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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2011/92/EU on the assessment of the effects of certain public and
private projects on the environment

(Text with EEA relevance)

{SWD(2012) 354 final}
{SWD(2012) 355 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

General context – Grounds for and objectives of the proposal

Directive 2011/92/EU¹ contains a legal requirement to carry out an environmental impact assessment (EIA) of public or private projects likely to have significant effects on the environment, prior to their authorisation. There is consensus that the main objective of the Directive has been achieved; the principles of environmental assessment have been harmonised throughout the EU by the introduction of minimum requirements concerning the type of projects subject to assessment, the main developer's obligations, the content of the assessment and the participation of the competent authorities and the public. In parallel, as part of the development consent process, the EIA is a tool to assess the environmental costs and benefits of specific projects with the aim of ensuring their sustainability. Hence, the Directive has become a key instrument of environmental integration and has also brought environmental and socio-economic benefits.

After 25 years of application, the EIA Directive has not significantly changed, while the policy, legal and technical context has evolved considerably. The experience with implementation, as reflected in the Commission reports on the application and effectiveness of the EIA Directive, including the latest one published in July 2009², has identified a number of shortcomings. In its mid-term review of the 6th Environment Action Programme³, the Commission stressed the need for improving the assessment of environmental impacts at national level and announced a review of the EIA Directive. In the context of Better Regulation, the Directive has also been identified as a potential instrument for simplification⁴. The general objective of the proposal is to adjust the provisions of the codified EIA Directive, so as to correct shortcomings, reflect ongoing environmental and socio-economic changes and challenges, and align with the principles of smart regulation.

Consistency with other policies and objectives of the Union

As the revised EIA Directive can play a crucial role in achieving resource efficiency (e.g. by introducing new requirements for assessing issues such as biodiversity and climate change which are related to the use of natural resources), the proposal is part of the initiatives aiming to implement the Roadmap to a Resource-Efficient Europe⁵. Furthermore, the revision of the EIA Directive subscribes to the Europe 2020 strategy⁶, in particular the priority of sustainable growth. The revised Directive can also contribute significantly to the duty of the Union to take cultural aspects into account in all its policies and actions.

¹ Directive 2011/92/EU (OJ L 26, 28.1.2012, p.1) codifies Directive 85/337/EEC and its three subsequent amendments (Directives 97/11/EC, 2003/35/EC and 2009/31/EC).

² COM(2009) 378. All reports are available on <http://ec.europa.eu/environment/eia/eia-support.htm>.

³ COM(2007) 225.

⁴ COM(2009) 15.

⁵ COM(2011) 571.

⁶ COM(2010) 2020.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

The consultation took place in 2010, in line with the Commission's standards. From June to September 2010, a wide public consultation on the review of the EIA Directive was launched, using a web questionnaire available in all EU official languages. 1365 replies were received (684 from citizens, 479 from organisations, companies and NGOs, 202 from public authorities and administrations). In addition, the Institute of Environmental Management & Assessment (IEMA)⁷ sent a contribution (1815 responses) in the form of a survey incorporating a number of the Commission's questions. The consultation phase was concluded with a Conference (on 18-19/11/2010, at Leuven, Belgium), which complemented the wide public consultation as it looked for input from specialised stakeholders. 200 representatives from the EU and international institutions, public authorities – at national, regional and local levels – industry, environmental organisations, and the academic community were present at the conference. The results of the public consultation⁸ and the conclusions of the Conference⁹ have provided useful input for the development of the Commission's proposal.

Result of the impact assessment

The Impact Assessment (IA), which is submitted with this proposal, identified shortcomings in the current EIA legislation that lead to unsatisfactory implementation (no provisions that ensure quality of information and quality standards for the EIA process and implementation gaps) and socio-economic costs in the implementation of the Directive. If these problems are not adequately addressed, the Directive would become less effective and efficient and would not be able to ensure the integration of environmental considerations in decision-making. In addition, the socio-economic costs are likely to negatively affect internal market harmonisation. The shortcomings of the Directive can be grouped into three specific problem areas: (1) the screening procedure, (2) the quality and analysis of the EIA and (3) the risks of inconsistencies within the EIA process itself and in relation to other legislation.

The IA assessed a number of policy options with the aim of identifying cost-effective measures to address these problems. The outcome has led the Commission to propose a number of amendments, of which the main ones are as follows:

It is proposed to clarify the **screening** procedure, by modifying the criteria of Annex III and specifying the content and justification of screening decisions. These amendments would ensure that EIAs are carried out only for projects that would have significant environmental effects, avoiding unnecessary administrative burden for small-scale projects.

⁷ The largest professional membership body for the environment with over 15,000 members working across all industry sectors.

⁸ <http://ec.europa.eu/environment/consultations/eia.htm>

⁹ <http://ec.europa.eu/environment/eia/conference.htm>

As regards the **quality and analysis of the EIA**, it is proposed to introduce amendments to reinforce the quality of the process (i.e. mandatory scoping and quality control of EIA information), specify the content of the EIA report (mandatory assessment of reasonable alternatives, justification of final decisions, mandatory post-EIA monitoring of significant adverse effects) and adapt the EIA to challenges (i.e. biodiversity, climate change, disaster risks, availability of natural resources).

