

European Communities

EUROPEAN PARLIAMENT

Working Documents

1981 - 1982

2 February 1982

DOCUMENT 1-569/81/rev.

Report

drawn up on behalf of the Committee on the
Environment, Public Health and Consumer
Protection

on the proposal from the Commission of the
European Communities to the Council (Doc. 1-293/80)
for a directive concerning the assessment of
the environmental effects of certain private
and public projects

Rapporteur: Mrs B. WEBER

PE 72.495/fin./rev.

By letter of 1 July 1980, the President of the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive concerning the assessment of the environmental effects of certain private and public projects.

The President of the European Parliament referred this proposal to the Committee on the Environment, Public Health and Consumer Protection as the committee responsible on 7 July 1980 and to the Legal Affairs Committee for its opinion on 4 May 1981.

On 26 September 1980, the Committee on the Environment, Public Health and Consumer Protection appointed Mrs Weber rapporteur.

It considered this proposal at its meetings of 26 November 1980, 26 January 1981, 14 April 1981 and 22/23 September 1981 and at the latter meeting adopted the motion for a resolution and the explanatory statement unanimously save for three abstentions.

The following voted: Mr Collins, chairman; Mr Johnson, vice-chairman; Mrs Weber, vice-chairman and rapporteur; Mr Adam (deputizing for Mr Lynge), Mr Ceravolo (deputizing for Mr Segre), Mr Del Duca (deputizing for Mr Verroken), Mr Hoffmann (deputizing for Mr Ghergo), Miss Hooper, Mrs Krouwel-Vlam, Mrs Lentz-Cornette, Mr Mart (deputizing for Mr Combe), Mrs Maij-Weggen, Mr Muntingh, Mr Rinsche (deputizing for Mr Mertens), Mr Rogers (deputizing for Mr Bombard), Mrs Schleicher, Mrs Scrivener, Mrs Seibel-Emmerling, Mr Sherlock, Mrs Spaak, Mrs Squarcialupi, Mrs von Alemann (deputizing for Mrs Pruvot), Mr Welsh (deputizing for Sir Peter Vanneck)

The opinion of the Legal Affairs Committee is attached.

A.

The Committee on the Environment, Public Health and Consumer Protection hereby submits to the European Parliament the following amendments and motion for a resolution together with explanatory statement:

AMENDMENTS
TABLED

TEXT OF THE PROPOSAL FROM THE
COMMISSION OF THE EUROPEAN COMMUNITIES

Proposal from the Commission of the European Communities to the Council for a directive concerning the assessment of the environmental effects of certain public and private projects

AMENDMENT No. 1¹

Article 1

2.
developer means the applicant for permission for a private project or the public authority which proposes a project;
permission means the decision of the competent authority to permit a project in the private sector or the corresponding decision to proceed in the case of a project in the public sector.

AMENDMENT No. 2

Article 1

2. plan means the policy plan of a public authority in which a project or a number of projects are proposed, provided for or authorized. (new)

AMENDMENT No. 3

Article 2

Member States shall adopt all necessary measures to ensure that, before any permission is given or a plan is proposed, projects likely to have a significant effect on the environment by virtue of their nature, size and/or location are made subject to an appropriate assessment of these effects, in accordance with the following Articles.

Article 1

2.
developer means the applicant for planning permission for a private project or the public authority which proposes a project.
planning permission means the decision of the competent authority to permit a project in the private sector or the corresponding decision to proceed in the case of a project in the public sector.

Member States shall adopt all necessary measures to ensure that, before any planning permission is given, projects likely to have a significant effect on the environment by virtue of their nature, size and/or location are made subject to an appropriate assessment of these effects, in accordance with the following Articles

¹This amendment applies to the entire proposal from the Commission.

