leads to a clearer understanding and the effective consideration of environmental effects by the planners and decision-makers.
- 1.7 By the time that an application for development consent for a project is being considered by a competent authority many important decisions will already have been taken which will partly determine the outcome of the development consent process. For example, the general location of a particular type of project may be determined by the adoption of a regional town and country planning plan. Environmental assessment at the project stage comes too late in the decision-making process to cover such plan level decisions. Without the requirement for environmental assessment at the plan and programme stage in the development consent decision-making process such decisions will be taken without a comprehensive consideration of their environmental consequences.

The Proposal will correct this situation by requiring an environmental assessment to be carried out before the adoption of such environmentally significant plans and programmes.

- 1.8 One particular benefit of bringing plans and programmes within the assessment system is that it will allow the issue of alternatives (such as the choice between alternative locations for a particular type of project or the choice between different modes of transport) to be properly assessed. The issue of alternatives can only be properly assessed at the plan and programme level.
- 1.9 The environmental assessment of plans and programmes will also allow the cumulative and synergistic environmental impacts of small but numerous projects to be assessed. For example, the general location of new housing can be considered in the context of a regional town and country planning plan and the environmental impact of different locations can be environmentally assessed and taken into account during the preparation of the plan. This type of environmental impact is not assessed at all under the EIA Directive.

The Fifth Environmental Action Programme "Towards Sustainability"

- 1.10 The Fifth Action Programme requires the implementation of a strategy of sustainable development. There are a number of ways of promoting sustainable development. It is clear that one way is to promote and improve environmental assessment procedures operating at the strategic level. Under the heading "sectoral and spatial planning" the Fifth Action Programme provides that given the goal of achieving sustainable development it seems only logical, if not essential, to assess the environmental implications of all relevant policies, plans and programmes. The current Proposal will help to fulfil this commitment by extending environmental assessment beyond the project level.

Economic benefits

- 1.11 One of the most important benefits is the creation of a more efficient planning framework which will have a positive and stabilizing effect on capital investments and development because main stream decisions will be taken at an early stage in the process. The Fifth Environmental Action Programme states that "the integration of environmental assessment within the macro-planning process would not only enhance the protection of the environment and encourage optimization of resource management but would also help to reduce those disparities in the international and inter-regional competition for new development projects which at present arise from disparities in assessment practices in the Member States". Also by conducting a strategic environmental assessment, the plan making process becomes more transparent and already at the planning level public support can be obtained for the preferred option or strategy. Once properly completed, the SEA procedure will increase the acceptability of the economic activities at project level. Finally in defining clearly about the conditions under which economic activities may be undertaken in the framework of the plan or the programme security will be increased and delays and additional costs at the project level will be reduced.

The Report on the implementation of the EIA Directive

- 1.12 In 1993 the Commission submitted a report to Parliament and the Council covering the application and effectiveness of the EIA Directive. The Report showed that Member States had made considerable progress in implementing the Directive and that there had been an improvement in the information made available to decision makers during the project level development consent procedure. One of the conclusions of the Report was, however, that project level assessments take place too late in the decision-making process to address all of the significant issues:

"It is clear ... that evaluation of the environmental impacts of certain projects is taking place too late in the development planning and decision-making process. In effect this has the result of removing from consideration the possible adoption of alternatives both to the individual project under consideration as well as to its particular location or route (in the case of linear developments).

This is a limitation inherent in an instrument restricted to the evaluation of environmental impacts at the individual project level since a number of important policy decisions will have been taken before the project level is reached which then limit the room for manoeuvre at the detailed project level."

- 1.13 In summary it was found that only limited provisions exist in most Member States for the integration of an environmental assessment process into the decision-making procedures for plans and programmes.

The present Proposal is intended to address this inherent limitation by supplementing the EIA Directive with a Directive requiring the assessment of town and country planning plans and programmes. From this perspective the Proposal can be seen as the second phase in the process begun in 1985 with the adoption of the EIA Directive.