As regards the risks of **inconsistencies**, it is proposed to specify the time-frames for the main stages required by the Directive (public consultation, screening decision, final EIA decision) and introduce a mechanism, a kind of EIA one-stop shop to ensure coordination or joint operation of the EIA with the environmental assessments required under other relevant EU legislation, e.g. Directives 2010/75/EU, 92/43/EEC, 2001/42/EC.

Nine of the twelve amendments analysed are expected to provide significant environmental and socio-economic benefits without additional administrative costs; moderate savings are also expected. Two amendments (assessment of alternatives and monitoring) are expected to provide high environmental and socio-economic benefits at moderate costs for developers and with limited or negligible costs for public authorities; one amendment (adaptation of the EIA to new challenges) is expected to provide high benefits at moderate to high costs for developers and public authorities. In the long term, the significant environmental and socio-economic benefits and the moderate savings associated with the proposed amendments are likely to exceed the administrative costs.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The proposal will strengthen the provisions concerning the quality of the EIA with the aim of achieving a high level of environmental protection. Indeed, the ability to make valid decisions on the environmental impact of a project depends – to a large extent – on the quality of the information used in the EIA documentation and the quality of the EIA process. Furthermore, the proposal will enhance policy coherence and synergies with other EU law instruments and simplify procedures, with a view to reducing unnecessary administrative burdens.

Specific information on the amended Articles and Annexes of the EIA Directive is provided below.

The changes to Articles 1(2), 1(3) and 1(4) aim to clarify the terms of the Directive, based on the implementation experience and the Court case-law. The definition of ‘project’ is amended to make it clear that demolition works are included, in accordance with the Court ruling in case C-50/09; relevant definitions are also inserted. The possibility of not applying the Directive is limited to projects with national defence as their sole purpose and is extended to cover civil emergencies, as it is already the case under Directive 2001/42/EC.

Article 2(3) is amended to introduce an EIA ‘one-stop shop’, allowing the coordination or integration of assessment procedures under the EIA Directive and other EU legislation.

The modifications to Article 3 aim to ensure consistency with Article 2(1), i.e. by referring to 'significant' effects, and adapt the EIA to environmental issues (biodiversity, climate change, disaster risks, use of natural resources).

The changes introduced in Article 4 streamline the screening procedure and enhance the consistency of Member States' approaches to ensure that EIAs are required only when it is clear that there are significant environmental impacts. As regards projects listed in Annex II, a new paragraph is inserted concerning the obligation of the developer to provide specific information to the competent authority (detailed in Annex II.A). This Article also allows for specification of the selection criteria listed in Annex III via delegated acts. The content of the screening decision is specified to acknowledge the successful practice of adapting projects under certain preconditions (on the basis of a consideration of the most relevant impacts and information generated under other Union environmental legislation), which can avoid having to conduct a full assessment, as the most relevant environment impacts are satisfactorily addressed by the adapted project. The likelihood of significant effects and the subsequent need for an EIA would take into account the nature, complexity, location and size of the proposed project and would be based on objective factors, such as the scale of the project, the use of valuable resources, the environmental sensitivity of the location, and the magnitude or irreversibility of the potential impact. Furthermore, the lessons drawn from the case-law, where the Court stressed the need for "sufficiently reasoned" (C-75/08) screening decisions, which contain or are accompanied by all the information that makes it possible to check that the decision is based on adequate screening (C-87/02), are taken on board. Finally, a time-frame is set for adoption of the screening decision.

Article 5 is comprehensively modified, with a view to reinforcing the quality of information and streamlining the EIA process. The core requirement for the developer to submit environmental information is maintained, but its form and content is streamlined and specified in Annex IV. The scoping process becomes obligatory and the content of the opinion delivered by the competent authority is specified. Mechanisms are introduced to guarantee the completeness and sufficient quality of the environmental reports.

Article 6(6), which refers to the time-frames for public consultation, is modified with a view to reinforcing the role of environmental authorities and defining concrete time-frames for the consultation phase on the environmental report.

Article 7(5) is amended in order to include the establishment of time-frames for consultations among the issues to be determined by Member States when defining the arrangements for the implementation of projects likely to have significant transboundary environmental effects.

Article 8 is substantially amended and includes several new provisions. Firstly, a time-frame is set for the conclusion of the environmental impact assessment procedure. Secondly, the competent authority is required to include in the development consent decision itself some items substantiating the decision; this reflects the case-law (e.g. C-50/09). Thirdly, mandatory ex-post monitoring is introduced only for projects that will have significant adverse environmental effects, according to the consultations carried out and the information gathered (including the environmental report), with the purpose of assessing the implementation and

effectiveness of mitigation and compensation measures. Some Member States already require such monitoring, which should not duplicate that which may be required by other Union legislation (e.g. on industrial emissions or water quality), and it is appropriate therefore to establish common minimum requirements. This new obligation is cost-effective, as it may help to avoid adverse impacts on the environment and public health and costs of reparation, and is relevant for addressing impacts related to new challenges such as climate change and disaster risks. Fourthly, the competent authority is required to verify that the information of the environmental report is up to date, before deciding to grant or refuse development consent.

The main modification to Article 9 is the inclusion of a description of the monitoring arrangements in the information provided to the public when development consent is granted.

Article 12 is amended in order to specify the information required to monitor the implementation of the Directive.

Two new Articles (12a and 12b) are inserted concerning the adaptation of Annexes II.A, III and IV to scientific and technical progress through delegated acts.