AMENDMENT No. 7Article 6

1. The Member States shall adopt the necessary measures to ensure that the developer prepares, with the assistance of the competent authority when necessary, and supplies with his application for permission the following information in an appropriate form:
 - a description of the proposed project and acceptable alternatives (remainder to be deleted)

Article 6

1. The Member States shall adopt the necessary measures to ensure that the developer prepares, with the assistance of the competent authority when necessary, and supplies with his application for planning permission the following information in an appropriate form:
 - a description of the proposed project and, where applicable, of the reasonable alternatives for the site and design of the project;

AMENDMENT No. 8Article 6

2. The information to be supplied in accordance with paragraph 1 shall also contain the date referred to in Annex 3 to the extent that they are relevant to the stage of the decision-making procedure and to the specific characteristics of the project and of the environment likely to be affected and to the extent that the developer can reasonably be expected to be able to obtain them, taking into account existing knowledge and assessment methods.
3. At the appropriate stages of the decision-making procedure the competent authority shall require completion of, or assist in completing when appropriate, the information to be supplied by the developer.

2. The information to be supplied in accordance with paragraph 1 shall also contain the data referred to in Annex 3 to the extent that they are relevant to the stage of the planning procedure and to the specific characteristics of the project and of the environment likely to be affected, and to the extent that the developer can reasonably be expected to be able to obtain them, taking into account existing knowledge and assessment methods.
3. At the appropriate stages of the planning procedure the competent authority shall require the completion of, or assist in completing when appropriate, the information to be supplied by the developer.

AMENDMENT No. 9Article 6

4. Where the assessment of projects and their effects so requires, the opinion of experts may be sought. (new)

ANNEXESAMENDMENT No. 13

- a. Classification of projects in accordance with Articles 4(1) and (2) shall be effected after a trial period during which, in particular, the expediency of the distinction made between Annex I and Annex 2 shall be reviewed in the light of practical experience.
- b. This period shall also be used to establish whether the branches of industry listed in the annexes should be replaced by types of plant and manufacturing processes.

AMENDMENT No. 14ANNEX I

2. Energy industry
Coke ovens (12)
Petroleum refining (140.1)
Production and processing of fissionable and fertile material (152)
Generation of electricity from nuclear energy (161.3)
Coal gasification plants
Disposal facilities for radioactive waste.

Temporary and permanent storage of radioactive waste.

AMENDMENT No. 15¹ANNEX I

8. Agriculture
Large-scale land reform projects.
Projects for cultivating natural areas and abandoned land
Water management projects for agriculture (drainage and irrigation)
Intensive livestock rearing

AMENDMENT No. 16ANNEX I

9. Processing of rubber (48)
Factories for the primary production of rubber
Manufacture of rubber tyres (481.1)
Factories for processed and reprocessed rubber products.

ANNEX I

2. Energy industry
Coke ovens (12)
Petroleum refining (140.1)
Production and processing of fissionable and fertile material (152)
Generation of electricity from nuclear energy (161.3)
Coal gasification plants
Disposal facilities for radioactive waste

ANNEX I

8. Processing of rubber (48)
Factories for the primary production of rubber
Manufacture of rubber tyres (481.1)

¹The corresponding activities

under paragraph 1 of Annex 2 therefore lapse.

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities to the Council for a directive concerning the assessment of the environmental effects of certain private and public projects

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council¹,
- having been consulted by the Council pursuant to Article 100 of the EEC Treaty (Doc. 1-293/80),
- having regard to the preamble of the EEC Treaty which affirms the essential objective of the constant improvement of living and working conditions (recital),
- having regard to the environment action programmes of the European Communities (1973-1977),
- having regard to the Second Report of the Commission of the European Communities on the State of the Environment (1979),
- having regard to the introduction of procedures to assess environmental effects in various Member States of the Community,
- having regard to the numerous preparatory studies by the Commission of the European Communities,
- having regard to the reports of its Committee on the Environment, Public Health and Consumer Protection and the opinion of the Legal Affairs Committee (Doc. 1-569/81/rev.)

