



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.01.1997
COM(96) 723 final

94/0078 (SYN)

Re-examined Proposal for a

COUNCIL DIRECTIVE

amending

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

(presented by the Commission pursuant to Article 189 c (d)
of the EC Treaty)

EXPLANATORY MEMORANDUM

On 16 March 1994 the Commission adopted a Proposal for a Council Directive amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (COM(93) 575final - 94/0078 (SYN) - OJ C 130, 12.5.1994, p. 8).

The Economic and Social Committee adopted its opinion on 14 September 1994 (OJ C 393, 31.12.1994).

The Committee of the Regions adopted its opinion on 16 November 1994 (OJ C 210, 14.8.1995).

The European Parliament delivered its opinion, on first reading, on 11 October 1995 (OJ C 287, 30.10.1995, p. 83).

The Commission presented on 18 January 1996 to the Council a modified Proposal (COM(95) 720 final - 94/0078 (SYN), OJ C 81, 19.3.1996, p. 14).

The Council formally adopted its Common Position on the Proposal on 25 June 1996 (OJ C 248, 26.8.1996, p. 75).

The European Parliament examined the Council's Common Position at Second Reading on 13 November 1996 and approved it subject to 15 proposed amendments.

The Commission has examined the amendments proposed by the European Parliament at Second Reading, incorporating a number of them into the present re-examined Proposal.

The Commission's position on each of the amendments approved by Parliament at Second Reading is as follows.

Amendments accepted by the Commission

Amendment 1 has been accepted fully. Amendment 1 refers to the environmental principles of the Treaty of the European Union. Although a reference to these principles does not change the substance of the Common Position, the text can be improved in order to underline the environmental importance of such an instrument.

Amendments 15, 42 and 43 have been accepted in principle. Amendment 15 proposes some changes to Article 6 (2) of the Common Position and the Directive. The proposal of referring to making the information of the environmental impact statement available to **the public** "as soon as available" can be accepted because it avoids delays in the procedure. The proposals introducing details on the carrying out of public participation are not accepted because examples are already lined out in Article 6 (3) of the Directive. Amendment 42 and 43 would tend to postpone the implementation date of the amended Directive. It is expected that the Council will approve the amended Directive in early 1997. Therefore a certain prolongation of the implementation period can be accepted. However, the proposed period of **two years** is considered too long, taken into account that the Member States already have their systems for

EIA.

Amendments 16, 38 and 39 have been accepted in part. The part of amendment 16 proposing the setting of a reasonable time limit for the length of the consultation period can be accepted as it is in line with the Espoo Convention on environmental impact assessment in a transboundary context. An exhaustive list of subjects for discussion during consultations, however, cannot be accepted as it goes beyond the Espoo Convention. The Espoo Convention lines out examples for discussion, the detailed arrangements for consultations being left to the Member States as they may depend inter alia on the activity in question. Amendment 38 introduces a more detailed text regarding alternatives to be included in the environmental impact statement (Annex IV of the Common Position). The current wording of the Common Position does not exclude the assessment of what has been proposed by Parliament. To make the range of alternatives which can be studied by the developer clearer, a reference to the most environment-friendly alternative can be accepted. Amendment 39 refers to the reduction of the threshold relating to very high voltage overhead electrical power lines to 220 kV and the deletion of the length threshold as well as of the word "overhead". The part of this amendment relating to the thresholds can be accepted because it is technically more appropriate for this kind of activity which is always likely to have significant environmental impacts. However the reference to "overhead" should be kept because underground electrical power lines do not always have significant environmental impacts.

Amendments not accepted by the Commission

Amendments 3, 4, 6, 13, 20, 22, 23 and 28 have not been accepted. Amendments 5 and 6 have not been accepted because they refer to the assessment of Community or national programmes. The assessment of certain plans and programmes will be dealt with by the Commission's forthcoming Proposal for a separate Council Directive on this subject. Amendment 4 could not be accepted because the current wording makes the scope of the assessment of Annex I in relation to possible exemptions and to Annex II projects clearer. Amendment 13 proposed to insert public involvement in the scoping phase in Article 5. This provision is considered too far reaching and has therefore not been accepted. The rest of the suggested amendments to this Article are not considered to improve the current approach for scoping. Amendment 20 could not be accepted because the submission of proposals to modify the Directive complies with the legislative procedures laid down in the Treaty. Amendments 22 and 28 have not been accepted because they either proposed the lowering of thresholds of Annex I projects which would then be too low for the purposes of Annex I or did not include a threshold at all. Amendment 23 could not be accepted because the realignment or widening of an existing road should be treated under the same conditions as the construction of a new road.

RE-EXAMINED 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

COMMON POSITION

AMENDED TEXT

RECITAL 2a (new)

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

ARTICLE 1(8)
Article 6(2) (Directive 85/337/EEC)

Article 6(2) first indent is 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, as soon as they are available,

ARTICLE 1(9)
Article 7 (Directive 85/337/EEC)

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.

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 set a reasonable time limit for the length of the consultation period.

ARTICLE 3(1)

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1997 at the latest. They shall forthwith inform the Commission thereof.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within one year from its publication. They shall forthwith inform the Commission thereof.

ARTICLE 3(2)

2. If a request for development consent is submitted to a competent authority before 1 January 1998, the provisions of Directive 85/337/EEC prior to these amendments shall continue to apply.

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.

ANNEX I (20)

20. Construction of overhead electrical power lines with a voltage of 225 kV or more and a length of more than 15 km.

20. Construction of overhead electrical power lines with a voltage of 220 kV or more.

ANNEX IV (2)

Annex III (2) Directive 85/337/EEC

2. 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.

2. An outline of the main alternatives studied by the developer, including the most environment-friendly alternative, and an indication of the main reasons for his choice, taking into account the environmental effects.

ISSN 0254-1475

COM(96) 723 final

DOCUMENTS

EN

14

Catalogue number : CB-CO-96-735-EN-C

ISBN 92-78-14149-6

Office for Official Publications of the European Communities

L-2985 Luxembourg