Annex II.A, which is a new Annex, sets out the information to be submitted by the developer as regards projects listed in Annex II, for which screening is carried out to determine whether an EIA is required. This amendment is intended to harmonise the screening process.

Annex III, which lays down the criteria used for screening Annex II projects, is amended to clarify the existing criteria (e.g. cumulative effects or links with other EU legislation) and to include additional ones (mainly those related to new environmental issues).

Annex IV contains the items to be considered in the environmental report required by Article 5. The main changes are additional information requirements concerning the assessment of reasonable alternatives, the description of monitoring measures and the description of aspects related to new environmental issues (e.g. climate change, biodiversity, disaster risks, use of natural resources).

The amended Directive contains transitional provisions, which draw on the case-law (e.g. case C-81/96). The EIA should apply to projects for which the request for development consent was introduced before the time-limit for transposition and for which the environmental impact assessment has not been concluded before that date.

Explanatory documents

The Commission considers that explanatory documents are necessary in order to improve the quality of information on the transposition of the Directive for the following reasons.

The complete and correct transposition of the Directive is essential to guarantee that its objectives (i.e. protecting human health and the environment and ensuring a level play field) are achieved. The EIA is part of the process for assessing and granting development consent to a wide range of private and public projects in the Member

States, as either a separate or integrated part of assessment procedures. In addition, the implementation of the Directive is often highly decentralised, as the regional and local authorities are responsible for its application and, in some Member States, even for its transposition. Finally, the codification of the EIA Directive is likely to result in changes to the national measures that transposing progressively the initial directive and its three subsequent amendments. In order to implement the provisions of the revised Directive, which amends the codified version, Member States may have to act in different policy fields and amend a wide variety of legislative acts at national, regional and local levels.

The above factors are likely to increase the risks of incorrect transposition and implementation of the Directive, and complicate the Commission's task of monitoring the application of EU law. Clear information with respect to the transposition of the revised EIA Directive is instrumental in ensuring the conformity of national legislation with its provisions.

The requirement to provide explanatory documents may create an additional administrative burden on those Member States which do not work on this basis in any case. However, explanatory documents are necessary to allow effective verification of complete and correct transposition, which is essential for the reasons mentioned above, and there are no less burdensome measures to allow efficient verification. Moreover, the explanatory documents can contribute significantly to reducing the administrative burden of compliance monitoring by the Commission; without them, considerable resources and numerous contacts with national authorities would be required to track the methods of transposition in all Member States. Hence, the possible additional administrative burden of providing explanatory documents is proportionate to the aim pursued, namely to ensure effective transposition and fully achieve the objectives of the Directive.

In view of the above it is appropriate to ask Member States to accompany the notification of their transposition measures with one or more documents explaining the relationship between the provisions of the Directive and the corresponding parts of national transposition instruments.

Legal basis

As the primary objective of the Directive is the protection of the environment, in accordance with Article 191 TFEU, the proposal is based on Article 192(1) TFEU.

Subsidiarity and proportionality principles and choice of instrument

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the European Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States. The existing legislation sets minimum requirements for the environmental assessment of projects throughout the EU and aims to comply with international conventions (e.g. Espoo, Aarhus, Convention on Biological Diversity). This principle is maintained in the proposal which further harmonises the principles of environmental assessment and addresses inconsistencies. All Member States must take measures to comply with the minimum requirements; individual national actions

could impair the functioning of the internal market, as varying national regulation might hamper transboundary economic activities.

EU action will better achieve the objectives of the proposal. Since the adoption of the Directive in 1985, the EU has enlarged, while the scope and seriousness of environmental issues to be tackled and the number of major EU-scale infrastructure projects have also increased (e.g. transboundary projects in the field of energy or transport). Because of the transboundary nature of environmental issues (e.g. climate change, disaster risks) and of some projects, action at EU level is necessary and brings added value compared to individual national actions. The EU's action will also address issues that are important to the EU as a whole, such as adaptation to climate change and disaster prevention, and has a role to play in the achievement of Europe's 2020 objectives for sustainable growth.

The proposal therefore respects the subsidiarity principle.

The chosen legal instrument is a directive, as the proposal aims to modify an existing directive. The proposal lays down general objectives and obligations, while leaving sufficient flexibility to the Member States as regards the choice of measures for compliance and their detailed implementation. The proposal therefore complies with the proportionality principle.

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the EU budget.

5. OPTIONAL ELEMENTS

The proposal concerns a matter relevant to the European Economic Area and should therefore be applicable to it.

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amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹⁰,

Having regard to the opinion of the Committee of the Regions¹¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2011/92/EU has harmonised the principles for the environmental assessment of projects by introducing minimum requirements (with regard to the type of projects subject to assessment, the main obligations of developers, the content of the assessment and the participation of the competent authorities and the public), and contributes to a high level of protection of the environment and human health.
- (2) The mid-term review of the sixth Environment Action Programme¹² and the latest Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the EIA Directive (Directive 85/337/EEC)¹³, the predecessor to Directive 2011/92/EU, stressed the need to improve the principles of environmental assessment of projects and adapting the Directive to the policy, legal and technical context, which has evolved considerably.

¹⁰ OJ C , , p. .

¹¹ OJ C , , p. .

¹² COM(2007) 225.

¹³ COM(2009) 378.