Relationship between the EIA-Directive and the present Proposal

- 1.14 The extension of the environmental assessment system to the plan and programme level of decision-making will produce a more efficient assessment system. It will mean that the appropriate type of assessment will be required at the appropriate stage in the decision-making process. Under the SEA Proposal strategic issues will be assessed at the plan and programme level leaving the environmental impact assessment at the project level to address specific issues inherent to the proposed project. This will result in a more streamlined assessment at the project level. By conducting a comprehensive assessment at the strategic level, parts of the information required by the EIA Directive for the environmental impact statement can be used or provided in less detail by referring to the assessment already completed at the strategic level. In terms of procedure, the requirements of the existing EIA Directive and the present Proposal are very similar. Member States will therefore be familiar with the procedural steps to be taken. This will ensure timely implementation of the new Directive in the Member States. Finally, a properly conducted SEA will clarify the environmental conditions for projects approval. The EIA procedure will therefore be easier and in some cases maybe even unnecessary. This will presumably be the case for the majority of projects, for which according to the modified EIA Directive, the Member States have to undertake a screening examination before deciding to submit them to an EIA procedure. However, the need for a

comprehensive environmental assessment at the project level will remain for those projects for which an EIA is mandatory according to the modified EIA Directive.

International and Community initiatives

- 1.15 The need for environmental assessment above the project level is recognized in the Espoo Convention on environmental impact assessment in a transboundary context, which was signed in Espoo, Finland on 25 February 1991 by the Community and 29 countries, including all Member States. The Convention provides that, to the extent appropriate, the Parties to the Convention shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.
- 1.16 At Community level the need for the environmental assessment of plans and programmes has been recognized in Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. Article 6(3) of that Directive provides that any plan or project likely to have a significant effect on a special area of conservation designated under the Directive shall be subject to an appropriate assessment. This recognizes the importance of ensuring that the conservation objectives of the designated areas are properly considered at both the plan level and the project level. The need to consider environmental objectives at all levels of decision taking applies equally to situations which do not involve special areas of conservation.

Member State initiatives

- 1.17 A study prepared for the Commission on plan and programme assessment legislation and procedures within the Community (March 1995) found that there had been some significant developments within Member States in this area since 1988 and that all Member States have some experience of carrying out such assessments. The study, however, identified two main deficiencies in the existing systems operating within the Community:
- (1) although Member States have some provisions for assessing the likely environmental consequences of implementing plans and programmes which are adopted for development consent purposes, the coverage of such plans and programmes is not complete;
 - (2) even where some form of environmental assessment system is in place it does not always comply with the basic requirements for such a system, for example, the information supplied for the assessment does not always cover all of the significant environmental impacts and there may be no formal requirement to consult the public.

The existing systems operating within the Community are therefore deficient, both in terms of their coverage of plans and programmes and in terms of their procedural requirements. The large majority of the Member States do not have legislation on SEA. Only three Member States have such a legislation that broadly fulfils the minimum requirements of the Proposal. Two Member States have such a legislation for some of their regions that broadly fulfils the minimum requirements of the Directive. None of the existing town and country planning systems in the other Member States

covers all of the minimum requirements for a SEA-Directive-like assessment. It should be noted, however, that the majority of Member States have in place procedures for consultation of both the public concerned and the environmental authorities in the preparation of town and country planning programmes.

Existing methodology

- 1.18 In investigating the availability of methodologies for assessing the environmental impact of plans and programmes the Commission has carried out reviews of existing practice in this area (e.g. *SEA Existing Methodology*, 1994, *SEA Case-studies*, 1996). The conclusions of these studies, also supported by other recent publications (e.g. *SEA: Status, Challenges and Future Directions*, Dutch Ministry of Environment 1996, *The Practice of Strategic Environmental Assessment*, Therivel and Partidario 1996) reveal that a range of methods and techniques are already applied for the environmental assessment of plans and programmes. These methods are usually based on those used in the environmental assessment of projects or in policy appraisal and planning.

Thus simple methods (such as maps, checklists, matrices) have often proved to be successful, while more complex techniques (such as multi-criteria analysis, Geographical Information Systems) have also been reported and are increasingly used. In any case the selection of appropriate methods depends on factors such as the objectives and scale of the action, time and budget constraints, or the availability of environmental data.

Therefore the availability of tools would be no obstacle for the performance of environmental assessments at plan or programme level. These tools are developing rapidly and it is clear that a Community-wide Directive will, as the Directive 85/337/EEC on the environmental assessment of projects did, stimulate research and exchange of experiences in this area and lead to the development of more sophisticated methodologies.