1. Recognizes its obligations to ensure satisfactory living and working conditions for future generations in the Member States;
2. Recognizes the risk that ever-increasing pressure will be placed on the environment by current economic developments and that, at the same time, raw materials may be depleted in an irresponsible manner;

¹ OJ No. C 169, 9.7.1980, p. 14

- (c) the tangible consequences of pollution which already exist on Community territory,
- (d) activities which might suffer as a result of harmful effects on the environment;
-
12. Calls on the Commission to submit as soon as possible a proposal on the assessment of the environmental effects of public plans and programmes as these govern choice of location and public and private projects and may thus have a considerable influence on the environment;
13. Considers constructive participation by the public in approval procedures to be an essential component of any assessment of environmental effects;
14. Hopes that greater transparency in the preparation and approval of plans and programmes will lead to better relations between the population, the sponsors of projects and the authorities;
15. Notes that public participation at an early stage may cut costs by reducing the likelihood of appeals and court proceedings, which always lead to considerable delays, and requests the Commission to submit an assessment report after the transitional period has expired or before a new proposal is submitted;
16. Hopes that the directive will provide an effective and satisfactory instrument that will take account of transfrontier effects on the environment;
17. Expects the competent authority when producing its final assessment of a project to consider the information and data obtained through consultation and to take full account of these in its decision;
18. Asks for the European Parliament to continue to be involved in the consultation procedure between the Commission and the Council in matters relating to the directive on the assessment of environmental effects even if this procedure extends over a long period; expects any substantial amendments made by the Commission to the present proposal to be submitted to Parliament and its appropriate committee for an opinion;
19. Requests the Council, once it has adopted this directive, to declare it applicable to plans concerning the Community;
20. Calls on the Commission to incorporate the proposed amendments pursuant to the second paragraph of Article 149 of the EEC Treaty.

7. Plans and programmes must be subject to the assessment of environmental effects as early as possible in the Community and the Member States because important preliminary decisions which will affect public and private projects have to be taken at this planning level.
8. It is necessary and of course justified for Community projects also to be subject to such assessment. At the same time care must be taken to ensure that other Community policies are also compatible with environmental requirements, in particular the Community's investment policy (whether direct investment aid by the Community or investment aid granted by the European Investment Bank).
9. In a community of states it is particularly important for this assessment of environmental effects also to cover transfrontier effects. Only too frequently neighbouring countries are still being used against their will as dumping grounds for another country's waste. Nuisances which a country's own people are not expected to tolerate are exported next door.
10. It is essential for the public to be involved at the earliest possible stage in the assessment of a project's environmental effects and the developers and authorities must give all possible assistance to ensure this. Firstly, it is desirable and helpful for the public to be informed, as has been shown in the case of many projects in the USA for instance; secondly, early notice of any complaints by the public is the best protection against delays and costly objections at a late stage of the project. The manner in which the public is to be consulted is left largely to the Member State concerned, while the Commission must ensure that this major component of the assessment of environmental effects is not neglected and must carefully observe Member States' activities.
11. The annexes in which the Commission distinguishes between projects subject to a full or a simplified assessment must certainly be reviewed after a trial period of at least two years. During this period the Commission must ensure that the 'simplified' form of assessment is not used as a means of circumventing important parts of the directive, such as consultation of the public.

A. INTRODUCTION

I. AIM OF PROPOSAL

1. In the words of paragraph 1 of the Commission's Explanatory Memorandum: "The aim of this proposal is to introduce into the legislation and administrative practice of the Member States certain common principles for the prior assessment of the effect on the environment of public and private projects likely to have major effects on the environment and living conditions. The competent authority in the Member States would have the task of seeing to it that before certain projects are authorised or approved, an appropriate assessment is made, so that its decision is taken on the basis of adequate information regarding major environmental aspects of the question." The Directive is designed to add a new element to the procedure for deciding on an application for planning authorisation. It aims therefore to add weight to a particular direction within the existing procedures in Member States, but not to impose a new procedure.
2. In all the Member States the building and operation of large scale development projects are regulated through administrative procedures, usually in the form of procedures for authorising individual development projects. The obvious conclusion is that if any mandatory environmental assessment is to be introduced in the Member States by legislation it should be done within the existing procedures for planning control without the imposition of a further tier of administrative procedure.
3. The Directive must be in such a form that environmental assessment is only required where necessary. This will require precise terminology with a mixed use of

in judgements, it is important that the environmental assessment is only one element to be taken account of in the planning decision. Whatever virtue there might be in according preference to environmental or economic or social considerations, the balance between them must never be lost.