- (3) It is necessary to amend Directive 2011/92/EU in order to strengthen the quality of the environmental assessment procedure, streamline the various steps of the procedure and enhance coherence and synergies with other Union legislation and policies, as well as strategies and policies developed by Member States in areas of national competence.
- (4) Over the last decade, environmental issues, such as resource efficiency, biodiversity, climate change, and disaster risks, have become more important in policy making and should therefore also constitute critical elements in assessment and decision-making processes, especially for infrastructure projects.
- (5) In its Communication entitled 'Roadmap to a Resource Efficient Europe'¹⁴, the Commission committed itself to including broader resource efficiency considerations in the context of the revision of Directive 2011/92/EU.
- (6) The Soil Thematic Strategy¹⁵ and the Roadmap to a Resource-Efficient Europe underline the importance of the sustainable use of soil and the need to address the unsustainable increase of settlement areas over time (land take). Furthermore, the final document of the United Nations Conference on Sustainable Development held in Rio de Janeiro on 20-22 June 2012 recognises the economic and social significance of good land management, including soil, and the need for urgent action to reverse land degradation. Public and private projects should therefore consider and limit their impact on land, particularly land take, and soil, including on organic matter, erosion, compaction and sealing, including through appropriate land use plans and policies at national, regional and local levels.
- (7) The United Nations Convention on Biological Diversity ("the Convention"), to which the European Union is party, requires assessment, as far as possible and as appropriate, of the significant adverse effects of projects on biological diversity, which is defined in Article 2 of the Convention, with a view to avoiding or minimising such effects. This prior assessment of impacts should contribute to attaining the Union headline target adopted on 2010¹⁶ of halting biodiversity loss and the degradation of ecosystem services by 2020 and restoring them where feasible.
- (8) The measures taken to avoid, reduce and, if possible, offset significant adverse effects on the environment should contribute to avoiding any deterioration in the quality of the environment and any net loss of biodiversity, in accordance with the Union's commitments in the context of the Convention and the objectives and actions of the Union Biodiversity Strategy up to 2020¹⁷.
- (9) Climate change will continue to cause damage to the environment and compromise economic development. Accordingly, the environmental, social and economic resilience of the Union should be promoted so as to deal with climate change throughout the Union's territory in an efficient manner. Climate change adaptation and mitigation responses need to be addressed across many of the sectors of Union legislation.

¹⁴ COM(2011) 571.

¹⁵ COM(2006) 231.

¹⁶ European Council conclusions, March 2010.

¹⁷ COM(2011) 244.

- (10) Following the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on a Community approach on the prevention of natural and man-made disasters¹⁸, in its conclusions of 30 November 2009, the Council of the EU invited the Commission to ensure that the implementation review and further development of EU initiatives take into consideration disaster risk prevention and management concerns and the United Nations Hyogo Framework for Action Programme (2005-2015), which stresses the need to put in place procedures for assessment of the disaster risk implications of major infrastructure projects.
- (11) Protection and promotion of cultural heritage and landscapes, which are an integral part of the cultural diversity that the Union is committed to respect and promote in accordance with Article 167(4) of the Treaty on the Functioning of the European Union, can usefully build on definitions and principles developed in relevant Council of Europe Conventions, in particular the Convention for the Protection of the Architectural Heritage of Europe, the European Landscape Convention and the Framework Convention on the Value of Cultural Heritage for Society.
- (12) When applying Directive 2011/92/EU, it is necessary to ensure a competitive business environment, especially for small and medium enterprises, in order to generate smart, sustainable and inclusive growth, in line with the objectives set out in the Commission's Communication entitled 'Europe 2020 – A strategy for smart, sustainable and inclusive growth'¹⁹.
- (13) Experience has shown that in cases of civil emergency compliance with the provisions of Directive 2011/92/EU may have adverse effects, and provision should therefore be made to authorise Member States not to apply that Directive in appropriate cases.
- (14) The information which the developer is required to supply in order to enable the competent authority to determine whether projects listed in Annex II of Directive 2011/92/EU should be subject to an environmental assessment (screening procedure), should be specified.
- (15) The selection criteria laid down in Annex III of Directive 2011/92/EU, which are taken into account by the Member States in order to determine which projects should be subject to assessment on the basis of their significant environmental effects, should be adapted and clarified in order to ensure that an environmental assessment is only required for projects likely to have significant environmental effects, such as projects using or affecting valuable resources, projects proposed for environmentally sensitive locations, or projects with potentially hazardous or irreversible effects.
- (16) When determining whether significant environmental effects are likely to be caused, the competent authorities should identify the most relevant criteria to be considered and use the additional information that may be available following other assessments required by Union legislation in order to apply the screening procedure effectively. In this regard, it is appropriate to specify the content of the screening decision, in particular where no environmental assessment is required.

¹⁸ COM(2009) 82.

¹⁹ COM(2010) 2020.

