COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 575 final
Brussels, 16.03.1994

94/0078 (SYN)

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
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(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Justification of the proposal

This proposal for a Directive amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment[1] is submitted in accordance with Article 11(4) of the Directive, which calls upon the Commission to submit additional proposals to the Council with a view to ensuring that the Directive is applied in a sufficiently coordinated manner.

The proposal is based chiefly on the findings of the report on the implementation of the Directive[2], which the Commission, again in accordance with Article 11, sent to Parliament and the Council.

The experience gained over that period shows that, despite considerable efforts to bring existing national procedures more closely into line with the new environmental impact assessment requirements, there have been practical difficulties in implementing the Directive owing to occasional differences in interpretation between the Member States and the Commission. The latter has on several occasions found that Member States are failing to apply the Directive in its entirety.

In addition, the proposal takes account of the Community's and the Member States' international commitments under the Espoo Convention on environmental impact assessment in a transboundary context[3]: certain Articles of the Directive are adapted, including Article 7, which has been reworded in the light of the Convention's objectives.

Lastly, the proposal is a response to the concern expressed by Parliament in its Resolution on agriculture and the environment[4] and by the Commission itself in its communication on the same subject[5].

1.1 Report on the implementation of Directive 85/337

Detailed analysis of the information in the report on the implementation of Directive 85/337/EEC revealed that the Directive has been applied very differently from one Member State to another.

These differences particularly concern the rules in the Directive on:

- the practical scope of the Directive, as laid down by Article 2(1) in conjunction with Article 4 (Annexes I and II);
- the information to be supplied based on Article 5 in conjunction with Annex III;
- monitoring of the impact of the project.

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(1) OJ No L 175, 5.7.1985.
(2) COM(93) 28, 2.4.1993.
(3) OJ No C 104, 24.4.1992.
(4) OJ No C 68, 24.3.1986.
(5) COM(88) 338 final, 8.6.1988.

1.1.1 Scope

One of the key criteria for assessing practical implementation of the Directive are the data on the total number and types of projects assessed. These figures clearly indicate that the differences in the annual number of assessments are attributable to differences in the extent of the obligations imposed by the national legislation for Annex II projects and to the thresholds applied for such projects.

However, as currently defined in Article 4, the scope of the Directive covers both projects for which assessment is a mandatory requirement (Annex I projects) and those for which assessment must be performed only where Member States so deem necessary on the basis of the project's characteristics (Annex II projects).

Taking issue with the way certain Member States have interpreted this latter provision, the Commission believes that giving Member States this discretionary power should not devalue the general provision in Article 2(1) which requires all projects referred to in both Annexes I and II of the Directive to be assessed if they are liable to have a significant environmental impact.

As the Commission sees it, the reason for the difference in approach to Annex I and Annex II projects in Article 4 is essentially the following: whereas it is unanimously acknowledged that Annex I projects have to be subjected to mandatory systematic analysis, in the case of Annex II projects it has been agreed that the detailed arrangements for assessing environmental impact should be determined by the Member States in keeping with their individual constitutional and administrative procedures.

In this connection, the report stresses that besides the fears that Annex II projects are not fully covered, there are also grounds to fear the opposite since the adoption of very low thresholds (or no thresholds at all) could result in large numbers of relatively minor projects being submitted for assessment.

The Commission is therefore proposing to amend paragraph 2 of Article 4 so as to clarify:

(i) the circumstances in which Annex II projects will be required to undergo an environmental assessment, i.e. where they are liable to have a significant effect on special protection areas designated by Member States and communicated to the Commission in accordance with the Community Directives on environmental protection;

(ii) the selection procedure for Annex II projects which Member States must apply in all other cases in order to ascertain whether an assessment is necessary, using criteria defined and agreed at Community level. Where appropriate these criteria can be accompanied by thresholds to be laid down by the Member States in line with the principles of subsidiarity and shared responsibility.

1.1.2 Content of the impact study

The current practices for determining the information provided for in Article 5 vary considerably from one Member State to another. In most cases, however, the result is that the impact assessments contain only the minimum information required by Article 5(2), thereby failing to satisfy the requirement in paragraph 1 that the information, under certain circumstances, must be that specified in Annex III.

To ensure that the information collected is more relevant to the type of project being considered and to improve the quality of that information, the Commission believes the application of this article could be clarified by introducing the concept of scoping.