Costs

- 1.19 The costs of carrying out an environmental assessment of a plan or programme are generally borne by the public authority concerned. The Commission arranged for a study on such costs to be prepared. The study covered the direct financial costs of an assessment (for example, the fees paid to consultants) and the costs associated with the use of staff resources. The cases covered by the study revealed a relatively wide range of costs. The general conclusion, however, was that the increase in costs associated with this type of assessment is marginal compared with the scale of investment required in the overall development of the plan or programme being assessed. The environmental benefits of such assessments, as described above, should certainly outweigh these costs.

2. NEED FOR ACTION AT COMMUNITY LEVEL

How are the objectives of the Proposal related to the Community's obligations?

- 2.1 Article 130r(1) of the Treaty requires Community policy on the environment to contribute to the objectives of preserving, protecting and improving the quality of the environment, protecting human health and the prudent and rational utilization of natural

resources. A comprehensive environmental assessment system, which requires assessments to be carried out at the plan and programme level as well as at the project level, will make an important contribution towards these objectives by integrating environmental considerations into the relevant decision-making processes.

Is the Proposal within an area of exclusive Community competence or is competence shared with Member States?

2.2 The Proposal is not within an area of exclusive Community competence.

What is the Community dimension of the problem? What solution has been in force until now?

2.3 Council Directive 85/337/EEC introduced a system of environmental assessment at the project level into the Community. Experience has shown that there is a major problem with this system, namely that it only requires an assessment to take place at the end of the decision taking process. This means that the environmental assessment system established by Community law is incomplete. It needs to be completed by the addition of an environmental assessment requirement at the plan and programme level.

2.4 The lack of an effective and comprehensive environmental assessment system at the plan and programme level of assessment affects all Member States. It leads to a general failure within the Community to integrate fully and completely environmental considerations into the development consent decision-making process.

2.5 There is, in addition, a particular Community problem when the implementation of a plan or programme in one Member State will have a significant effect on the environment of another Member State. It is important in such cases that there is an effective environmental assessment within the plan or programme making Member State before the plan or programme is adopted and that there are also proper transboundary consultations. Such consultations are required to ensure that all of the significant environmental effects of implementing the plan or programme are taken into account, not just those that relate to the territory of the Member State in which the plan or programme is being prepared. The Proposal will ensure that there is an effective environmental assessment of such plans and programmes, including the carrying out of transboundary consultations.

2.6 Member States are seeking to address these common problems by introducing some elements of environmental assessment into some of their procedures for adopting plans and programmes. This is encouraging because it means that all Member States have some experience and understanding of this level of environmental assessment. However, a study prepared for the Commission (referred to in 1.17 above) identified two main deficiencies in the existing systems operating in the Community. First, there is an incomplete coverage of the main plans and programmes. Secondly, the procedural requirements of the assessment systems which do exist do not always satisfy the basic requirements for any environmental assessment system.

What is the most effective solution, comparing the means of Member States and the Community?

- 2.7 Community action is required to address the two deficiencies referred to above. The Proposal will, in particular, ensure that the assessment system in each Member State covers the core development consent plans and programmes and that the assessment procedure is satisfactory. This will ensure that a minimum level of environmental integration is established in the development consent decision-making process in all Member States. By setting up a basic framework procedure, a minimum Community wide system is established for the environmental assessment of plans and programmes. The Community fulfils its obligations under the Treaty but does not go beyond what is necessary in order to fulfil those obligations. The subsidiarity principle is met, the requirements of the Directive are sufficiently flexible to allow Member States to work out the detailed arrangements for implementing the Directive. The Directive leaves enough room for Member States either by integrating the minimum requirements of the Directive into existing national procedures or by establishing new procedures to comply with the Directive.

What would be the cost of inaction by the Community?

- 2.8 If the Community does not take any action the environmental assessment system established under Community law will remain incomplete. The two deficiencies identified above will continue. This will mean that a comprehensive integration of environmental considerations into the town and country planning plans and programmes adopted within the Community for the purpose of influencing development consent decisions will not occur. Plans and programmes will be adopted which have unforeseen adverse environmental consequences. Considering the very real environmental benefits of the Proposal, inaction would make it difficult to achieve the objectives referred to in Article 130r(1) of the Treaty of preserving, protecting and improving the quality of the environment, protecting human health and the prudent and rational utilization of natural resources.

What action is available to the Community (recommendation, financial support, legislation, etc.)?

