



COMMISSION OF THE EUROPEAN COMMUNITIES

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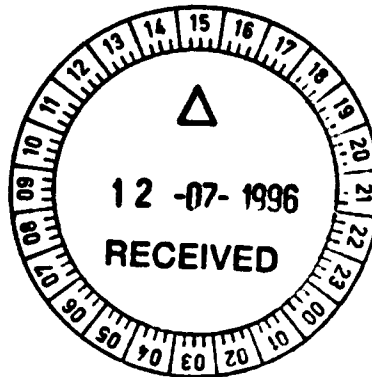
94/0078 (SYN)

COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the first subparagraph of Article 189 c (b) of the EC-Treaty

Common position of the Council on the

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



1. Procedure

- The proposal (COM (93) 575 final, 94/0078 SYN of 16 March 1994) was sent to the Council on 21 April 1994.
- The Economic and Social Committee adopted its opinion on 14 September 1994 (OJ C393, 31.12.1994, p.1).
- The Committee of the Regions adopted its opinion on 16 November 1994 (OJ C210, 14.8.1995, p.78).
- The European Parliament delivered its opinion on a first reading on 11 October 1995 (OJ C287, 30.10.1995, p. 83).
- The Commission presented an amended proposal (COM (95) 720 final) and sent it to the Council on 18 January 1996 (OJ C 81, 19.03.1996, p.14).
- At its 1939th meeting on 25th June 1996, the Council adopted a common position on the Directive.

2. Aim of the Directive

The Proposal aims to improve the environmental assessment procedure set out in Directive 85/337/EEC and to clarify and extend the lists of projects to which the Directive applies.

3. Commission position on the Council's common position

3.1 General remarks

The Commission accepted (in whole or in part) 16 of the 58 amendments to the Proposal requested by the Parliament; 11 of these 16 amendments have been fully or partially incorporated into the common position.

3.2 Specific remarks

(A) Parliamentary amendments accepted by the Commission and incorporated into the common position :

- the amendments to recital 1 (amendment 2), recital 3 (amendment 8), and recital 4 (which has become part of recital 3) (amendment 11);
- the substitution of a new Article 2(1) requiring the projects covered by Directive 85/337/EEC to be subject to a requirement for development consent and an environmental assessment (amendment 32);
- the substitution of a new Article 3 setting out the general requirements of an environmental assessment (amendment 25 - incorporated in part);
- the reinstatement in Article 5 of the minimum list of information to be provided by the developer (amendment 28);
- the addition of the following types of project to Annex I of Directive 85/337/EEC - projects relating to nuclear power stations and fuels and to radio active waste

(amendment 44 - incorporated in part); the incineration of non-hazardous waste (amendment 46); ground water capture schemes; works for the transfer of water between river basins; waste water treatment plans; extraction of hydrocarbons; dams and other installations for the holding back of water; and intensive livestock rearing installations (amendment 47 - in some cases thresholds used to define these projects have been added or amended);

- the addition of the following types of project to Annex II of Directive 85/337/EEC - extraction of minerals by marine dredging; wind farms (amendment 50); certain racing and test tracks; the storage of scrap vehicles; cable cars (amendment 51).

(B) Parliamentary amendments accepted by the Commission but not incorporated into the common position :

- the amendments to the second and seventh recital (amendments 3 and 15) and the addition of a new recital referring to the Dublin summit (amendment 5) - the second recital and the new recital referring to the Dublin summit were not considered necessary and the seventh recital was rewritten on the basis that the revisions to the transboundary provisions in Directive 85/337/EEC are desirable but not necessary in a legal sense;

- the revision of the opening paragraph of new Article 7(2) (amendment 33) - Article 7 was rewritten and this revision was no longer required;

- the addition of a final paragraph to Article 9 (amendment 34) - Article 9 was also rewritten so that this revision was no longer required.

(C) New elements introduced by the Council :

- some relatively minor revisions of Article 2 of Directive 85/337/EEC (which, in particular, provide that a single procedure may be used to fulfil the requirements of the 1985 Directive and the proposed Directive on integrated pollution, prevention and control and that the power of exemption in Article 2(3) of the Directive cannot be used to circumvent the transboundary consultation requirements in Article 7);

- a revised Article 4, which provides that Member States may determine whether projects listed in Annex II of the Directive have to be environmentally assessed by either carrying out case by case examinations or by setting thresholds or criteria and that when carrying out such examinations or setting such thresholds or criteria the relevant selection criteria in new Annex III must be taken into account;

- a revised Article 5, which makes the new scoping procedure conditional on a request being submitted by the developer and adds a reference to alternatives to the minimum list of information to be provided by developers in every case;

- a revised Article 7, which incorporates the main principles of the Espoo Convention on environmental impact assessment in a transboundary context;

- revised Articles 8, 10 and 11(2), containing some minor drafting changes;

- a revised Article 9, which replaces the requirement in the Proposal to publish the development consent decision with a requirement to inform the public of the decision and to make relevant information on the decision available;

- a new Article 2 of the Proposal requiring a further 5 year report;
- the redrafting of points 6 and 8(b) of Annex I and the addition of the following types of project to that Annex : non - ferrous crude metal installations, dual carriage ways, installations for the chemical treatment of non-hazardous waste, ground water recharge schemes, gas, oil and chemical pipelines, installations for the manufacture of pulp, paper and board, quarries, open-cast mining and peat extraction, overhead electrical power lines, and storage installations for petroleum, petrochemical and chemical products (in most cases thresholds have been used to define these categories of project);
- the redrafting of some of the project categories in Annex II and the addition of the following projects to that Annex insofar as they are not included in Annex I : extraction of minerals by fluvial dredging, installations for asbestos production, ground water abstraction and ground water recharge schemes, works for the transfer of water between river basins;
- the redrafting of new Annex III (criteria to be taken into account when setting thresholds and criteria or carrying out case by case examinations under Article 4).

Commission position on new elements : The Commission considers that the common position text represents an acceptable compromise. The redrafting of Article 4 of Directive 85/337/EEC, read in conjunction with the transfer of projects from Annex II to Annex I and the redrafting of new Annex III, sets out a generally acceptable mechanism for determining which projects should be submitted to an environmental assessment. The extension of Annex I is to be particularly welcomed. The scoping provision in Article 5(2) could be stronger and it will be necessary to study closely how well this provision operates in practice. The Commission agrees with the introduction of a reference to "alternatives" in the minimum list of information in Article 5(3). The Commission is satisfied with new Article 7 because it incorporates the main principles of the Espoo Convention and applies those principles to all of the projects assessed under the Directive, not just to those listed in the Convention. The additions to Annex II and the relatively minor amendments to Article 2, 8, 9, 10, and 11 are also acceptable to the Commission.

4. Conclusion

The Commission considers that the Common Position text is an acceptable compromise which should improve the operation of Directive 85/337/EEC.