By taking this approach it will be possible to indicate which items from the information specified in Annex III should be gathered and submitted by the developer. In any event this information should include a description of the alternatives being considered by the developer.

The developer will henceforth have access to the data held by any authority, in accordance with Directive 90/313/EEC on the freedom of access to information on the environment[6], Article 3 of which requires public authorities to make available information relating to the environment to any natural or legal person at his request and without his having to prove an interest.

1.1.3. Monitoring

The report highlighted the technical shortcomings of the assessment procedure provided for by the Directive, which makes no provision for monitoring the effects on the environment due to the implementation of the project.

However, imposition of such monitoring would have a beneficial effect when it comes to implementing the project by enabling the competent authorities and the developer to take the necessary measures to soften or compensate for the impact at the earliest possible stage, thereby improving the cost-benefit ratio for the measures.

Moreover, it would enable the environmental authorities and the public to take a more favourable view if the impact assessments revealed uncertainties or gaps in the information about a project since they could be reconsidered during the monitoring phase.

A clause to this effect has already been included in the Espoo Convention which the Member States and the Community must observe as regards the transfrontier impact.

However, the Commission considers that there is no need, at the moment, to adapt the Community Directive to the rules laid down in the Directive, by providing for systematic monitoring of the circumstances in which the development consent decision was taken and the proposed corrective measures so as to avoid, reduce or offset the adverse effects on the environment.

Before submitting specific proposals it intends to examine in greater depth the costs and benefits of such adaptation and its compatibility with the subsidiarity principle.

1.1.4. These new provisions are consistent with the experience of environmental assessment at international level and in a number of Member States. They should, in the Commission's view, make this procedure more efficient and yield greater benefits in terms of safeguarding the environment.

1.2 Compatibility with the fifth environmental action programme and with the White Paper on growth, competitiveness and employment

The fifth programme acknowledges the central role of the environmental impact assessment in decision-making with regard to both individual projects and the underlying development strategies.

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[6] OJ No L 158, 23.6.1990.

It provides decision-makers with the information needed in order to evaluate the environmental impact of the necessary investment more accurately, especially in the sectors which are given priority in the fifth programme[7] and in the White Paper on growth, competitiveness and employment[8].

In particular, the rules in force and those proposed enable the Member States to take the appropriate measures to simplify and concentrate the existing national consent procedures and to avoid unnecessary delays during planning and implementation of priority projects identified and adopted at Community level, particularly as part of the trans–European networks.

More systematic and better coordinated application of the EIA procedure can also help reduce distortion to which the widely differing national practices may give rise.

2. Costs and benefits of the proposal

2.1. The potential benefits of the new provisions, which are explained in detail under point 1.1, are considerable:

- more relevant and selective gathering of the information required from the developer based on the particulars supplied by the competent authority in agreement with the environmental authorities responsible and in consultation with the developer. It should be emphasized here that involving the public in appropriate ways at this stage of the assessment procedure can only improve public relations and make the necessary consensus on the project easier to achieve;

- easier access to relevant existing data for those who need it;

- better control over the quality of impact assessments and the conclusions drawn from them;

- closer attention to attenuation measures which tend not to be properly integrated into the project design;

- fewer assessments of very small projects (where they are unlikely to have any environmental impact).

2.2. The cost of putting these new measures into effect can be broken down into three categories: funding, time and personnel. Since these three parameters will be dependent on the number and type of assessments to be conducted, it is impossible to put forward accurate estimates at this stage.

Experience gained in the Member States shows that generally the financial cost of conducting an impact assessment is a minute fraction of the total project cost. Only in exceptional cases for small projects requiring heavy capital investment will they be more than 1% of the total cost of the project[9].

It therefore seems perfectly reasonable to assume that normally the cost of such an assessment will remain below the 1% threshold.

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[7] COM(92) 23 final, 12.6.1992, pages 26-27.

[8] COM(93) 700 final, 5.12.1993.

[9] See Report on the implementation of Directive 85/337/EEC (COM(93) 28 final, pp. 55-57).

The cost of attenuation measures varies appreciably from one project to another and is usually dictated by environmental constraints. Where the environmental protection standards to be attained are the same, the necessary attenuation measures can be taken into account from the beginning of the project design, which should permit a reduction in the overall capital cost.

Similarly, the time taken for the environmental impact assessment seems to make little difference to the total time needed to implement the project as it can be included in the consent procedure.

Secondly, it is clear that the time required for the scoping exercise, if it is well managed, will be more than offset by savings at later stages in the development consent process.