- 2.9 A new Directive is required to establish a Community level framework for the environmental assessment of town and country planning plans and programmes, thus extending the assessment system introduced by Council Directive 85/337/EEC. A non-binding recommendation would not be sufficient to correct the identified deficiencies. The correction of these deficiencies will only be achieved by setting out at a Community level clearly enforceable obligations. This will ensure that all Member States adequately assess the plans and programmes identified in the Proposal. It will, in particular, ensure that there is a proper framework for the carrying out of transboundary consultations when a town and country planning plan or programme in one Member State is likely to have a significant environmental effect on the environment of another Member State.

Is uniform regulation necessary or is a Directive setting out the general objectives and leaving the detailed execution to Member States enough?

2.10 The Proposal is for a framework Directive which sets out the basic requirements for carrying out an environmental assessment at the town and country planning plan and programme level but leaves Member States free to decide how to implement these requirements into their national systems. The procedure for preparing and adopting plans and programmes varies in each Member State and the detailed arrangements for implementing the Directive which may be appropriate in one Member State may be inappropriate in other Member States. Member States should therefore be left to work out the detailed arrangements for implementing the Directive. In particular, it should be left to Member States to decide whether to integrate the new requirements into existing procedures or whether it would be more efficient to create new procedures. This may vary between Member States and between sectors. This framework approach was adopted for similar reasons for the EIA Directive and has proven to be the appropriate approach in that context.

3. CONSULTATIONS

3.1 The first draft of the Proposal was discussed with Member States on 28 April 1995. A further meeting was held with Member States on the 24 July 1995. These meetings helped to identify the type of plans and programmes which are adopted in Member States. This information was extremely helpful in defining the scope of the Proposal and particularly in drafting the definition of "plan or programme" in Article 2.

3.2 The Commission has also consulted representatives of regional authorities, environmental non-government organizations and certain social and economic organizations. Most of the consultees welcomed the Proposal although some considered that the scope of the Proposal should be wider (so that, for example, it covered general policies as well as plans and programmes). The justification for the scope of the Proposal is set out at paragraphs 1.2 to 1.5 above.

3.3 One consultee was concerned that the Proposal would increase the costs involved in preparing and adopting plans and programmes and lead to delays. Costs are considered at paragraph 1.19 above. The Commission considers that the procedural steps set out in the Proposal are the minimum steps that must be followed in any environmental assessment system. It considers that if the system is efficiently transposed it should not lead to unnecessary or unacceptable delays in the preparation and adoption of plans and programmes.

4. LEGAL BASE

4.1 The present Proposal, based on the precautionary principle, is intended to further the objectives defined in Article 130r(1) of the Treaty establishing the European Community, namely the preservation, protection and improvement of the quality of the environment, the protection of human health and the prudent and rational utilization of natural resources.

In this perspective, the Proposal sets out an environmental assessment procedure to be followed before a decision is taken in relation to plans and programmes likely to have an environmental impact in the framework of town and country planning.

- 4.2 The main objective of the Proposal is to ensure that during an administrative procedure and before adopting the final decision, the competent authority examines and takes into consideration the impact that the final decision is likely to have on the environment. In that respect the statement on the state of the environment prepared by the competent authority as well as the consultation of the environmental authorities and of the public concerned constitute supports to the decision making. Basically, therefore, it is only the protection of certain environmental interests - by means of the awareness raising of the authorities having a decisional power - which is directly aimed by this proposal.

It must be also underlined that this Proposal is of a procedural nature. This means that it provides for assessment and consultations during the preparatory procedure and the taking into consideration of the results of this assessment and consultations in the final decision, in view of the protection of the environment, without therefore allotting any binding effect to these results in relation to the decision making, the assessment power as well as the final decision remaining entirely within the only competence of the competent authorities. The possible effects of the measures provided for by the Proposal on the town and country planning as such can therefore be considered only as indirect.

- 4.3 Within this perspective, it appears that the legal base for the Proposal is Article 130s(1) of the Treaty.

5. EXPLANATION OF THE PROVISIONS OF THE PROPOSAL

- 5.1 Article 1 sets out the objective of the Proposal, which is a high level of protection of the environment by ensuring that an environmental assessment is carried out and the results taken into account during the preparation and adoption of certain environmentally significant plans and programmes.

