Opinion 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

(95/C 210/12)

On 14 June 1994 the Council of the European Union decided to consult the Committee of the Regions on the above-mentioned proposal.

At its fifth plenary session, held on 15 and 16 November 1994 (meeting of 16 November), the Committee of the Regions unanimously adopted the following Opinion prepared by the Rapporteur, Mrs Ulrike Riedel.

Introduction

The draft Directive amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (referred to below as the environmental impact assessment or 'EIA' Directive), complies with Article 11(4) of the EIA Directive which requires the Commission to submit additional proposals to the Council, should this prove necessary for the purposes of uniform application of the Directive.

The proposal is based chiefly on the findings of the report on the application and effectiveness of the EIA Directive, which the Commission is required under Article 11 to send to the European Parliament and the Council five years after notification of the Directive. The report was submitted in November 1992 (Doc. COM(93) 28 final — vol. 13).

The report shows that the EIA Directive has been applied differently in the various Member States. The differences particularly concern the rules on:

— the practical scope of the Directive, as laid down by Article 2(1) in conjunction with Article 4 (Annexes I and II);

— the information to be supplied under Article 5 in conjunction with Annex III;

— monitoring of the impact of the project.

The Commission attempts to remedy these shortcomings with new rules on (a) the compulsory assessment of Annex II projects (screening) and (b) on the content of the assessment (scoping, compulsory assessment of alternatives).

Screening means the system whereby the responsible authority is required to consider, on the basis of the limit values in force in the Member States and the selection criteria defined in Annex II, whether the probable impact of a project on the environment warrants an EIA.

Scoping means the system whereby the responsible authority is required to define the scope of the information to be supplied, in consultation with the authorities concerned and the project manager and before the application is made.

Point 2 of Annex III requires an outline of the main alternatives studied to make it easier for the authority to identify the most environment-friendly solution.

The projects subject to EIA listed in Annexes I and II are also systematically rearranged and expanded.

The proposal also takes account (Article 7) of the international law commitments entered into by the Community and the Member States in signing the Espoo Convention on environmental impact assessment in a transboundary context [1].

As the Directive is based on Article 130s (1) of the Treaty on European Union, the cooperation procedure with the European Parliament applies and the Economic and Social Committee has to be consulted. In view of the subject matter, the Commission has suggested that the Committee of the Regions also be consulted.

Commission 5 (Land-use Planning, Environment, Energy) recommends that the Committee of the Regions adopt the following Opinion at its Session of 15/16 November 1994.

1. General comments

1.1. *The EIA Directive needs to be expanded*

The COR agrees with the Commission that uneven application makes it necessary to expand and clarify the EIA Directive. The COR endorses the objective of the Directive: to aim for a uniform level of protection of the environment and the quality of life, and to this end to establish as early as possible the impact of certain projects on the environment, and to take these into account in reaching a decision on authorization. The COR feels that the EIA, as amended, should help guarantee identical standards for siting projects and

[1] OJ No C 104, 24. 4. 1992.

consistently healthy living conditions in all the regions. Regional disparities in environmental protection must not be permitted. The administrative aspects of environmental impact assessment — for which the regions are mainly responsible — must also proceed smoothly. Disparate rules and administrative procedures would jeopardize cooperation between the regions and compromise equality of development opportunity.

1.2. *General assessment of the proposals*

The COR confirms that it regards the provisions of Article 5, in conjunction with the revised Annex III, and Articles 6-13 as appropriate to the objectives of amending the EIA Directive.

The COR feels however that the proposal will not secure uniform application of the assessment procedure.

The COR feels that the shortcomings in the application of the EIA Directive pinpointed in the report will actually be exacerbated by the present proposal. The proposal should therefore be revised to make it more workable in practice.

The regions, whose administrative authorities are responsible for implementing the proposal, fear that adoption will only intensify the disparities in application of the Directive between the various Member States.

1.3. *Lack of coordination with other Commission draft Directives*

The COR feels that the regions will find implementation difficult, as the EIA Directive is insufficiently coordinated with the Council Directive on integrated pollution prevention and control (Doc. COM(93) 423 final, OJ No C 311 of 17 November 1993) ('IPC Directive'), although both Directives cover the same or similar projects. The Commission's environmental policy will be successful only if strategies and detailed rules are coordinated. Differences of definition (e.g. between the EIA and IPC Directives), non-harmonized administrative procedures and different material requirements for the same projects in practice lead to confusion and are detrimental to the environmental policy objective of sustained development.