2.3. Lastly, given that the implementation of these provisions will create certain additional needs in terms of training people to conduct assessments and in terms of drafting appropriate guidelines, the Commission has already initiated a programme of technical assistance to that end in conjunction with the Member States.

3. Subsidiarity and proportionality

3.1. The main purpose of harmonizing the provisions on environmental impact assessment is to establish at Community level a general frame of reference to ensure that action by Member States to protect the environment is following similar lines.

The same is true of the new provisions contained in this proposal, insofar as the proposed amendments do not alter the actual scope of the Member States' obligations under the directive.

It is for the Member States, working within their own administrative and organizational structures, but on the basis of principles laid down at Community level, to:

- define the required content and form of the information to be supplied by the developer;
- explain the manner in which the outcome of the assessment is taken into consideration;
- examine, in certain circumstances, whether the likely environmental impact of Annex II projects makes an assessment necessary.

3.2. Consequently, these provisions are consistent with the principle of subsidiarity enshrined in Article 130r of the Treaty and restated in the fifth environmental action programme.

4. Consultation of socio-economic interests

Consulting the Economic and Social Committee under Article 198 of the Treaty will guarantee a wide-ranging debate with the representatives of the various economic and socio-professional groups.

5. Legislative situation in the Member States

Although the new provisions on screening and scoping have not yet been fully incorporated into the laws of the Member States, some of the practices involved are already being applied to differing degrees in a number of Member States, and in certain non-Community countries. The following tables give an idea of the experience gained and the extent to which the procedures mentioned above, and monitoring have been formalized.

TABLE A

LEGISLATIVE SITUATION IN MEMBER STATES REGARDING SCREENING, SCOPING AND MONITORING

MEMBER STATES	SCREENING	SCOPING	MONITORING
Belgium	Single list of projects subject ot EIA in Flanders (1 & 2 of EIA admin orders). Wallonia more individual evaluation of projects to assess requirement for EIA.	No mandatory provision in Flanders regulation . Public enquiry provided for projects initiated by a public body.	Industrial installations conditions of licence may require that monitoring is carried out.
Denmark	Lists of projects requiring EIA in several Acts; no screening procedure.	No mandatory provision. Informal discussion in EIS preparation.	Local authorities undertake monitoring requirements as part of planning process.
Netherlands	List of projects requiring EIA in annex C of EIA Decree; no screening procedure.	Competent authority draws up guidelines after mandatory consultation of other authorities, independent EIA Commission and the public.	Regulations require monitoring of effects detailed in EIS.
Greece	Two list of projects (Group 1 & Group 2); all projects require EIA but the two groups have different EIS content requirements; no screening procedure.	No formal provision at present. Binding arrangements in preparation.	Only occasional monitoring and post-auditing undertaken by PERPA.
Germany	Lists of projects requiring EIA at both federal and regional (Lander-) level; screening of significance of effects in the case of modification to projects.	Discussion of information requirements between developer and competent authority mandatory at federal level; in some "Lander" mandatory public consultation.	Some projects monitored, under EIA act and consent agency may require additional monitoring.
Ireland	Single list of projects; EIA mandatory when project above threshold, case-by-case screening possible when under threshold.	No formal provision at present. Proposed EPA to prvide scoping guidelines for EIS information on project classes.	No formal system for monitoring under EIA regulations. Proposed EPA may have a monitoring and evaluation rôle.
Italy	Single list of projects requiring EIA, no screening procedure.	No mandatory provision.	Consent may be conditional on formation of monitoring network.
France	Lists of projects requiring EIA in several Acts; no screening procedure.	No mandatory provision for formal, systematic scoping.	All "Installations classées" subject to monitoring by relevant inspectorates. All other projects not subject.
Portugal	Annex of D.R. No.38/90, project list and thresholds (24 types of projects).	No mandatory provision.	No formal provision for monitoring.
Spain	Lists of projects requiring EIA in several acts, both at the national level and the level of autonomous communities (lists of additional projects requiring EIS); no screening procedure.		Voluntary scoping only (takes place in most cases).Monitoring required by programme of Environmental Surveillance. Conditional in declaration of Environmental Impact.