- 5.2 Article 2 defines certain expressions which are used in the Proposal. Of particular importance is the definition of the terms "plan" and "programme". The definition of these terms determines the scope of the Proposal. It should be noted that the Proposal only applies to formal plans and programmes, that is, those subject to adoption by a competent authority or those adopted by an act of legislation for the purpose of setting the framework for subsequent development consent decisions. This Article refers to general town and country planning plans and programmes as well as to town and country planning plans and programmes in sectors such as transport, energy, waste management, water resource management, industry, telecommunication and tourism. This Directive will apply, for example, to a town and country planning plan in the sector waste management dealing with the need for and siting of waste treatment installations and telecommunications plans and programmes containing provisions on the nature, size or operating conditions of telecommunication installations such as base stations for mobile telephones and broadcasting installations.

Furthermore, the "competent authority" and "development consent" are defined in the same way as in EIA Directive 85/337/EEC. These terms are already well known in the Member States which will facilitate the implementation. Finally, in this Article "environmental assessment" is defined.

- 5.3 Article 3 sets out certain procedural requirements for the implementation of the Directive.

- 5.4 Article 4: Paragraph 1 provides that an environmental assessment must be carried out before the adoption of such a plan or programme by a competent authority or before the submission to the legislative procedure of a plan or programme referred to in Article 2.

Paragraph 2 foresees that the disposition of the present Directive do apply only to plans and programmes the first formal preparation act of which is posterior the transposition period referred to in Article 12(1).

Paragraph 3 refers to a screening provision for minor modifications of existing plans and programmes which do not in every case have significant environmental effects. In such cases the Member States have the option of screening such modifications of plans and programmes in order to identify whether they have significant negative environmental effects.

Paragraph 4 refers to a screening provision for plans and programmes at local level which determine the particular use of small areas. Such a plan or programme could be for example a building plan outlining details on how buildings may be constructed, determining the height or width of buildings. As such plans or programmes do not in every case have significant negative environmental effects, the Member States have the option of screening such plans and programmes.

- 5.5 Article 5 and Annex describe the information that has to be provided where an assessment is required. The competent authority (that is, the competent authority which is responsible for adopting the plan or programme or the authority which is responsible for submission to the legislative procedure) has to provide the information listed in the Annex in such detail as may reasonably be required for the purpose of assessing the environmental effects of implementing the plan or programme. Article 5 takes account of the possible hierarchy of plans and programmes by recognizing that the information that can reasonably be required will vary according to the level of detail contained in the plan or programme and the extent to which certain matters are more appropriately assessed in detail at different levels in the decision-making process. The competent authority will have to scope the environmental statement. It will, for example, have to identify the likely significant environmental effects of implementing the plan or programme and decide on the level of detail to be used in the environmental statement to describe those effects. In making this scoping decision the competent authority will have to consult the relevant environmental authorities and/or bodies concerned. This will introduce a necessary degree of independence into the scoping process.

- 5.6 Article 6 provides that the relevant environmental authorities and/or bodies and the public concerned are to be given an opportunity to comment on the information provided under Article 5 and on the plan or programme concerned. Consultation is an essential part of any environmental assessment procedure. Regarding the definitions of the "environmental authorities concerned" and the "public concerned" those terms are also used in EIA Directive 85/337/EEC and are applied by the Member States without difficulties and have therefore been used for the current Proposal. As the administrative systems in the Member States vary considerably, it is left to the Member States to define, according to their national administrative systems, the respective environmental authorities and/or bodies and the public concerned and to arrange for the detailed arrangements for such consultations.

