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NOTE

from: General Secretariat

to: Delegations

No. Cion prop.: 15627/12 ENV 825 CODEC 2533 - COM(2012) 628 final

Subject: Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/92/EU of the assessment of the effects of certain public and private projects on the environment
- Comments from Member States

Delegations will find in the Annex comments from DK and AT on the Presidency compromise text (document 9391/13).

DENMARK

Presidency compromise text	DK comments
Article 1	
<p>Para 1, (a), the term ‘adverse’ is inserted after the ‘significant’</p>	<p>The idea behind the proposal seems obvious, but the amendment gives rise to more questions than it solves. By placing the amendment in article 1, it is the initial scope of the directive, which is changed and not the qualification of the possible environmental impact of a specific project. This means that Annex I and II have to be amended and considerably shortened, accordingly. One scenario could be to do away with Annex II.</p> <p>Denmark can fully support any effort to streamline regulation and avoid unnecessary double regulation, but we cannot support this proposal, as it stands, because of its legal implications as described.</p>
<p>Para 2, (a) project means: - the execution of construction or demolition works <u>(including any demolition works required to facilitate such construction works)</u>, or of other installations or schemes,</p>	<p>As far as Denmark understands the proposed amendment of the Commission’s proposal, it narrows down the scope for demolition works, because it links demolition works with construction works.</p> <p>We have in an earlier comment asked the Commission to clarify the more intricate connection between demolition works and the project types in Annex I, no. 7(a) or (c)-project, because the temporal qualification of ‘new’ in these project types does not apply to demolition. By narrowing down the scope for demolition works the problem is bypassed.</p> <p>However, we would like to challenge the proposed amendment given the fact that the initial reason for the Commission’s proposal was to update the Directive in accordance with the ECJ rulings. Does the amending proposal live up to this fact?</p>
<p>Para 2, (c) <u>‘development consent’ means the decision of the competent authority or authorities which entitles the developer to proceed with the project;</u> <u>‘(c) consent’ means a permission, authorisation or permit without which the project cannot lawfully proceed</u></p>	<p>As far as we understand the proposal it first of all changes the scope of the provision from one of emphasis on the legal implications of a decision reached by the competent authority to a description of a variety of legal instruments.</p> <p>Secondly, the proposal expresses the negative legal sanction of the consent and not the positive legal entitlement of the consent.</p> <p>The reason for wanting to amend this point is not quite clear to us, so we cannot see the immediate effect of the amendment.</p>

Presidency compromise text	DK comments
	<p>Another consequence of the proposal seems to be that projects e.g. public initiated projects like roads, which do not need a consent to proceed, will not be covered by the EIA-Directive. The legal consequence would be an exclusion of the public from the right to public consultation, including the public in other Member States, if the specific project is believed to have transboundary effects. We are not quite sure, if the Presidency is aware of this consequence, but this is the case, we will urge the Presidency to take note of these remarks and adopt the Commission's proposal.</p>
<p>Para 2, (g) "environmental impact assessment" shall mean</p> <ul style="list-style-type: none"> - the process of preparing preparation of an environmental impact assessment report by the developer, which assesses the significant effects of the project on the environment; - the carrying out of consultations (including with the public concerned and the environmental authorities referred to in Article 6(1)); - the assessment examination by the competent authority of the substance and quality of information gathered in the environmental impact assessment report and through the consultations and the seeking of supplementary information where necessary; - taking into account of the environmental impact assessment report, the results of the consultations and its own examination, the conclusion by the competent authority as to whether the project will have significant adverse effects on the environment; - the integration of this conclusion into in the development consent decision procedure; - the making of information on the consent decision available to the public as well as the provision of information on the decision in accordance with Articles 5 to 10. 	<p>As far as we understand the proposed amendment of the Commission's proposal the definition of 'environmental impact assessment' incorporates all the substantial and procedural legal obligations and provisions already stated in articles 3-8. We recognize the need for laying down the substantial and procedural scope of the environmental impact assessment, but the question is, if the preliminary definition is the right place for it. We would suggest that this rather extensive definition is replacement by the one or one similar to the Commission's proposal and instead incorporating the Presidency's proposal in article 3.</p>
<p>3. Member States may decide, on a case-by-case basis and if so provided under national law, not to apply this Directive to projects having as their main sole purpose national defence or the response to civil emergencies, if they deem that such application would have an adverse effect on those purposes.</p>	<p>We are well aware that the Presidency's proposal is initiated by several Member States explicit concerns as to the use of 'national defence' in the Commission's proposal. However, we do feel that the proposed amendment broadens the scope of the provision to an extent of mismatch, when large civil constructions like hospitals, housing etc. will be exempted the Directive without the need for keeping classified information safe as the reason for the exemption.</p>

