COUNCIL DIRECTIVE 97/11/EC

of 3 March 1997

amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment

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],

Having regard to the opinion of the Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the procedure laid down in Article 189c of the Treaty [4],

(1) Whereas Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [5] aims at providing the competent authorities with relevant information to enable them to take a decision on a specific project in full knowledge of the project's likely significant impact on the environment; whereas the assessment procedure is a fundamental instrument of environmental policy as defined in Article 130r of the Treaty and of the Fifth Community Programme of policy and action in relation to the environment and sustainable development;

(2) Whereas, pursuant to Article 130r (2) of the Treaty, Community policy on the environment is based on the precautionary principle and on the principle that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay;

(3) Whereas the main principles of the assessment of environmental effects should be harmonized and whereas the Member States may lay down stricter rules to protect the environment;

(4) Whereas experience acquired in environmental impact assessment, as recorded in the report on the implementation of Directive 85/337/EEC, adopted by the Commission on 2 April 1993, shows that it is necessary to introduce provisions designed to clarify, supplement and improve the rules on the assessment procedure, in order to ensure that the Directive is applied in an increasingly harmonized and efficient manner;

(5) Whereas projects for which an assessment is required should be subject to a requirement for development consent; whereas the assessment should be carried out before such consent is granted;

(6) Whereas it is appropriate to make additions to the list of projects which have significant effects on the environment and which must on that account as a rule be made subject to systematic assessment;

(7) Whereas projects of other types may not have significant effects on the environment in every case; whereas these projects should be assessed where Member States consider they are likely to have significant effects on the environment;

(8) Whereas Member States may set thresholds or criteria for the purpose of determining which such projects should be subject to assessment on the basis of the significance of their environmental effects; whereas Member States should not be required to examine projects below those thresholds or outside those criteria on a case-by-case basis;

(9) Whereas when setting such thresholds or criteria or examining projects on a case-by-case basis for the purpose of determining which projects should be subject to assessment on the basis of their significant environmental effects, Member States should take account of the relevant selection criteria set out in this Directive; whereas, in accordance with the subsidiarity principle, the Member States are in the best position to apply these criteria in specific instances;

(10) Whereas the existence of a location criterion referring to special protection areas designated by Member States pursuant to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds [6] and 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [7] does not imply necessarily that projects in those areas are to be automatically subject to an assessment under this Directive;

[1] OJ No C 130, 12. 5. 1994, p. 8 and OJ No C 81, 19. 3. 1996, p. 14.
[2] OJ No C 393, 31. 12. 1994, p. 1.
[3] OJ No C 210, 14. 8. 1995, p. 78.
[4] European Parliament Opinion of 11 October 1995 (OJ No C 287, 30. 10. 1995, p. 101), Council common position of 25 June 1996 (OJ No C 248, 26. 8. 1996, p. 75) and European Parliament Decision of 13 November 1996 (OJ No C 362, 2. 12. 1996, p. 103).
[5] OJ No L 175, 5. 7. 1985, p. 40. Directive as last amended by the 1994 Act of Accession.
[6] OJ No L 103, 25. 4. 1979, p. 1. Directive as last amended by the 1994 Act of Accession.
[7] OJ No L 206, 22. 7. 1992, p. 7.

(11) Whereas it is appropriate to introduce a procedure in order to enable the developer to obtain an opinion from the competent authorities on the content and extent of the information to be elaborated and supplied for the assessment; whereas Member States, in the framework of this procedure, may require the developer to provide, *inter alia*, alternatives for the projects for which it intends to submit an application;

(12) Whereas it is desirable to strengthen the provisions concerning environmental impact assessment in a transboundary context to take account of developments at international level;

(13) Whereas the Community signed the Convention on Environmental Impact Assessment in a Transboundary Context on 25 February 1991,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

1. Article 2 (1) shall be replaced by the following:

'1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.';

2. The following paragraph shall be inserted in Article 2:

'2a. Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control (1).

