Opinion on the proposal for a Council Directive concerning the assessment of the environmental effects of certain public and private projects

The text referred to the Committee has been published in *Official Journal of the European Communities* No C 169 of 9 July 1980, page 14.

A. LEGAL BASIS FOR THE OPINION

On 26 June 1980 the Council referred the abovementioned proposal to the Economic and Social Committee in accordance with Article 100 of the Treaty establishing the European Economic Community.

B. OPINION OF THE ECONOMIC AND SOCIAL COMMITTEE

The Economic and Social Committee prepared its opinion on the above matter at its 187th plenary session held in Brussels on 29 and 30 April 1981.

The full text of the opinion is as follows:

THE ECONOMIC AND SOCIAL COMMITTEE,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the request made by the Council of the European Communities on 26 June 1980 for an opinion on the proposal for a Council Directive concerning the assessment of the environmental effects of certain public and private projects,

Having regard to the decision taken by its Bureau on 2 July 1980, instructing the Section for Protection of the Environment, Public Health and Consumer Affairs to draw up an opinion and a report on the matter,

Having regard to the discussions held by the Section for Protection of the Environment, Public Health and Consumer Affairs at its 62nd meeting on 7 April 1981,

Having regard to the report submitted by Mr Mills,

Having regard to its discussions at its 187th plenary session held on 29 and 30 April (meeting of 29 April 1981),

HAS ADOPTED THE FOLLOWING OPINION:
unanimously:

1. General comments

1.1. The proposal for a Directive is submitted under the programme of action of the European Communities on the environment and provides for prior assessment of the impact on the environment of certain public and private projects. This assessment and appropriate public consultation should precede any planning decision or authorization by the competent authorities. The proposed Directive also lays down the common principles on which the assessment should be based, viz. protection of human health, the safeguard of living conditions and preservation of natural resources.

1.2. An examination of the environment in the Community shows that an appreciable improvement may take place in the coming years if preventative measures are taken. If such measures are not taken deterioration of the environment may continue in all the Member States.

1.3. There are at Community level and in the various Member States many laws and authorization procedures on air and water pollution, land use and dangerous products. Since at present little progress has been made on a Community coordinated approach, it is extremely difficult to consider the effect of changes in the environment both in the long and short term (the interrelationships and balances between the various factors water, air, soil etc.). It is the undesirable effects, whose implications are of the greatest importance for living conditions, that have to be minimised.

1.4. A coordinated assessement procedure could provide some advantages, not only for the competent

authorities, who would have a better understanding of the projects and a better instrument for decision-making, but also for the developer as a result of the simplification of administrative procedures.

1.5. Some activities are liable to have considerable impact on the environment, e.g.:

a) individual projects in the public and private sector (industrial, residential or commercial complexes, infrastructure);

b) land-use plans and programmes at national, regional and local level;

c) economic plans and industrial policy promoting and giving direction for example, to a specific industrial sector;

d) new technologies and new products which have an increasingly complex impact and often give rise to considerable debate. It should be borne in mind that measures have been taken at Community level to control the marketing of new chemical products (6th amendment of the 1967 Directive on the classification, packaging and labelling of dangerous substances).

The impact of the preceding activities can be difficult to assess and problems could arise over whether an application or plan should be accepted or rejected.

1.6. This impact assessment should be undertaken as early as possible in the decision-making process.

1.7. Accordingly, attempts should be made to resolve the many difficulties by the introduction of various mandatory procedures within the framework of a long-term plan drawn up by the competent authorities. Account should also be taken of environmental aspects in physical planning and the repercussions on the quality of life and the natural habitat.

1.8. The Committee supports the aims of making possible the convergence of national environmental impact assessment procedures, in that provision is made *inter alia* for the examination of projects and for appropriate public consultation. However, it also considers that the asssessment procedures should only constitute one of the instruments in the decision-making process and should not become an end in themselves.