III. CRITICISMS

7. The teething problems experienced in the US, where environmental assessment was first introduced by the National Environmental Policy Act 1969 at the level of Federal Actions, have led to justified criticisms. Many states and cities have now adopted similar requirements to the original act. The importance of the political acceptability of such procedures has been amply demonstrated in New Mexico. One of the first states to enact legislation based on NEPA in 1971, the New Mexico Environmental Quality Act was repealed in 1974 as a result of complaints by private industry and state agencies that impact statements were an expensive waste of resources and the results meaningless.
8. There are two main lessons to be learnt from the US. First, that irrelevant information must not be required in an environmental assessment. This will avoid the expense and delay caused by the preparation of highly technical and too detailed assessments. The criteria of relevance already incorporated in the draft Directive possibly needs strengthening. Secondly, that litigation arising from ill-defined provisions and uncharted procedures for appeal must be guarded against. If not, the ensuing costs and delay of compulsory assessment will make the provisions unworkable. One criticism of the Commission's draft proposal in this context is that it is not sufficiently clear that the assessment procedure is to be simply an element in the national procedures dealing with planning applications.

agreement between the developer and the responsible planning authority. Secondly, the terms used in the Directive must be defined as clearly as possible. This will involve some amendments to the present draft. And lastly, a procedure for the speedy determination of disputes as to the applicability of the Directive both in general and in particular must be provided. It is to be regretted that the Commission draft fails to deal with the question of legal disputes and does not provide for a uniform appeal procedure.

IV. PRESENT STATE OF ENVIRONMENTAL ASSESSMENT REQUIREMENTS
IN THE LAWS OF THE MEMBER STATES

12. In France environmental impact assessment was introduced through the requirements of Article 2 of the 1976 Law for the Protection of Nature. This requires the preparation of impact statements for certain types of public and private projects, but does not apply to policies, programmes, legislation or plans. The 1976 law was supplemented by a decree of application issued on 12 October 1977. The law and decree came into effect on 1 January 1978. The assessment of impacts includes impacts on the human environment as well as the physical environment. The decree lists projects or activities exempt from assessment, including maintenance and large repair projects costing less than 6 million francs. But certain types of activities are subject to assessment even if the cost is less than 6 million francs. The applicant has to prepare and pay the costs of an impact statement, which must accompany a request for authorisation. The impact assessment must contain: an analysis of the initial conditions of the site and the surrounding environment, analysis of the effects of the project on flora, fauna and human well-being, reasons why the proposed project was selected from alternatives from an environmental point of view, and measures to prevent or mitigate adverse impacts. Public partici-

15. In Luxembourg, recent legislation introduced assessment. The law of 27 July (1980) on protection of the natural environment requires that physical planning or individual projects outside conurbations shall be subject to an impact study, if their size or the scale of effects on the natural environment could have an adverse effect upon the latter.
16. In the UK the Town and Country Planning Act of 1971 and the General Development Order 1977 made pursuant to that Act provide a sophisticated system for the authorization of development. As far as projects are concerned, outside the scope of the numerous environmental agencies, there is no mandatory requirement for environmental assessment. In Denmark there is also no mandatory requirement for impact assessment. The Danish system provides a system of development control, including considerable participation by interested parties. The applicant for development has an almost unlimited duty to disclose information requested by the relevant authorities. This duty extends in particular to the process, by-products and so forth. In practical terms major development projects are closely scrutinized for their environmental effects under the systems of both the UK and Denmark.
17. The Netherlands and Belgium are currently considering legislation requiring impact assessment.
18. In other Member States environmental assessment is often part of the planning control procedure but is either ad hoc or discretionary.

States meeting within the Council of the 17 May 1977" adopted the Second Environment Action Programme, covering 1977-1981, with the express aim of continuing and implementing the first Programme (O.J.C. 139, 13.6.1977). Under Title IV of the 1977 Programme, the Commission has proposed the present Directive.