- 5.7 Article 7 applies where the implementation of a plan or programme being prepared in one Member State is likely to have a significant effect on the environment in another Member State. In such circumstances the Article requires the two Member States to enter into consultations if the Member State whose environment is likely to be affected so requests.
- 5.8 Article 8 requires the competent authority to take into consideration the results of the assessment process before the adoption or submission to the legislative procedure of the plan or programme concerned. Environmental assessment is intended to ensure that decision makers take into account the relevant environmental considerations. In some cases this will lead a decision maker to modify its proposal. The final decision, however, remains with the decision maker.
- 5.9 Article 9 ensures that the relevant environmental authorities and/or bodies and the public concerned are informed of the adoption or submission to the legislative procedure of a plan and programme and of how the results of the environmental assessment have been taken into account. This is important because it ensures that decisions can be scrutinized by those concerned.
- 5.10 Article 10 concerns the relation between the Proposal and other instruments of Community law. It makes it clear that Member States can not dispense with an assessment at the project level under Directive 85/337/EEC just because an assessment has been carried out at the plan or programme level. This is consistent with the intention that the appropriate type of assessment should be carried out at the appropriate level. This will not lead to an unnecessary duplication of assessments. Proper scoping under Article 5 should ensure that an environmental statement at the plan or programme level only contains the information that is required in order to consider the environmental consequences of implementing the plan or programme concerned. Developers at the project level will be able to concentrate their resources on supplying information which is relevant to the specific details of the proposed project. Article 10 also excludes from the Directive management plans for special areas of conservation under the Habitats Directive (Directive 92/43/EEC), which contain conservation measures designed to protect the areas concerned.

Paragraph 3 makes clear that nobody has a right to legally challenge decisions made in the legislative procedure. The proposed Directive is not intended to interfere with legislative procedures used to adopt plans or programmes. Therefore, the Proposal limits itself to the pre-legislative phase, which ends when a draft plan or programme is submitted to a legislative body. The purpose of this paragraph is to ensure that any dissatisfaction with an SEA in the pre-legislative phase will not result in the subsequent legislative procedure being open to legal challenge.

- 5.11 Article 11 requires Member States and the Commission to exchange information on the application of the Directive. It also requires the Commission to send to the Parliament and the Council a report on the application and effectiveness of the Directive. The report is to be sent seven years after the entry into force of the Directive and the Commission is required to follow up the report with a proposal to amend the Directive if that appears from the report to be desirable.

5.12 Article 12 contains the commencement provisions of the Directive. It also contains a provision for the Member States to communicate to the Commission a list of the types of plans and programmes which they will submit to an environmental assessment according to this Directive.

5.13 Article 13 provides that the Directive comes into force on the 20th day following its official publication and Article 14 provides that the Directive is addressed to Member States.

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THE COUNCIL OF THE EUROPEAN UNION;

Having regard to the Treaty establishing the European Community, and in particular Article 130s (1) thereof;

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the procedure laid down in Article 189c of the Treaty in cooperation with the European Parliament⁴,

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 utilization 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 environment⁵ applies);

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 environmental assessment is an important tool in integrating environmental considerations into such plans and programmes because it ensures that the relevant authorities take account of the likely environmental effects of implementing plans and programmes prior to their adoption;

¹ OJ No C

² OJ No C

³ OJ No C

⁴ Opinion of the European Parliament of +++ (OJ No C+++), common position of the Council of +++ and Decision of the European Parliament of +++

⁵ OJ No L 175, 5.7.1985, p. 40.

Whereas the European Community programme of policy and action in relation to the Environment and Sustainable Development⁶ affirms the importance of assessing the likely environmental effects of plans and programmes;

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 development 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, in particular, the systems operating within the Community for environmental assessment of plans and programmes do not ensure that there are adequate transboundary consultations where the implementation of a plan or programme being prepared in one Member State is likely to have a significant effect on the environment of another Member State;

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, having regard to the principle of subsidiarity and in order to ensure the requisite uniformity and transparency, it is appropriate that this Directive sets out the broad principles of the environmental assessment system, leaving the procedural details to the Member States;

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), telecommunication and tourism sectors, and certain transport infrastructure plans and programmes;

Whereas such plans and programmes are adopted under two types of procedure and this Directive should apply to plans and programmes adopted under both procedures, namely to plans and programmes adopted by competent authorities, in which case the assessment should be carried out before the relevant competent authority adopts the plan or programme, and to plans and programmes which are subject to adoption by an act of legislation, in which case the assessment should be carried out before the plan or programme is submitted to the legislative procedure;

Whereas, where an assessment is required by this Directive, it should be carried out on the basis of an environmental statement containing the information required, taking account of the stage of the plan or programme in the decision-making process to assess the likely significant environmental effects of implementing the plan or programme;

⁶ OJ No C 138, 17. 5. 1993, p. 1.

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, where the implementation of a plan or programme prepared in one Member State is likely to have a significant effect on the environment of other Member States, provision should be made for the Member States concerned to enter into consultations;

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

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

HAS ADOPTED THIS DIRECTIVE:

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.