Sphere of application

1.9. The competent authorities have to apply the principle of impact assessment by clearly specifiying the sphere of application of the Directive. The Member States should decide the thresholds at which certain projects in Annex 2 are deemed to be likely to have a significant effect on the environment.

Procedure

1.10. The preparation of the documentation to be provided by the developer poses a whole series of problems, particularly as regards the confidential nature of information, the cost involved, the time needed for the determination of a planning permission or authorization, the definition of the realistic objectives and the needs the project is to meet, as well as alternatives to the initial project.

1.11. Legitimate protection of industrial and commercial secrets as regards the data supplied by the devoloper should not, however, prevent a full assessment of the project by the competent authorities and a proper appreciation by other organizations called upon to give their views.

1.12. The Committee notes that the proposal for a Directive does not deal with the apportionment of the costs involved in preparing the impact assessment study between the initiator of the project and the public authorities but leaves this to the discretion of the Member States. The Committee considers it would be desirable to add to the Directive provisions designed to prevent the Member States' decisions in this matter from diverging.

1.13. The Committee also recognizes that the total cost of producing an environmental impact assessment will vary; it thinks, however, that the cost of preventive action, including assessment studies, will be less than the amount that the community and developers might have to spend on remedial action.

1.14. The Committee considers that delays in the taking of decisions by the competent authorities may lead to additional costs for the developers, and therefore advocates that the provisions of the Directive be strictly applied in order to simplify and speed up the administrative procedure.

1.15. The Committee assumes that the developer's obligation to submit any possible alternatives to the project, covers both the site and the production processes. Problems may arise here, since it is sometimes difficult for the developer to envisage reasonable alternative solutions taking into consideration that such decisions are influenced by

various factors e.g. costs of infrastructure, economic, cultural and possibly natural constraints.

1.16. The Committee is nevertheless aware that the above provision is in general necessary to enable the parties directly affected to make a better assessment of the aims of the project and to arrive at a better understanding of the implications of the various options for the environment. The submission of realistic alternatives will provide the competent authorities with additional data which may facilitate clear and responsible decision-making.

2. **Specific comments**

2.1. *Article 1*

2.1.1. The Committee considers, even when read in conjunction with Annex 3, that certain expressions, such as "significant effects" and "substantial changes", may give rise to difficulties of interpretation and result in dispute that could cause harmful delays in the determination of planning applications.

2.1.2. The Committee understands the aim of the assessment process is not to prejudice administrative decisions systematically in favour of environmental considerations, to the detriment of the economic and social advantages which might be derived from a project. The proposed system should enable the responsible authorities to strike a proper balance between the various factors involved, environmental and others. To be able to undertake this task it is recognized the competent authority needs accurate information at their disposal of the type that could be provided by an assessment procedure. This would enable them to weigh up all the interests at stake when making their decision. The Committee repeats its warning that the assessment procedure must not be allowed to cause undue delays in the decision-making process.

2.2. *Article 2*

2.2.1. The Committee proposes that Member States should take measures to ensure that projects which are likely to have a significant effect on the environment are required to obtain suitable authorization from a competent authority. Such projects should therefore be subject to an environmental assessment procedure.

2.3. *Article 3*

2.3.1. The Committee would point out that the failure to take man as the point of departure for the assessment of the effects of projects means that such an assessment may fail to cover the repercussions which have a direct bearing on man's presence, such as noise, effects of radiation, etc.

2.3.2. The Committee agrees that it would be advisable to assess the extent of the effect of projects and therefore their overall impact, in the light of the need to conserve the natural resources which, in some cases, are currently being exploited.

2.3.3. The Committee recommends 'long term productive capacities' be replaced by 'long term regenerative capacities'.

2.4. *Article 4*

2.4.1. The Committee notes that the draft Directive has two key elements, namely the division of projects into three categories and the definition of two levels of assessment ('full' assessment and 'simplified' assessment).