22. One of the essential principles of the Community Environment Policy laid down in the 1973 Action Programme is the need for a preventive policy. The 1977 Action Programme restates the objectives and principles of the Community Environment Policy (Title I).
23. The objective is "to improve the setting and quality of life, and the surroundings and living conditions of the peoples of the Community. It must help to bring expansion into the service of man by procuring for him an environment providing the best possible conditions of life, and to reconcile this expansion with the increasingly imperative need to preserve the natural environment".
24. The relevant principles with regard to Environmental Impact Assessment are set out in Chapter 1 of Title IV entitled "General Action to protect and improve the environment".
25. "The best environment policy consists in preventing the creation of pollution or nuisances at source rather than subsequently trying to counteract their effects."
26. "Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes."

33. In its Explanatory Memorandum the Commission points to the disparate approaches of existing legislation for environmental assessment as requiring the formation of common principles and criteria for assessment to avoid the distortion of competition as the result of disparities in investment conditions between one region of the Community and another.
34. The Commission has rightly chosen Article 100 as the legal basis for the Directive.

VI. SUMMARY OF PROPOSALS PROVISIONS

35. The application of the draft Directive is limited to public and private "projects", including 'development projects' and 'modification projects' as defined in Article 1, which are "likely to have significant effects on the environment." (Article 1)
36. There are no quantitative thresholds or criteria given for determining which projects are likely to have such effect but prescriptive lists of the types of project which may require an assessment under the Directive are given in Annex 1 & 2. Annex 1 lists 35 classes of development which by Article 4 (1), "shall be made subject to an assessment." Annex 2 lists 43 classes of project which by Article 4 (2) are to be made subject to an assessment "whenever their characteristics so require."
37. Article 4 (1) provides for the exclusion of certain Annex 1 projects from an assessment namely "exceptional cases which are unlikely to have any significant effect on the environment." The "competent authority,"

42. The "effects on these resources shall be assessed by reference to the need to protect and improve human health and living conditions as well as to preserve the long term productive capacities of the resources".
43. Where a project is to be subject to an assessment under Article 6 (1) the developer must prepare, with assistance of the competent authority where necessary, and supply with his application for planning permission the following information in an appropriate form:
- a description of the proposed project and, where applicable, of the reasonable alternatives for the site and design of the project;
 - a description of the environment like to be significantly affected by the proposed project, including where applicable, the environment in other Member States;
 - an assessment of the likely significant effects on the environment, including, where applicable, effects on the environment in other Member States;
 - a description of the measures envisaged to eliminate, reduce or compensate adverse effects on the environment;
 - a description of the relationship between the proposed project and existing environmental and land-use plans and standards for the area likely to be affected;

47. Under Article 8 the competent authority must make the documents publicly available and arrange appropriate public consultation. It must decide "the best means for giving the information to the public with a suitable time limit and for ascertaining the views of the public".
48. Under Article 9 these requirements are subject to the need for limitations to protect industrial and commercial secrecy.
49. Article 10 (1) provides that when deciding on an application for planning permission, the competent authority is to 'take into consideration' the information gathered under Article 6 and from subsequent consultation under Articles 7 and 8 and to that end is required to "make an assessment of the likely significant effects of the proposed project".
50. Under Article 10 (2) the competent authority, except when planning permission is refused on grounds other than environmental, is to make available with its decision, or as part of the decision, its assessment of the likely significant effects on the environment of the proposed project, a synthesis of the main comments and opinions received, the reasons for granting or refusing the planning permission and the conditions, if any, to be attached to the planning permission.
51. Article 11 provides that subsequent to a grant of planning permission subject to conditions, the competent authority is to check periodically whether the conditions are being complied with, whether they are still adequate, whether other provisions to protect the environment are being obeyed, and

56. The Legal Affairs Committee considers that Article 1(2) should be amended as follows:

"Definitions"

competent authority means the authority or the authorities designated as responsible in each Member State for executing the tasks set out in the present Directive in respect of a given project;

project likely to have significant effects on the environment

means in the normal course of events a project which by virtue of its nature, size and/or location will require positive action by the developpee and/or competent authority to make provisions to account for the alterations to the local amenity resulting from it.