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 a 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
- 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;
- (d) "project" means:
 - the execution of construction works or of other installations or schemes,
 - other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;
- (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.

Article 3

The requirements of this Directive shall either be integrated into existing procedures in Member States for the adoption or submission to the legislative procedure of plans and programmes or incorporated in procedures established to comply with this Directive.

Article 4

1. An environmental assessment, in accordance with Articles 5 to 8, shall be carried out before the adoption or the submission to the legislative procedure by the competent authority of a plan or programme.
2. The obligation referred to in paragraph 1 shall apply only to the plans and programmes of which the first formal preparatory act is subsequent to the date referred to in Article 12(1).
3. Minor modifications of existing plans and programmes shall require an environmental assessment only where the Member States consider that such modifications are likely to have significant negative environmental effects.
4. Plans or programmes which determine the particular use of small areas at local level shall require an environmental assessment only where the Member States consider that they are likely to have significant negative environmental effects.

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.
3. The competent authority shall consult the environmental authorities and/or bodies concerned as referred to in Article 6(3) when deciding on the scope and level of detail of the information which must be included in the environmental statement.
4. The environmental statement shall include a non-technical summary of the information contained in it.

Article 6

1. A copy of the draft plan or programme and of the environmental statement prepared in accordance with Article 5 shall be made available to the environmental authorities and/or bodies concerned and the public concerned.
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.
3. Member States shall designate the authorities and/or bodies to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes.
4. Member States shall designate the public to be consulted taking into account the stage of the plan or programme in the decision-making process.
5. The detailed arrangements for the information and consultation of the environmental authorities and/or bodies concerned and the public concerned shall be determined by the Member States.

Article 7

1. Where a Member State considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the plan or programme is being prepared shall, before the adoption of the plan or programme or its submission to the legislative procedure by a competent authority, forward a copy of the draft plan or programme and the relevant environmental statement to the other Member State.
2. Where a Member State is sent a copy of a draft plan or programme and an environmental statement under paragraph 1, it shall indicate to the other Member State whether it wishes to enter into consultations prior to the adoption or submission to the legislative procedure of the plan or programme and, if it so indicates, the Member States

concerned shall enter into consultations concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects.

3. Where Member States are required under this Article to enter into consultations, they shall agree, at the commencement of such consultations, on a reasonable timetable for the duration of the consultations.

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 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 9

1. When a plan or programme is adopted, the competent authority shall inform the environmental authorities and/or bodies concerned, the public concerned and any Member State consulted under Article 7 and shall make available to those so informed:
 - (a) a copy of the plan or programme as adopted, and
 - (b) a statement of how the environmental statement prepared pursuant to Article 5, any opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8.
2. The detailed arrangements concerning the information referred to in paragraph 1 shall be determined by the Member States.

Article 10

1. An environmental assessment carried out under this Directive is without prejudice to any requirements under Directive 85/337/EEC and to any other Community law requirements.
2. This Directive shall not apply to management plans specifically designed for special areas of conservation and adopted pursuant to Article 6(1) of Council Directive 92/43/EEC⁷.
3. No provision of this Directive shall give rise to a right to seek a judicial review in respect of a legislative act by which a plan or programme has been adopted.

⁷ OJ No L 206, 22.7.1992, p. 7.

Article 11

1. The Member States and the Commission shall exchange information on the experience gained in applying this Directive.
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.

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 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.

Article 13

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 14

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

Information referred to in Article 5

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 Council Directives 79/409/EEC⁸ and 92/43/EEC;
- (d) the environmental protection objectives, established at International, Community and Member State level (including objectives established in other plans and programmes in the same hierarchy), which are relevant to the plan or programme and the way these objectives and any other environmental considerations have been taken into account during its preparation;
- (e) the likely significant environmental effects of implementing the plan or programme;
- (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;
- (h) any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information.

⁸ OJ No L 103, 25.4.1979, p. 1.