- (17) The competent authorities should be required to determine the scope and level of detail of the environmental information to be submitted in the form of an environmental report (scoping). In order to improve the quality of the assessment and streamline the decision-making process, it is important to specify at Union level the categories of information on which the competent authorities should make that determination.
- (18) The environmental report of a project to be provided by the developer should include an assessment of reasonable alternatives relevant to the proposed project, including the likely evolution of the existing state of the environment without implementation of the project (baseline scenario), as a means to improve quality of the assessment process and to allow integrating environmental considerations at an early stage in the project's design.
- (19) Measures should be taken to ensure that the data and information included in the environmental reports, in accordance with Annex IV of Directive 2011/92/EU are complete and of sufficiently high quality. With a view to avoiding duplication of the assessment, Member States should take account of the fact that environmental assessments may be carried out at different levels or by different instruments.
- (20) With a view to ensuring transparency and accountability, the competent authority should be required to substantiate its decision to grant development consent in respect of a project, indicating that it has taken into consideration the results of the consultations carried out and the relevant information gathered.
- (21) It is appropriate to establish common minimum requirements for the monitoring of the significant adverse effects of the construction and operation of projects to ensure a common approach in all Member States and to ensure that, after the implementation of mitigation and compensation measures, no impacts exceed those initially predicted. Such monitoring should not duplicate or add to monitoring required pursuant to other Union legislation.
- (22) Time-frames for the various steps of the environmental assessment of projects should be introduced, in order to stimulate more efficient decision-making and increase legal certainty, also taking into account the nature, complexity, location and size of the proposed project. Such time-frames should under no circumstances compromise the high standards for the protection of the environment, particularly those resulting from other Union environmental legislation, and effective public participation and access to justice.
- (23) In order to avoid duplication of the assessment, reduce administrative complexity and increase economic efficiency, where the obligation to carry out environmental impact assessments arises simultaneously from this Directive and other Union legislation, such as Directives 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment²⁰, 2009/147/EC on the conservation of wild birds²¹, 2000/60/EC establishing a framework for Community action in the field of water policy²², 2010/75/EU on industrial emissions²³ and Council Directive 92/43/EEC on

²⁰ OJ L 197, 21.7.2001, p.30.

²¹ OJ L 20, 26.1.2010, p.7.

²² OJ L 327, 22.12.2000, p.1.

²³ OJ L 334, 17.12.2010, p.17.

the conservation of natural habitats and of wild fauna and flora²⁴, Member States should provide for coordinated or joint procedures fulfilling the requirements of the relevant Union legislation.

- (24) The new provisions should also apply to projects for which the request for development consent is introduced before the time-limit for transposition but for which the environmental impact assessment has not been concluded before that date.
- (25) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (26) In order to adjust the selection criteria and the information to be provided in the environmental report to the latest developments in technology and relevant practices, the power to adopt acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union, should be delegated to the Commission in respect of Annexes II.A, III and IV of Directive 2011/92/EU. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (27) The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.
- (28) Since the objective of this Directive, namely to ensure a high level of protection of the environment and of human health, through the establishment of minimum requirements for the environmental assessment of projects, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scope, seriousness and transboundary nature of the environmental issues to be addressed, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (29) Directive 2011/92/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2011/92/EU is amended as follows:

- (1) Article 1 is amended as follows:

²⁴ OJ L 206, 22.7.1992, p.7.

(a) in point (a) of paragraph 2, the first indent is replaced by the following:

"— the execution of construction or demolition works, or of other installations or schemes,"

(b) in paragraph 2, the following definition is added:

"(g) "environmental impact assessment" shall mean the process of preparing an environmental report, carrying out consultations (including with the public concerned and the environmental authorities), the assessment by the competent authority, taking into account the environmental report and the results of the consultations in the development consent procedure as well as the provision of information on the decision in accordance with Articles 5 to 10."

(c) paragraphs 3 and 4 are replaced by the following:

"3. Member States may decide, on a case-by-case basis and if so provided under national law, not to apply this Directive to projects having as their sole purpose national defence or the response to civil emergencies, if they deem that such application would have an adverse effect on those purposes."

4. This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, provided that the objectives of this Directive, including that of supplying information, are achieved through the legislative process. Every two years from the date specified in Article 2(1) of Directive XXX [OPOCE please introduce the n° of this Directive], Member States shall inform the Commission of any application which they have made of this provision."

(2) In Article 2, paragraph 3 is replaced by the following:

"3. Projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Union legislation shall be subject to coordinated or joint procedures fulfilling the requirements of the relevant Union legislation.

Under the coordinated procedure, the competent authority shall coordinate the various individual assessments required by the Union legislation concerned and issued by several authorities, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

Under the joint procedure, the competent authority shall issue one environmental impact assessment, integrating the assessments of one or more authorities, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

Member States shall appoint one authority, which shall be responsible for facilitating the development consent procedure for each project."

(3) Article 3 is replaced by the following:

"Article 3

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

- (a) population, human health, and biodiversity, with particular attention to species and habitats protected under Council Directive 92/43/EEC(*) and Directive 2009/147/EC of the European Parliament and of the Council(**);
- (b) land, soil, water, air and climate change;
- (c) material assets, cultural heritage and the landscape;
- (d) the interaction between the factors referred to in points (a), (b) and (c);
- (e) exposure, vulnerability and resilience of the factors referred to in points (a), (b) and (c), to natural and man-made disaster risks."

(*) OJ L 206, 22.7.1992, p.7.

(**) OJ L 20, 26.1.2010, p.7."

(4) Article 4 is amended as follows:

(a) paragraphs 3 and 4 are replaced by the following:

"3. For projects listed in Annex II, the developer shall provide information on the characteristics of the project, its potential impact on the environment and the measures envisaged in order to avoid and reduce significant effects. The detailed list of information to be provided is specified in Annex II.A."

4. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the competent authority shall take account of selection criteria related to the characteristics and location of the project and its potential impact on the environment. The detailed list of selection criteria to be used is specified in Annex III."

(b) The following paragraphs 5 and 6 are added:

"5. The competent authority shall make its decision pursuant to paragraph 2, on the basis of the information provided by the developer and taking into account, where relevant, the results of studies, preliminary verifications or assessments of the effects on the environment arising from other Union legislation. The decision pursuant to paragraph 2 shall:

- (a) state how the criteria in Annex III have been taken into account;
- (b) include the reasons for requiring or not requiring an environmental impact assessment pursuant to Articles 5 to 10;

(c) include a description of the measures envisaged to avoid, prevent and reduce any significant effects on the environment, where it is decided that no environmental impact assessment needs to be carried out pursuant to Articles 5 to 10;

(d) be made available to the public.

6. The competent authority shall make its decision pursuant to paragraph 2 within three months from the request for development consent and provided that the developer has submitted all the requisite information. Depending on the nature, complexity, location and size of the proposed project, the competent authority may extend that deadline by a further 3 months; in that case, the competent authority shall inform the developer of the reasons justifying the extension and of the date when its determination is expected.

Where the project is made subject to an environmental impact assessment in accordance with Articles 5 to 10, the decision pursuant to paragraph 2 of this Article shall include the information set out in Article 5(2)."

(5) In Article 5, paragraphs 1, 2 and 3 are replaced by the following:

"1. Where an environmental impact assessment must be carried out in accordance with Articles 5 to 10, the developer shall prepare an environmental report. The environmental report shall be based on the determination pursuant to paragraph 2 of this Article and include the information that may reasonably be required for making informed decisions on the environmental impacts of the proposed project, taking into account current knowledge and methods of assessment, the characteristics, technical capacity and location of the project, the characteristics of the potential impact, alternatives to the proposed project and the extent to which certain matters (including the evaluation of alternatives) are more appropriately assessed at different levels including the planning level, or on the basis of other assessment requirements. The detailed list of information to be provided in the environmental report is specified in Annex IV.

2. The competent authority, after having consulted the authorities referred to in Article 6(1) and the developer, shall determine the scope and level of detail of the information to be included by the developer in the environmental report, in accordance with paragraph 1 of this Article. In particular, it shall determine:

- (a) the decisions and opinions to be obtained;
- (b) the authorities and the public likely to be concerned;
- (c) the individual stages of the procedure and their duration;
- (d) reasonable alternatives relevant to the proposed project and its specific characteristics;
- (e) the environmental features referred to in Article 3 likely to be significantly affected;

(f) the information to be submitted relevant to the specific characteristics of a particular project or type of project;

(g) the information and knowledge available and obtained at other levels of decision-making or through other Union legislation, and the methods of assessment to be used.

The competent authority may also seek assistance from accredited and technically competent experts referred to in paragraph 3 of this Article. Subsequent requests to the developer for additional information may only be made if these are justified by new circumstances and duly explained by the competent authority.

3. To guarantee the completeness and sufficient quality of the environmental reports referred to in Article 5(1):

(a) the developer shall ensure that the environmental report is prepared by accredited and technically competent experts or

(b) the competent authority shall ensure that the environmental report is verified by accredited and technically competent experts and/or committees of national experts.

Where accredited and technically competent experts assisted the competent authority to prepare the determination referred to in Article 5(2), the same experts shall not be used by the developer for the preparation of the environmental report.

The detailed arrangements for the use and selection of accredited and technically competent experts (for example qualifications required, assignment of evaluation, licensing, and disqualification), shall be determined by the Member States."

(6) Article 6 is amended as follows:

(a) paragraph 6 is replaced by the following:

"6. Reasonable time-frames for the different phases shall be provided, allowing sufficient time:

(a) for informing the authorities referred to in Article 6(1) and the public and

(b) for the authorities referred to in Article 6(1) and the public concerned to prepare and participate effectively in the environmental decision-making subject to the provisions of this Article."

(b) the following paragraph 7 is added:

"7. The time-frames for consulting the public concerned on the environmental report referred to in Article 5(1) shall not be shorter than 30 days or longer than 60 days. In exceptional cases, where the nature, complexity, location or size of the proposed project so require, the competent authority may extend this time-frame by a further 30 days; in that case, the competent authority shall inform the developer of the reasons justifying the extension."

(7) In Article 7, paragraph 5 is replaced by the following:

"5. The detailed arrangements for implementing paragraphs 1 to 4 of this Article, including the establishment of time-frames for consultations, shall be determined by the Member States concerned, on the basis of the arrangements and time-frames referred to in Article 6(5) and (6), and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project."

(8) Article 8 is replaced by the following:

"Article 8

1. The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 shall be taken into consideration in the development consent procedure. To this end, the decision to grant development consent shall contain the following information:

- (a) the environmental assessment of the competent authority referred to in Article 3 and the environmental conditions attached to the decision, including a description of the main measures to avoid, reduce and, if possible, offset significant adverse effects;
- (b) the main reasons for choosing the project as adopted, in the light of the other alternatives considered, including the likely evolution of the existing state of the environment without implementation of the project (baseline scenario);
- (c) a summary of the comments received pursuant to Articles 6 and 7;
- (d) a statement summarising how environmental considerations have been integrated into the development consent and how the results of the consultations and the information gathered pursuant to Articles 5, 6 and 7 have been incorporated or otherwise addressed.