suitable time limit except by agreement between the developer and the competent authority, any time limit fixed in implementation of this Directive shall not prevent a decision being taken by the competent authority within a period to be laid down by national authorities.

environment means "the physical and human environment"

57. The justification for these proposed changes in Article 1(2) is as follows:

Since a competent authority is not responsible for the tasks attributed to it by the Directive until designated as such, it is necessary to amend the definition of 'competent authority' to that extent. The phrase 'likely to have significant effects on the environment' and 'environment' require definitions. Similarly, if the dangers of delay are to be guarded against the phrase 'suitable time limit' that occurs several times in the

criteria adopted for the selection of projects referred to in Article 4 (1) and Article 4 (2). The Commission shall regularly review with Member States these criteria with a view to ensuring consistency in the application of the Directive."

62. The avoidance of the term 'thresholds' in favour of 'criteria' avoids some of the unrealistic elements of a quantitative approach to classification.

IX. ASSESSMENT PROCEDURE

- i) information from the developer

Article 6 and Annex 3

63. There are two chief areas of concern regarding Article 6. First, the meaning of 'with the assistance of the competent authority when necessary' and secondly the overlap between the Article 6 data requirements and Annex 3, in particular concerning alternative sites and designs and solutions.
64. It has been suggested that the inclusion of 'the risk' of accidents' in the fourth indent of paragraph 3 of Annex 3 is unnecessary in the light of the specific Community Directive proposed to cover accidents. However, in view of the current fears in the Community over the risk of accidents in industrial plant it may be as well to have a specific requirement to assess the risk of accidents.

- ii) consultation of administrative authorities:

Article 7

65. Article 7 (1); It should be the Member State rather than the competent authority who determines what authorities are competent and who should fix the 'suitable time limit', in accordance with Article 1(2)'s overall limit.

72. This Directive is an ideal place to deal with trans-frontier effects of development projects, which are of great importance. In this connection Article 9, dealing with commercial secrets, should have a clause added to the effect: "where Article 7 applies the provisions of the Member State where the project is proposed will apply:"
73. Article 9 itself would seem sufficient for its purpose.
74. Article 13 requires implementation of the Directive within 2 years of notification. As considerable discussion will take place in the Council of Ministers before this Directive is adopted, two years will be a sufficient period.

XI. SUMMARY OF RECOMMENDED AMENDMENTS

In accordance with this opinion, the Legal Affairs Committee recommends the following amendments to the Draft Directive:

1. ARTICLE 1(2) should be redrafted in accordance with paragraph 56.
2. Article 3 should be amended in accordance with paragraph 58.
3. Article 5 should be amended in accordance with paragraph 61.
4. Article 7(1) should be amended in accordance with paragraph 65
5. Article 7(2) should be amended in accordance with paragraph 67

European Communities

EUROPEAN PARLIAMENT

Working Documents

1981-1982

12 October 1981

DOCUMENT 1-568/81

Oral Questions

Pursuant to Rule 44 of the Rules of Procedure

for QUESTION TIME
on 12 and 14 October 1981

1. Question by Mr MEGAHY (H-351/81)

Subject: Statement on unemployment

On 3 July 1981 Sir Roy Denman, Director General for External Affairs of the EEC Commission, was reported in British newspapers as stating that unemployment would reach between five and six million if Britain withdrew from the Common Market. Was Sir Roy speaking on behalf of the Commission as a collegiate body and were his predictions drawn from official Community studies?

2. Question by Mr COMBE (H-355/81)

Subject: Dangers of receptacles for domestic use

As there are no European laws on the dangers to human health posed by cooking receptacles made of enamelled ceramic materials or by any crockery normally used in households regardless of its composition, and as certain countries such as the USA already have rules in this field, could the Commission put forward relevant proposals for a directive, a move which would also make it easier to export to countries with such legislation?

3. Question by Mr PRICE (H-384/81)

Subject: State aid to Belgian horticulturalists

Does the Commission intend to press for quick results from the application of Article 93 (2) of the Treaty in respect of state aid to Belgian horticulturalists or will it let the matter drag on for over a year as has happened with state aid to Dutch horticulturalists?