FINANCIAL STATEMENT

1. **TITLE OF OPERATION** Proposal for a Council Directive on the assessment of the effects of certain Plans and Programmes on the Environment
2. **BUDGET HEADING** B4-3040
3. **LEGAL BASIS** Article 130s(1)/ET
4. **DESCRIPTION OF OPERATION:**
 - 4.1 General objectives: To extend the environmental assessment system to land use plans and programmes
 - 4.2 Period covered and arrangements for renewal : indeterminate
5. **CLASSIFICATION OF EXPENDITURE/REVENUE**
 - 5.1 Compulsory/Non-compulsory expenditure
 - 5.2 Differentiated/Non-differentiated appropriations
 - 5.3 Type of revenue involved : -
6. **TYPE OF EXPENDITURE/REVENUE**
 - *subsidy for joint financing with other sources in the public and/or private sector* : 50 % - 75 % (workshops, trial runs)
 - *Other* - Studies / Publications

7. FINANCIAL IMPACT

7.1. Method of calculating total cost of operation (relation between the individual and total costs) - estimated cost of workshops, studies and publications relating to the implementation of the Directive

7.2. Itemised breakdown of cost:

CE in Mio Ecus
(current price)

Breakdown	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and subs. years	Total
Studies, etc	. 2	. 3	. 4	. 4	. 4	. 4	2 . 1
Total	. 2	. 3	. 4	. 4	. 4	. 4	2 . 1

7.3. Schedule of Commitment appropriations/payment appropriations

CE in Mio Ecus

	Year n	n + 1	n + 2	n + 3	n + 4	n+5 and subs. years	Total
Commitment appropriations	. 2	. 3	. 4	. 4	. 4	. 4	1 . 2
Payment appropriations							
year n	. 1						
n + 1	. 1	. 1	. 125				
n + 2		. 2	. 275	. 125			
n + 3				. 275	. 125		
n + 4					. 275	. 125	
n + 5 and subs. years						. 275	
Total	. 2	. 3	. 4	. 4	. 4	. 4	1 . 2

8. FRAUD PREVENTION MEASURES

- Special control measures envisaged: Contracts will be by calls for tender

9. COST-EFFECTIVENESS ANALYSIS

9.1 Specific and quantifiable objectives, target population:

- *Specific objectives : links with general objective :* Publication of studies and guides etc to help Member States implement directive
- *Target population: distinguish for any individual objectives, indicate the end-beneficiaries of the Community's financial contribution and the intermediaries involved:* The administrators, practitioners and trainers in Member States responsible for land use plans and programmes

9.2 Grounds for the operation

- The financial actions will support the implementation of the Directive by developing and exchanging EU experience
- *Need for Community financial aid with particular regard to the principle of subsidiarity*
 - *Choice of ways and means*
 - ** advantages over possible alternatives (comparative advantages)*
 - ** explanatory reference to similar Community or national operations*
 - ** spin-off and multiplier effects expected*
 - *Main factors of uncertainty which could affect the special results of the operation*

9.3 Monitoring and evaluation of the operation:

- The Directive and the success of the financial actions will be reviewed after 5 years
- *Performance indicators*
 - ** output indicators (measuring activities used)*
 - ** impact indicators (measuring performance against objectives)*
 - *Details and frequency of planned evaluations*
 - *Assessment of the results obtained (where the operation is to be continued or renewed)*

10. ADMINISTRATIVE EXPENDITURE (PART A OF SECTION III OF THE BUDGET)

Actual mobilisation of the necessary administrative resources will derive from the Commission's annual decision on the allocation of resources, in the light of whatever additional staff and amounts are awarded by the budgetary authority.

10.1 Effect on the number of posts:

Type of post	Staff to be assigned to managing the operation		source		Duration
	Permanent posts	Temporary posts	Existing resources in the DG or department concerned	Additional resources	
Officials or temporary staff	A 1,5 B 0,5 C 0,5		1,5 0,5	0,5	
Other resources					
Total	2,5		2,0	0,5	

If additional resources are required, indicate the pace at which they will have to be made available.

10.2 Overall financial impact of additional human resources

(écus)

	Amounts	Method of calculation
Officials 0,5 B Temporary staff	25372,5	rate used for TCE (50745 per year)
Total	25372,5	

The amounts given must express the total cost of additional posts for the entire duration of the operation, if this duration is predetermined, or for 12 months if it is indefinite.

10.3 Increase in other administrative expenditure as a result of the operation

(écus)

Budget heading	Amounts	Method of calculation
2500	21,000	1 meeting per year with 32 national experts (calculated according to the tariff applied by DG IX)
Total	21,000	

The amounts given must correspond to total expenditure arising from the operation if its duration is predetermined or expenditure for 12 months if it is indefinite.

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