1.4. *Necessary rules not covered by the Commission proposal*

The COR alerts the Commission to the fact that whilst the EIA Directive is of a procedural nature, it also requires an assessment of content. But for this the necessary criteria are lacking, e.g. with regard to impact on soil and water. The Commission should consider whether special standards for the level of protection need to be established.

1.5. *General objectives of environmental impact assessment*

The COR fears that EIA will become a mere formality if it is applied to too many small projects with an insignificant environmental impact. It should be confined to projects likely to have a significant impact on the environment.

2. **Specific comments**

Article 1(2) of the EIA Directive

The COR confirms that the regions' administrative authorities have had difficulty in interpreting the concept 'modifications to projects', both in terms of the scale of the change and in relation to the original conditions under which consent was granted. The new Commission definitions will not help however, as they are too abstract. The definitions should spell out what constitutes a major change, and the criterion for this should be environmental impact.

The COR regrets that even the change proposed in Article 1 is not coordinated with Article 2(9) of the IPC Directive. 'Substantial change' should be defined uniformly and as concretely as possible. The IPC Directive's definition is more concrete. The Commission should also decide whether the concepts 'modifications to projects' and 'substantial change' should be used in both Directives.

Article 4(3) of the EIA Directive

The COR regrets that the proposal does not harmonize the project definitions contained in Annex II of the EIA Directive with those contained in the draft IPC Directive, where the EIA Directive covers comparable projects.

The proposed new screening procedure will not permit uniform application of EIA in all the regions. Indeed the abstract and general nature of the criteria for decision may even exacerbate regional disparities.

With regard to the IPC Directive, it is proposed that the distinction between Annexes I and II of the EIA Directive be dropped and that the Commission draw up a comprehensive list of projects subject to EIA. Project

assessment experience accumulated over decades can be exploited in identifying (on the basis of type and scale) projects likely to have a significant environmental impact. Case-by-case decisions by the authorizing authorities on the basis of the limit values of the various Member States or the criteria set out in Annex IIa are not acceptable. Such an approach will cause administrative problems in the regions and will further accentuate disparities.

The Member States will retain the right to make other kinds of project, not specified in the Directive, subject to EIA, in order to take account of specific national or regional conditions (Article 130t of the Treaty).

Articles 5(1) and (3) of the EIA Directive

The COR welcomes the proposed arrangements, particularly the requirement under the revised Point 2 of Annex III that an assessment of alternatives be carried out in respect of all projects subject to EIA.

Articles 6 and 9 of the EIA Directive

The COR welcomes the requirement for the environmental authorities to be heard not only on the developer's application for consent, but also on the information supplied by the developer. We also welcome the requirement that the public be consulted before development consent is granted, rather than before the work actually commences.

Article 7 of the EIA Directive

The COR feels that the rules and regulations on cross-border environmental impact assessments should be clarified. In order to simplify the procedure, the COR feels that the reciprocal provision of information and consultations should be carried out by the authorities and regions in the Member States responsible for project approval. The COR recommends that a provision be included requiring the submission of a non-technical summary of the project description within the meaning of Annex IV(1) in the language of the Member State concerned. This should highlight the impact on neighbouring regions.

Annexes I and II of the EIA Directive

The COR has no reservations as to the inclusion in Annex I of installations for reprocessing irradiated nuclear fuel and storing radioactive waste. Installations for processing nuclear fuels should however also be included. The concept of reprocessing does not cover plants which manufacture fuel elements from nuclear material.

The COR feels that the definition of integrated chemical installations is still not satisfactory. It would be more logical, as in point 4 of Annex 1 to the IPC Directive, to give a comprehensive definition of the chemical installations concerned.

The expansion of Annex II is in principle to be welcomed. It would however be better, particularly in the case of irrigation and land drainage projects, afforestation and intensive stock farming, to specify the size of installations subject to EIA.

The same applies to projects listed in point 11 of Annex 2. An indication of size would, for example, be helpful in the case of waste-water treatment plants and sludge-deposition sites.

Annex IIa

Apart from the COR's view that screening should be dropped in favour of a clear and binding list of projects subject to EIA, the Committee notes that the selection criteria listed in point 1 are very general and require clarification.

The COR fears that screening will require the administrative authorities of the regions to introduce a further stage into the approval procedure, with no clear distinction between screening and scoping.

The COR feels that the practicalities of the various stages of the procedure have not been sufficiently thought through.

The COR therefore reiterates its suggestion that the Commission opt for an exhaustive list of projects subject to EIA.

Done at Brussels, 16 November 1994.

The Chairman

of the Committee of the Regions

Jacques BLANC