For projects likely to have significant adverse transboundary effects, the competent authority shall provide information for not having taken into account comments received by the affected Member State during the consultations carried out pursuant to Article 7.

2. If the consultations and the information gathered pursuant to Articles 5, 6 and 7 conclude that a project will have significant adverse environmental effects, the competent authority, as early as possible and in close cooperation with the authorities referred to in Article 6(1) and the developer, shall consider whether the environmental report referred to in Article 5(1) should be revised and the project modified to avoid or reduce these adverse effects and whether additional mitigation or compensation measures are needed.

If the competent authority decides to grant development consent, it shall ensure that the development consent includes measures to monitor the significant adverse environmental effects, in order to assess the implementation and the expected effectiveness of mitigation and compensation measures, and to identify any unforeseeable adverse effects.

The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the proposed project and the significance of its environmental effects.

Existing monitoring arrangements resulting from other Union legislation may be used if appropriate.

3. When all necessary information gathered pursuant to Articles 5, 6 and 7 has been provided to the competent authority, including, where relevant, specific assessments required under other Union legislation, and the consultations referred to in Articles 6 and 7 have been completed, the competent authority shall conclude its environmental impact assessment of the project within three months.

Depending on the nature, complexity, location and size of the proposed project, the competent authority may extend that deadline by a further 3 months; in that case, the competent authority shall inform the developer of the reasons justifying the extension and of the date when its decision is expected.

4. Before a decision to grant or refuse development consent is taken, the competent authority shall verify whether the information in the environmental report referred to in Article 5(1) is up to date, in particular concerning the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects."

(9) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public and the authorities referred to in Article 6(1) thereof, in accordance with the appropriate procedures, and shall make available to the public the following information:

(a) the content of the decision and any conditions attached thereto;

(b) having examined the environmental report and the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process;

(c) a description of the main measures to avoid, reduce and, if possible, offset the significant adverse effects;

(d) a description, where appropriate, of the monitoring measures referred to in Article 8(2)."

(b) the following paragraph 3 is added:

"3. Member States may also decide to make available to the public the information referred to in paragraph 1, when the competent authority concludes its environmental impact assessment of the project."

(10) In Article 12, paragraph 2 is replaced by the following:

"2. In particular, every six years from the date specified in Article 2(1) of Directive XXX [OPOCE please introduce the n° of this Directive] Member States shall inform the Commission of:

- (a) the number of projects referred to in Annexes I and II made subject to an assessment in accordance with Articles 5 to 10;
- (b) the breakdown of assessments according to the project categories set out in Annexes I and II;
- (c) the breakdown of assessments undertaken by type of developer;
- (d) the number of projects referred to in Annex II made subject to a determination in accordance with Article 4(2);
- (e) the average duration of the environmental impact assessment process;
- (f) the average cost of the environmental impact assessments."

(11) The following Articles 12a and 12b are inserted:

"Article 12a

The Commission shall be empowered to adopt delegated acts, in accordance with Article 12b, concerning the selection criteria listed in Annex III and the information referred to in Annexes II.A and IV, in order to adapt them to scientific and technical progress.

Article 12b

1. The power to adopt delegated acts is conferred on the Commission subject to the condition laid down in this Article.
2. The delegation of power referred to in Article 12a shall be conferred on the Commission for an indeterminate period of time from the [OPOCE please introduce date of the entry into force of this Directive].
3. The delegation of power referred to in Article 12a may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 12a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of the notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not

object. That period shall be extended by two months at the initiative of the European Parliament or the Council."

- (12) The Annexes to Directive 2011/92/EU are amended as provided in the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [DATE] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a document explaining the relationship between them and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Projects for which the request for development consent was introduced before the date referred to in the first subparagraph of Article 2(1) and for which the environmental impact assessment has not been concluded before that date shall be subject to the obligations referred to in Articles 3 to 11 of Directive 2011/92/EU as amended by this Directive.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

- (1) The following Annex II.A is inserted:

"ANNEX II.A – INFORMATION REFERRED TO IN ARTICLE 4(3)

1. A description of the project, including in particular:

(a) a description of the physical characteristics of the whole project, including, where relevant, its subsurface, during the construction and operational phases;

(b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.

2. A description of the aspects of the environment likely to be significantly affected by the proposed project.

3. A description of the likely significant effects of the proposed project on the environment resulting from:

(a) the expected residues and emissions and the production of waste;

(b) the use of natural resources, in particular soil, land, water, and biodiversity, including hydromorphological changes.

4. A description of the measures envisaged to avoid, prevent or reduce any significant adverse effects on the environment."