(1) OJ No L 257, 10. 10. 1996, p. 26.';

3. The first subparagraph of Article 2 (3) shall read as follows:

'3. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.';

4. In Article 2 (3) (c) the words 'where appropriate' shall be replaced by the words 'where applicable';

5. Article 3 shall be 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 effects of a project on the following factors:

— human beings, fauna and flora;

— soil, water, air, climate and the landscape;

— material assets and the cultural heritage;

— the interaction between the factors mentioned in the first, second and third indents.';

6. Article 4 shall be replaced by the following:

'Article 4

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

2. Subject to Article 2 (3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

(b) thresholds or criteria set by the Member State

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.';

7. Article 5 shall be replaced by the following:

'Article 5

1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard *inter alia* to current knowledge and methods of assessment.

2. Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to

in Article 6 (1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.

Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

— a description of the project comprising information on the site, design and size of the project,

— a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,

— the data required to identify and assess the main effects which the project is likely to have on the environment,

— an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects,

— a non-technical summary of the information mentioned in the previous indents.

4. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, shall make this information available to the developer.';

8. Article 6 (1) shall be 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. 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.';

Article 6 (2) shall be replaced by the following:

'2. Member States shall ensure that any request for development consent and any information gathered pursuant to Article 5 are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion before the development consent is granted.';

9. Article 7 shall be replaced by the following:

'Article 7

1. Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, *inter alia*:

(a) a description of the project, together with any available information on its possible transboundary impact;

(b) information on the nature of the decision which may be taken,

and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the Environmental Impact Assessment procedure, and may include the information referred to in paragraph 2.

2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the Environmental Impact Assessment procedure, the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information gathered pursuant to Article 5 and relevant information regarding the said procedure, including the request for development consent.

3. The Member States concerned, each insofar as it is concerned, shall also:

(a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6 (1) and the public concerned in the territory of the Member State likely to be significantly affected; and

(b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.

4. The Member States concerned shall enter into consultations regarding, *inter alia*, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.

5. The detailed arrangements for implementing the provisions of this Article may be determined by the Member States concerned.';

10. Article 8 shall be replaced by the following:

'Article 8

The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.';

11. Article 9 shall be replaced by the following:

'Article 9

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

— the content of the decision and any conditions attached thereto,

— the main reasons and considerations on which the decision is based,

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

2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1.';

12. Article 10 shall be replaced by the following:

'Article 10

The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.';

13. Article 11 (2) shall be replaced by the following:

'2. In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4 (2).';

14. Article 13 shall be deleted;

15. Annexes I, II and III shall be replaced by Annexes I, II, III and IV as they appear in the Annex.

Article 2

Five years after the entry into force of this Directive, the Commission shall send the European Parliament and the Council a report on the application and effectiveness of Directive 85/337/EEC as amended by this Directive. The report shall be based on the exchange of information provided for by Article 11 (1) and (2).

On the basis of this report, the Commission shall, where appropriate, submit to the Council additional proposals with a view to ensuring further coordination in the application of this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 March 1999 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they 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 is submitted to a competent authority before the end of the time limit laid down in paragraph 1, the provisions of Directive 85/337/EEC prior to these amendments shall continue to apply.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 3 March 1997.

For the Council

The President

M. DE BOER

ANNEX

'ANNEX I

PROJECTS SUBJECT TO ARTICLE 4 (1)

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.

2. — Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and

   — nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (*) (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

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

   (b) Installations designed:

   — for the production or enrichment of nuclear fuel,

   — for the processing of irradiated nuclear fuel or high-level radioactive waste,

   — for the final disposal of irradiated nuclear fuel,

   — solely for the final disposal of radioactive waste,

   — solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4. — Integrated works for the initial smelting of cast-iron and steel;

   — Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilization of more than 200 tonnes per year.

6. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:

   (i) for the production of basic organic chemicals;

   (ii) for the production of basic inorganic chemicals;

   (iii) for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);

   (iv) for the production of basic plant health products and of biocides;

   (v) for the production of basic pharmaceutical products using a chemical or biological process;

   (vi) for the production of explosives.

7. (a) Construction of lines for long-distance railway traffic and of airports (1) with a basic runway length of 2 100 m or more;

   (b) Construction of motorways and express roads (2);

   (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length.

8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes;

   (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.

(*) Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

(1) For the purposes of this Directive, 'airport' means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

(2) For the purposes of the Directive, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.