Presidency compromise text	DK comments
<p>4. This Directive <i>Member States may decide shall not to apply to projects the details of which are adopted by a specific act of national legislation, provided that the objectives of this Directive, including that of supplying information, are achieved through the legislative process. Every two years from the date specified in Article 2(1) of Directive XXX [n° of this Directive], Member States shall inform the Commission of any application which they have made of this provision.</i></p>	<p>The rewording of the provision makes it more eligible.</p>
Article 2	
<p>1. <i>Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant <u>adverse</u> effects on the environment by virtue, inter alia, of their nature, size or location <u>are permitted to proceed, they</u> are made subject to a requirement for development consent and <u>to</u> an assessment with regard to their effects. Those projects are defined in Article 4.</i></p>	<p>We refer to our previous remark to article 1, para 1, regarding the term ‘adverse’: The idea behind the proposal seems obvious, but the amendment gives rise to more questions than it solves. By placing the amendment in article 1, it is the initial scope of the directive, which is changed and not the qualification of the possible environmental impact of a specific project. This means that Annex I and II have to be amended and considerably shortened, accordingly. One scenario could be to do away with Annex II. Denmark can fully support any effort to streamline regulation and avoid unnecessary double regulation, but we cannot support this proposal, as it stands, because of its legal implications as described.</p>
<p>3. <i>For projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and <u>the following other</u> Union legislation shall be subject to:</i></p> <ul style="list-style-type: none"> <i>• <u>Directive 2009/147/EC on the conservation of wild birds,</u></i> <i>• <u>Directive 2000/60/EC establishing a framework for Community action in the field of water policy,</u></i> <i>• <u>Directive 2010/75/EU on industrial emissions,</u></i> <i>• <u>Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora,</u></i> <p><i><u>Member States may provide for</u> coordinated or joint procedures fulfilling the requirements of the relevant Union legislation, <u>in order, inter alia, to avoid duplication of assessment.</u></i></p> <p><i>Under the coordinated procedure, the competent authority shall coordinate the various individual assessments required <u>for a particular project</u> by the Union legislation <u>specified above shall be coordinated by one authority designated by the Member State concerned for</u></i></p>	<p>We welcome the Presidency’s proposal, which narrows down the scope of EU-legislation to take into consideration. The specific list of directives to consider does not include the SEA-directive or the Seveso-directive. We are fully aware that the two directives to some extent may divert from the other directives mentioned in the provision, but the incorporation of the two directives hinges on the possible amendment of recital 23 in the chapeau. In the proposal the Presidency given a more general description of recital 23 ‘environmental issues’ instead of ‘environmental impact’ as suggested in the Commissions revised non-paper of 20 December 2012. We suggest an amendment of recital 23 as mentioned above and an adjustment of the provision in para 3 incorporating the two directives.</p> <p>The Presidency’s proposal deletes the last paragraph, where the appointed authority responsible for facilitating the development consent procedure may be relative to each specific project. At least the provision may be interpreted that way. However, the wording of the paragraphs dealing with the coordinated and joint procedure may be read as if only one and the same authority in all projects may act as authority within the regime of one stop shop.</p>