UK	No mandatory thresholds/criteria, UK regulations provide for case by case consideration of projects by competent authorities.	No mandatory provision. Developer/competent authorities consultation recommended by DoE. No mandatory provision, but monitoring conditions may be attached to certain consent procedures.	
Luxembourg	Projects covered by "commodo Law" (Annex 1 & most of Annex II) are screened for full-EIA requirement on the basis of preliminary EIA, other projects case-by-case screening.	No formal provision for scoping, check lists drawn by CA for specific projects. No new legislation envisaged.	Some monitoring carried out under the "commodo-law".

TABLE B

LEGISLATIVE SITUATION REGARDING SCREENING, SCOPING AND MONITORING IN COUNTRIES CANDIDATE FOR THE MEMBERSHIP OF THE UNION

COUNTRY	SCREENING	SCOPING	MONITORING
Austria	Single list of projects	Competent authority, after consultation of other authorities & public, decides on acceptability of a draft EIS content proposed by the developer.	Mandatory monitoring under the responsibility of the competent authority; results must be communicated to other authorities.
Finland (NB. proposal for EIA Act)	Single list of projects; in addition possibility for a case-by-case screening by Minister of Environment.	The competent authorities decide, following public consultation and involving the developer, on the content of the EIS.	Monitoring of projects mandatory under sectoral acts; monitoring programme mandatory part of EIS; monitoring information is public.
Norway	Single list of projects in principle requiring EIA; for projects not listed possibility of case-by-case screening by Minister of Environment.	The competent authority decides, after consultation of public and Minister of Environment, on the need for a full EIS and sets guidelines for its content.	Monitoring programme mandatory part of EIS; competent authority establishes programme, after consultation of public & Minister of Environment; programme responsibility of developer.
Sweden	In principle, according to the Natural Resources Management Act, all projects needing a permit under 13 different Acts require EIA.	Each Competent Authority has the power to determine the scope of each assessment but scoping procedures are not yet contained in legislation.	No specific EIA provisions or procedures for monitoring. Some more general provisions for monitoring project implementation may exist under specific permitting procedures.

TABLE C

LEGISLATIVE SITUATION REGARDING SCREENING, SCOPING AND MONITORING IN CERTAIN COUNTRIES

COUNTRY	SCREENING	SCOPING	MONITORING
Canada	Yes	Yes	Yes
United States	Yes	Yes	Variable - only in certain cases.
New Zealand	Yes	No	Yes
Australia	Yes	Yes	Variable - generally no
Switzerland	Yes	Yes	No specific provision in ordonance

6. Legal basis

The main reason for choosing Article 130s(1) was the fact that the Directive dates back to 1985 when it was based on Article 100, in view of the distortion which could arise from the diverging impact assessment requirements in the different Member States, and on Article 235 in view of the lack of any provision explicitly on the environment in the Treaty of Rome. This proposal is being submitted after the entry into force of the Treaty on European Union and places the emphasis on the Community's environmental obligations with regard to impact assessment and, hence, is covered by Article 130s(1).

The environmental assessment procedure not only plays a crucial role in the proper functioning of the internal market; its purpose, above all, is to provide the competent authorities with the information they need to reach an informed decision on any given project. This makes it a basic instrument of environmental policy.

The possibility that the costs of the environmental assessment procedure could create unequal conditions of competition and give rise to market distortions between Member States is only a secondary consideration with regard to the need for this common step, since the cost of the procedure is not such as would sway the investor's choice as to the site of the project.

7. Commentary on the individual articles of the proposal

Article 1 announces the amendments to the following Articles of Directive 85/337/EEC:

Article 1

The proposal is to transfer and clarify the definition of "modifications to projects" which appears as a project class in Annex II to the Directive. This operation is felt to be necessary because in practice the interpretation of "modifications to projects" has given rise to problems regarding the scope of the proposed modification (restructuring of a project) and changes to the conditions under which the project has been authorized.

Article 4

The aim of the amendments to this Article is to initiate the screening procedure to be applied by the Member States for identifying Annex II projects which require assessment.

Article 5

This Article introduces the concept of scoping, the main purpose of which is to facilitate the exchange of information between the various parties concerned and to improve the quality of the assessment.

Article 6

It is made clear in paragraph 1 that the environmental authorities must be consulted not only on the developer's application for development consent, but also on the information supplied by the developer.

Similarly, it is made clear in paragraph 2 that the public must be consulted before development consent is granted rather than before the work actually commences. In practice, development consent may be granted a long time before work begins, which in turn may be at a time when the consent can no longer be withdrawn. Consultation of the public would then be pointless.