- (2) Annexes III and IV are replaced by the following:

"ANNEX III – SELECTION CRITERIA REFERRED TO IN ARTICLE 4(4)

1. CHARACTERISTICS OF PROJECTS

The characteristics of projects must be considered with particular regard to:

(a) the size of the project, including, where relevant, its subsurface;

(b) cumulation with other projects and activities;

(c) the use of natural resources, in particular land, soil, water, and biodiversity, including hydromorphological changes;

(d) the production of waste;

(e) pollution and nuisances;

(f) the natural and man-made disaster risks and risk of accidents, with particular regard to hydromorphological changes, substances, or technologies or living organisms used, to specific surface and subsurface conditions or alternative use, and to the probability of accidents or disasters and the vulnerability of the project to these risks;

(g) impacts of the project on climate change (in terms of greenhouse gas emissions including from land use, land-use change and forestry), contribution of the project to an improved resilience, and the impacts of climate change on the project (e.g. if the project is coherent with a changing climate);

(h) impacts of the project on the environment, in particular on land (increase of settlement areas over time – land take), soil (organic matter, erosion, compaction, sealing), water (quantity and quality), air and biodiversity (population quality and quantity and ecosystem degradation and fragmentation);

(i) the risks to human health (e.g. due to water contamination or air pollution);

(j) impact of the project on cultural heritage and landscape.

2. LOCATION OF PROJECTS

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to:

(a) the existing and planned land use, including land take and fragmentation;

(b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water, and biodiversity) in the area;

(c) the absorption capacity of the natural environment, paying particular attention to the following areas:

(i) wetlands, riparian areas, river mouths;

(ii) coastal zones;

(iii) mountain and forest areas;

(iv) nature reserves and parks, permanent pastures, agriculture areas with a high nature value;

(v) areas classified or protected under Member States' legislation; Natura 2000 areas designated by Member States pursuant to Directive 2009/147/EEC of the European Parliament or of the Council and Council Directive 92/43/EEC; areas protected by international conventions;

(vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or is likely to be such a failure;

(vii) densely populated areas;

(viii) landscapes and sites of historical, cultural or archaeological significance.

3. CHARACTERISTICS OF THE POTENTIAL IMPACT

The potential significant effects of projects must be considered in relation to criteria set out under 1 and 2 above, with particular regard to:

- (a) the magnitude and spatial extent of the impact (geographical area and size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the duration, frequency and reversibility of the impact;
- (g) the speed of onset of the impact;
- (h) the cumulation of impacts with the impacts of other projects (in particular existing and/or approved) by the same or different developers;
- (i) the aspects of the environment likely to be significantly affected;
- (k) the information and findings on environmental effects obtained from assessments required under other EU legislation.
- (l) the possibility of reducing impacts effectively.

ANNEX IV – INFORMATION REFERRED TO IN ARTICLE 5(1)

1. Description of the project, including in particular:

- (a) a description of the physical characteristics of the whole project, including, where relevant, its subsurface, and the water use and land-use requirements during the construction and operational phases;
- (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials, energy and natural resources (including water, land, soil and biodiversity) used;
- (c) an estimate, by type and quantity, of expected residues and emissions (water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.

2. A description, of the technical, locational or other aspects (e.g. in terms of project design, technical capacity, size and scale) of the alternatives considered, including the identification of the least environmentally impacting one, and an indication of the main reasons for the choice made, taking into account the environmental effects.

3. A description of the relevant aspects of the existing state of the environment and the likely evolution thereof without implementation of the project (baseline scenario). This description should cover any existing environmental problems relevant to the project, including, in particular, those relating to any areas of a particular environmental importance and the use of natural resources.

4. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, human health, fauna, flora, biodiversity and the ecosystem services it provides, land (land take), soil (organic matter, erosion, compaction, sealing), water (quantity and quality), air, climatic factors, climate change (greenhouse gas emissions, including from land use, land use change and forestry, mitigation potential, impacts relevant to adaptation, if the project takes into account risks associated with climate change), material assets, cultural heritage, including architectural and archaeological ones, landscape; such a description should include the inter-relationship between the above factors, as well as the exposure, vulnerability and resilience of the above factors to natural and man-made disaster risks.

5. A description of the likely significant effects of the proposed project on the environment resulting from, inter alia:

(a) the existence of the project;

(b) the use of natural resources, in particular land, soil, water, biodiversity and the ecosystem services it provides, considering as far possible the availability of these resources also in the light of changing climatic conditions;

(c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the elimination of waste;

(d) the risks to human health, cultural heritage or the environment (e.g. due to accidents or disasters);

(e) the cumulation of effects with other projects and activities;

(f) the greenhouse gas emissions, including from land use, land use change and forestry;

(g) the technologies and the substances used;

(h) hydromorphological changes.

The description of the likely significant effects should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-, medium- and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at EU or Member State level which are relevant to the project.

6. The description of the forecasting methods used to assess the effects on the environment referred to in point 5, as well as an account of the main uncertainties involved and their influence on the effect estimates and selection of the preferred alternative.

7. A description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment referred to in point 5 and, where appropriate, of any proposed monitoring arrangements, including the preparation of a post-project analysis of the adverse effects on the environment. This

description should explain the extent to which significant adverse effects are reduced or offset and should cover both the construction and operational phases.

8. An assessment of the natural and man-made disaster risks and risk of accidents to which the project could be vulnerable and, where appropriate, a description of the measures envisaged to prevent such risks, as well as measures regarding preparedness for and response to emergencies (e.g. measures required under Directive 96/82/EC as amended).

9. A non-technical summary of the information provided under the above headings.

10. An indication of any difficulties (technical deficiencies or lack of knowhow) encountered by the developer in compiling the required information and of the sources used for the descriptions and assessments made, as well as an account of the main uncertainties involved and their influence on the effect estimates and selection of the preferred alternative."