2.4.2. Annexes 1 and 2 appear to be lists of industrial and non-industrial activities classified according to type of economic activities. In the Committee's view the projects should be more closely classified according to the extent of their impact on the environment. Such a presentation would be more in line with the aim of the Directive and would make the Annexes more useful.

2.4.3. Furthermore, the Committee questions whether the lists of projects set out in the Annexes are exhaustive and whether the terms used are sufficiently precise (for example the definition of subsidiary buildings).

2.4.4. The Committee notes that the Commission is only active in the authorization procedure for projects coming under Annex 1 where specific projects are to be exempted from the need for full assessment.

The Committee ist concerned about some aspects of the requirement for competent authorities to refer assessment procedures to the Commission. The Committee requests that the Commission should re-examine this requirement.

2.4.5. The Committee recognizes that in a few cases this Community intervention may cause difficulties for developers since it covers only specific projects whose importance it is difficult to quantify in advance.

2.4.6. The Committee notes that the proposal does not define the difference between a 'simplified' and a 'full assessment'.

2.5. *Article 5*

2.5.1. The Committee notes that the criteria and thresholds adopted by the Member States are only to be coordinated by the Commission. However, it considers the regular review period should be more specifically defined; say every five years.

2.6. *Article 6*

2.6.1. Bearing in mind the Committee's comments on realistic alternative solutions, it suggests that only a description of the proposed project and its purpose be required in the first indent of Article 6 of the Commission's proposal.

2.6.2. In the sixth indent of the Article the Committee is of the opinion that a brief outline of the main relevant alternative solutions will add nothing to the information required.

2.6.3. The reference in indent 7 (and Annex 3) to a non-technical summary is understood by the Committee to mean a printed explanation of the findings of the assessment which can be easily understood by the layman.

2.7. *Article 7*

2.7.1. The Committee considers that 'Member State' should be substituted for 'competent authority' in line 5, in order to ensure consistent and uniform application by all competent authorities within each Member State. The Committee proposes the incorporation in the draft Directive of a suitable procedure for consultations and appeals. The information made available to the public should be complete and include the views of public bodies with special responsibility for environmental matters. It also proposes selectivity in the bodies consulted and that the information supplied to the recipient bodies should relate to their specific role and responsibilities.

2.8. *Article 9*

2.8.1. The Committee thinks that the competent national authorities' obligation to respect their own provisions with regard to industrial and commercial secrecy does not offer adequate guarantees for the protection of confidential information supplied by the developer, since this information may be published in a neighbouring country under Article 7.

2.9. *Article 10*

2.9.1. The Committee thinks that the assessment of a project's impact on natural resources poses a number of scientific problems and that the competent authority may if necessary obtain expert opinion so that it can study neutral advice on these controversial scientific issues whilst evaluating an application for planning permission. Delay in decision-making should be kept to an absolute minimum.

2.10. *Article 11*

2.10.1. As Article 11 is worded at present the Committee is concerned that planning permission may be jeopardized because the study on which planning permission will be based will have been carried out prior to the implementation of a project and forecasting techniques do not necessarily permit a reliable impact assessment to be made. The Committee is therefore aware of the need to check whether assumptions made in the study have proved correct, and — if this is not the case — to take the requisite action in future cases.

2.11. *Article 12*

2.11.1. The Committee thinks that the report on the operation and effectiveness of the Directive should be drawn up by the Commission every five years and should also be sent to the Economic and Social Committee.

2.12. *Annexes 1, 2 and 3*

2.12.1. The Committee considers that the presentation of the Annexes will cause confusion when it comes to applying the Directive, it therefore suggests that the Annexes should be reconsidered to see if they are appropriate to meet the objectives of the Directive in an optimal way. The Committee draws attention to the observations made in the Report on the Annexes of the draft Directive.

Done at Brussels, 29 April 1981.

The Chairman
of the Economic and Social Committee
Tomas ROSEINGRAVE