Article 7

In accordance with the Espoo Convention, this proposal advocates a major improvement in bilateral relations between the Member States as regards consultation of the authorities of any Member State liable to be particularly affected and the latter's participation in the environmental assessment procedure.

The Member States affected by the project must therefore conduct a joint examination of the transboundary effects of the project and the measures to reduce or offset them, all this on the basis of the opinions of the authorities responsible for the environment and their respective nationals. This should ensure closer cooperation between the Member States, in view of the fact that pollution, as is stressed in the fifth environmental action programme[10], does not stop at frontiers.

Article 8

The report highlighted another difficulty in implementing the Directive, namely the extent to which the environmental assessment procedure can exert pro-environmental pressure on the development consent decision.

It would appear that the attention given to the findings of the assessment procedure in terms of preventing or offsetting the effects on the environment is not properly reflected in the decisions taken by the competent authorities.

The requirement that express account be taken of the opinions given by the environment authority and the public concerned should, to some extent, lead to greater transparency in the decisions taken by the competent authority.

Article 9

The main aim of the amendment is to require justification of the decisions taken by the competent authority so that the public may be aware of the effects of the environmental assessment on these decisions.

Article 11

The new wording of Article 4 of Directive 85/337/EEC makes Article 11(2) of that Directive redundant. The latter is therefore deleted.

Article 12

The new wording of Article 2 of the proposal makes Article 12 of the Directive redundant. The latter is therefore deleted.

Article 13

Article 13 is to be deleted, since Article 130t of the Treaty now allows Member States to lay down stricter rules on environmental protection.

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[10] COM(92) 23 final, 12.6.1992.

Annex I

Two new categories of project are introduced: installations for the reprocessing of irradiated nuclear fuel, and temporary storage of radioactive waste.

The inclusion of reprocessing installations is justified by the fact that more radioactive waste is produced by this type of installation than by the nuclear power stations already listed in the Annex. Similarly, the temporary storage of waste which presents such a danger to human health must also be assessed prior to authorization.

Lastly, the proposed amendment clarifies the definition of integrated chemical installations.

Annex II

The main purpose of the amendments to this Annex is to amalgamate certain categories of project and to tighten up some of the definitions.

It is proposed, for instance, that the agricultural projects category be restructured by transferring the projects for the use of uncultivated land and for the reclamation of land from the sea into a new land use category.

Another new category, "Tourism and leisure", will now encompass the construction of ski-runs and bobsleigh tracks, ski-lifts, golf courses, marinas, camp sites and caravan sites, holiday villages and leisure and cultural centres.

Other amendments cover the infrastructure projects category.

All these amendments are aimed at a clearer definition of the practical scope of the Directive.

Annex IIa (new Annex)

The objective of adding this new Annex to Directive 85/337/EEC is to allow application of the new provision in Article 4(3).

This Annex lays down selection criteria to allow Member States to appraise, on an identical basis, whether or not Annex II projects are likely to have a significant impact on the environment.

Annex III

Point 2 of the Annex is amended to make the examination of the main alternatives to the project compulsory. This is to make the Directive more effective and to harmonize the relevant national provisions.

Annex IV

The objective of this new Annex is to define the procedure for consultation between the Member States and the information considered appropriate in the case of projects with a transboundary impact.

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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 Commission[1],

In cooperation with the European Parliament[2],

Having regard to the opinion of the Economic and Social Committee[3],

Whereas the main purpose of the environmental assessment procedure under Council Directive 85/337/EEC[4] 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 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, however, in accordance with the subsidiarity principle, the Member States are in the best position to apply those criteria in specific instances;

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

Whereas additions should be made to the list of projects which have significant effects on the environment and which must on that account be made subject to systematic assessment;

Whereas it should also be made clear that such assessment is compulsory for the projects listed in Annex II to the Directive which may have a significant effect on the specific environmental protection objectives laid down by mutual agreement at Community level; whereas in all other cases, however, it falls to the Member States to determine whether assessment is necessary in accordance with the selection criteria set out in this Directive;

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(1) OJ No C
(2) OJ No C
(3) OJ No C
(4) OJ No L 175, 5.7.1985, p. 40.

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,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 85/337/EEC is hereby amended as follows:

I. In Article 1(2), the following definition is inserted after the first definition:

"'modifications to projects' means:

any restructuring of a project which affects it substantially or any substantial change in the conditions of execution or operation of a project;".

2. Article 4 is replaced by the following:

"Article 4

1. Subject to Article 2(3), projects listed in Annex I shall be assessed in accordance with Articles 5 to 10.

2. Subject to Article 2(3), projects listed in Annex II shall be assessed in accordance with Articles 5 to 10 where they are liable to have a significant effect on the special protection areas designated by Member States pursuant to Community law.

3. In all other cases, projects listed in Annex II shall be examined by the competent authority to determine, on the basis of thresholds set, where appropriate, by Member States and of the selection criteria laid down in Annex IIa, whether their probable environmental impact necessitates assessment in accordance with Articles 5 to 10.

Member States shall ensure that decisions taken by the competent authority are published."

3. Article 5(1) is replaced by the following:

"1. In the case of projects which, pursuant to Article 4, must undergo environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the competent authority defines, in agreement with the authorities referred to in Article 6 and in consultation with the developer, the information specified in Annex III which the developer is required to provide, in an appropriate form, in so far as:

(a) the information is relevant to a given stage of the development consent procedure and to the specific characteristics of a particular project or type of project, or those of the environmental features liable to be affected;

(b) a developer may reasonably be required to gather this information having regard, inter alia, to current knowledge and methods of assessment."

4. Article 5(2) is deleted.

5. Article 5(3) is replaced by the following:

"3. Member States shall ensure that any authorities holding relevant information, regard being had in particular to Article 3, shall make this information available to the developer."

6. Article 6(1) is replaced by the following:

"1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis, when the request for development consent is made. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States."

7. In Article 6(2), the words "before the project is initiated" are replaced by the words "before development consent is granted".

8. Article 7 is replaced by the following:

"Article 7

1. Where a Member State considers that a project referred to in Article 4 is liable to have significant adverse effects on the environment of another Member State, or where a Member State whose environment is liable to be significantly affected so requests, the Member State on whose territory the project is located shall communicate to the other Member State, at the latest when it informs its own nationals, the information specified in Annex IV.

2. The Member States concerned shall enter into consultations, setting a reasonable timetable for:

(i) the main alternative solutions to the project which have been examined;

(ii) the measures which may be taken to avoid, reduce and, if possible, offset the adverse transboundary effects;

(iii) possible forms of mutual assistance to lessen any major harmful transboundary impact caused by the proposed project;

(iv) the measures which may be taken to ensure the monitoring of the transboundary effects of the project at the expense of the Member State in which the project is proposed.

3. The authorities of the Member State whose environment is liable to be significantly affected shall hold consultations with the authorities concerned and with the public, in accordance with the provisions of Article 6 and shall, within the time limit provided for in paragraph 2, communicate their opinion on the project to the authorities of the Member State on whose territory the project is located.

However, failure by the authorities of the Member State whose environment is liable to be affected to deliver the opinion mentioned in paragraph 1 within the time limit and in the form specified above, those authorities having been properly informed pursuant to paragraph 2, shall not provide grounds which may be invoked in support of a challenge to the validity of the competent authorities' decision regarding the project."

9. Article 8 is replaced by the following:

"Article 8

The opinions and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure."

10. Article 9 is replaced by the following:

"Article 9

When a decision has been taken, the competent authority or authorities shall publish it and, where appropriate, inform the other Member State which has been consulted pursuant to Article 7 thereof, indicating:

- the content of the decision and any conditions attached thereto;

- the reasons and considerations on which its decision to refuse to grant development consent, or to grant development consent despite receiving unfavourable opinions pursuant to Articles 6 and 7, is based;

- a description, where necessary, of the measures to avoid, reduce and, if possible, offset the major adverse effects."

11. Article 11(2) is hereby deleted.

12. Article 13 is hereby deleted.

13. The Annexes are amended as shown in the Annex hereto.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 1996 at the latest. They shall forthwith inform the Commission thereof.

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. If a request for development consent has been submitted to a competent authority before 1 July 1996, the provisions of Directive 85/337/EEC prior to these amendments shall continue to apply.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX

1. Point 3 in Annex I is replaced by the following:

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

(b) Installations designed solely for the permanent storage or final disposal of radioactive waste and centralized temporary storage installations for radioactive waste or irradiated nuclear fuel."

2. Point 6 in Annex I is replaced by the following:

"6. Integrated chemical installations: installations located in a geographical area in which several units for the industrial production of chemical products, not necessarily belonging to the same company, are juxtaposed and are functionally linked to one another."

3. Point 8 in Annex I is replaced by the following:

"8. (a) Inland waterways which permit the passage of vessels of over 1 350 tonnes;

(b) Trading ports and port installations, including offshore installations, and ports and installations for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes."

4. Point 1 in Annex II is replaced by the following:

"1. **Agriculture**

(a) Projects for the restructuring of rural land holdings.

(b) Irrigation and land drainage projects.

(c) Afforestation, reafforestation, deforestation.

(d) Intensive stockfarming.

(e) Production of exotic species of flora and fauna.

(f) Intensive fish or shellfish farming."

5. Letter (h) under point 3 in Annex II is deleted.

6. Point 10 in Annex II is replaced by the following:

"10. **Infrastructure projects**

(a) Industrial estate development projects.

(b) Urban development projects, including the construction of shopping centres and car parks.

(c) Doubling, electrification and adjustment to standard gauge of railway lines or tracks for combined transport, construction of railway and intermodal transshipment facilities, and of intermodal terminals.

(d) Construction of airfields and extension of the airport capacity of airfields (projects not listed in Annex I).

(e) Construction and upgrading of roads (widening and alternative routes), harbours and port installations, including fishing harbours (projects not listed in Annex I).

(f) Inland-waterway construction, canalization and flood-relief works.

(g) Dams and other installations designed to hold water or store it on a long-term basis.

(h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport.

(i) Oil and gas pipeline installations.

(j) Installation of long-distance aqueducts.

(k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works."

7. Point 11 in Annex II is replaced by the following:

"11. **Other projects**

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

(b) Installations for the disposal of industrial and domestic waste (unless included in Annex I).

(c) Waste-water treatment plants.

(d) Sludge-deposition sites.

(e) Storage of scrap iron.

(f) Test benches for engines, turbines or reactors.

(g) Manufacture of artificial mineral fibres.

(h) Manufacture, packing, loading or placing in cartridges of gunpowder and explosives.

(i) Knackers' yards."

8. The following points are added to Annex II:

"11a **Tourism and leisure**

(a) Ski-runs, bobsleigh tracks and ski-lifts and artificial snow installations.

(b) Golf courses and associated developments.

(c) Marinas.

(d) Holiday villages, hotel complexes and associated developments.

(e) Camp sites and caravan sites.

(f) Leisure centres.

11b **Land-use projects**

(a) Changes in the use of uncultivated land, semi-natural areas and natural or semi-natural forests.

(b) Reclamation of land from the sea."

9. Point 12 in Annex II is replaced by the following:

"12. Modifications to projects listed in Annex I or Annex II and projects in Annex I undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years."

10. A new Annex IIa is inserted, as follows:

"ANNEX IIa

SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3)

1. Characteristics of the project

The characteristics of the project must be considered having regard, in particular, to:

- the size of the project[1];
- the use of natural resources;
- the production of waste;
- pollution and nuisances;
- the risk of accidents;
- the impact on the natural and historical heritage having regard to the existing functions of the areas likely to be affected (such as tourism, urban settlement, agriculture).

2. Location of the project

The environmental sensitivity of geographical areas likely to be affected by the project must be considered, having regard, in particular, to:

- the relative abundance, quality and regenerative capacity of natural resources in the area;

- the absorption capacity of the natural environment, paying particular attention to the following areas:

  (a) wetlands;
  (b) coastal zones;
  (c) mountain and forest areas;
  (d) nature reserves and parks;

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[1] The size of the project must be considered in relation to the duration, frequency and reversibility of its likely impacts.

(e) areas already classified or protected under Member States' legislation;
(f) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;

(g) densely populated areas;
(h) landscapes of historical, cultural or archaeological significance."

11. Point 2 in Annex III is replaced by the following:

"2. A description of the main alternatives which might be envisaged and an indication of the main reasons for the developer's choice, taking into account the environmental effects."

12. A new Annex IV is added, as follows:

"ANNEX IV

INFORMATION REFERRED TO IN ARTICLE 7

1. A description of the project together with any available information on the possible transboundary impact.

2. Information on the nature of the decision which may be taken.

3. A reasonable time limit within which the other Member State must indicate whether it intends to take part in the assessment procedure. Notification of such intention shall be accompanied by all available relevant information on the environment in that part of the territory which might be affected.

4. The information gathered pursuant to Article 5.

5. An indication of the date on which a decision will be taken on the project and the time limit, calculated on a reasonable basis, within which the Member State likely to be affected must communicate its opinion to the Member State on whose territory the project is located."

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESSES

Title of proposal: Amendment of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

The Proposal

The proposal does not impose new obligations beyond those already present in the existing Directive 85/337/EEC, but further Community legislation is necessary in this area for the following reasons:

- to remove uncertainties from the existing Directive as revealed by the review of its implementation (COM(93) 28 final);

- to provide for implementation of the Convention on transboundary EIA (Espoo Convention: COM(92) 93 final), which requirements do not go beyond the existing Article 7 of the Directive;

- to improve the effectiveness of the Directive by making more explicit provision for screening Annex II projects for their need for EIA and for scoping and monitoring of the assessment. Since some Member States have adopted these provisions and others have not, both environmental protection and distortion of the market are affected in the absence of legislation at Community level;

- to clarify various terms used in the Directive (for example "integrated chemical installation").

The impact on businesses

Who will be affected by the proposal?

Bearing in mind that no new obligations concerning the procedure which is to be applied are imposed by this proposed modification:

- there are three additions to Annex I requiring compulsory assessment which will affect only those businesses engaged in the treatment of spent nuclear fuel and those carrying out projects listed in Annex II, capable of affecting the special protection areas (SPAs) provided for in Community environmental protection legislation;

- in the main, therefore, the additions to Annex I will have impacts only upon a very small number of projects by the large-scale nuclear industry. As regards Annex II projects located in or affecting SPAs, it is impossible to identify whether these will be carried out by large, medium or small-scale businesses.

- the new screening provision will avoid the application of EIA for (mostly small) Annex II projects without likely significant environmental impacts;

- the benefit of the scoping provision will be that the process of producing an environmental impact statement in accordance with the requirements of Annex III to the Directive is likely to be accelerated, since the coverage required by the statement will have been set and agreed upon in advance of its production rather than after it has been submitted to the competent authority. This has been welcomed by, among others, the electricity generating and distribution industry in Europe;

- no particular type of business is affected by the proposed insertion of a requirement to provide details of monitoring of impacts, although it will not really affect certain types of finite project as much as those with a continuing impact on the environment.

What will businesses have to do to comply with the proposal?

In the vast majority of cases, no more than they do currently under the existing Directive on EIA. Except for the obligation to submit certain projects (i.e. spent nuclear fuel reprocessing and those affecting protected zones) to an assessment, there is no great increase in the numbers of EIAs that will be required of businesses in the Member States. The screening process, as well as some of the clarifications to the projects listed in Annex II, will serve to reduce the burdens on certain businesses.

The new requirement concerning scoping of the assessment is expected to speed up the process of information-gathering. Also it will reduce the need for late and expensive additional work to a submitted environmental impact statement, since its scope will have been set in advance.

What economic effects is the proposal likely to have?

On employment:

- since the purpose of EIA is not to prevent development but to provide decision-makers with better information on impacts, mitigatory measures and alternative locations and developments, the impact on employment is likely to be negligible other than in local terms where there may be some relocation of projects as a result of EIA. Also some increase in consultancy work can be expected.

On investment and the creation of businesses:

- given clearer information on the impact of a proposal, both investors and entrepreneurs will be better informed of the risks inherent in a particular project;

On the competitive position of businesses:

- within the Community, assuming correct transposition by all Member States, the effect should be neutral. As regards other countries, the effect will depend upon the regimes operated there since certain countries, e.g. Canada and the USA, have similar if not more advanced systems of EIA (including assessment in certain cases at the higher levels of policy, plan and programme-making). Assessment in the developing countries is usually less well-developed.

Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc.)?

Under the terms of the new Article 4 it is the competence of Member States to determine, on the basis of specified criteria, whether their probable impact gives rise to the need for assessment. This gives Member States the opportunity to specify levels of activity which would exclude small or medium-sized enterprises being required to carry out an EIA for projects normally contemplated by such size of businesses. It is unlikely that SMEs would be carrying out an Annex I project.

Consultation

Outside the Commission the **Member States Experts Working Group** has considered the proposal at three meetings and has amended it in a number of significant respects as a result (for example, by the removal of a number of projects introduced into Annex I).

Also comments made by UNICE have resulted in other amendments to the proposal, in particular concerning the definition of integrated chemical installations.

Within the Commission it was anticipated that other DGs might be in the position to bring into the discussion the major considerations to be expected in their respective policy sectors.

However, consultations with the Economic and Social Committee under Article 198 of the Treaty will guarantee a wide-ranging debate with the socio-economic groups involved.

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