Presidency compromise text	DK comments
<p><i>this purpose and issued by several authorities, without prejudice to any provisions to the contrary contained in other relevant Union legislation.</i></p> <p><i>Under the joint procedure, the competent authority shall issue one <u>assessment of environmental impacts of a particular project assessment</u>, integrating the assessments <u>of one or more authorities, required by the Union legislation specified above, shall be issued by one authority designated by the Member State concerned for this purpose of one or more authorities</u>, without prejudice to any provisions to the contrary contained in other relevant Union legislation.</i></p> <p><i>Member States shall appoint one authority, which shall be responsible for facilitating the development consent procedure for each project.</i></p>	<p>We would like a clarification on that point from the Presidency.</p>
Article 3	
<p><i>The environmental impact assessment <u>report</u> shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect significant effects of a project on the following factors:</i></p> <p><i>(a) population, human health, and biodiversity, <u>fauna and flora</u> with particular attention to species and habitats protected under Council Directive 92/43/EEC(*)-and Directive 2009/147/EC of the European Parliament and of the Council(**);</i></p> <p><i>(b) land, soil, water, air and climate <u>factors change</u>;</i></p> <p><i>(c) material assets, cultural heritage and the landscape;</i></p> <p><i>(d) the interaction between the factors referred to in points (a), (b) and (c);</i></p> <p><i>exposure, vulnerability and resilience of the factors referred to in points (a), (b) and (c), to natural and man-made disaster risks and shall comply with the requirements of Article 5.</i></p>	<p>The insertion of the word ‘report’ and the concluding sentence accentuate the different views on the role of the provision especially when framed within the underlying discussion of our comment regarding article 1, para 2, (g) and this article.</p> <p>We find that it calls for a clarification, before we go any further on this matter.</p> <p>Point (b): These comments are initiated by the project type biogas plants in Annex I, no. 10, and Annex II, no. 11(b), and installations for intensive livestock farming in Annex I, no. 17, and Annex II, no. 1(e). The provision in article 3, (b), differentiate between ‘land, soil and water’ and this differentiation recurs in the Annex’ (Annex III no. 1 (h), no. 2 (b), Annex IV no. 1 (b), no. 4 (b), and no. 5 (b)). Does this presuppose a division of biogas plants/rearing facilities and the areas needed for spreading manure, or does it presupposes an overall integrated project type such as it is in Annex III no. 1(g)?</p> <p>As far as the substitution of ‘climate change’ with ‘climate factors’ we have no objections.</p> <p>If the Seveso directive is reinstated as a consequence of our comment related to article 2, para 3, then the deleted indent should be undeleted as it links to the Seveso directive.</p>

Presidency compromise text	DK comments
Article 4	
<p>3. <u>When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the selection criteria set out in Annex III, where relevant and reasonably required, shall be taken into account.</u> [Based on the original paragraph 4 of Commission proposal.]</p>	<p>We welcome the Presidency's proposal.</p>
<p>4. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the competent authority shall take account of selection criteria related to the characteristics and location of the project and its potential impact on the environment. The detailed list of selection criteria to be used is specified in Annex III.</p> <p><u>4. Where a case-by-case examination is required for projects listed in Annex II (including where such projects would exceed a nationally set threshold) the developer shall provide information on the characteristics of the project, its potential impact on the environment, including where relevant, any features of the project which and the measures envisaged in order to avoid, prevent or and reduce what might otherwise have been significant adverse effects on the environment. The detailed list of information to be provided, where relevant and reasonably required, is specified in Annex IIA. The requirement to provide this information shall not apply where the developer instead provides an environmental impact assessment report.</u></p>	<p>As we understand the proposal of the Presidency it is an attempt to introduce excluding national set thresholds for Annex II projects. However, excluding such project types do not exempt the specific project from Annex III and the proposal may instead increase the level of litigation, because of the legal uncertainty it will provide.</p> <p>Furthermore, Member States will still have the use article 7, if the specific project is believed to have transboundary effect. If the Presidency wants to exclude Annex II projects why not delete Annex II instead – leaving only Annex I projects to be the list of projects covered by the Directive.</p>
<p>5. The competent authority shall make its determination decision pursuant to paragraph 2, on the basis of the information provided by the developer and taking into account, where relevant <u>and known to the competent authority</u>, the results of studies, preliminary verifications or assessments of the effects on the environment arising from other Union legislation. The determination decision pursuant to paragraph 2 shall:</p> <p>(a) state how the criteria in Annex III have been taken into account;</p> <p>(b) state include the reasons for requiring or not requiring an environmental impact assessment pursuant to Articles 5 to 10;</p> <p>(c) <u>where it is decided an environmental impact assessment is not required, explain how the project will not have significant adverse effects</u></p>	<p>The insertion of the reservation of knowledge with the competent authority in addition to the slight alteration of the time frame in para 6, where it starts on the date of the receipt from the developer the required information, the Presidency's proposal will be to lay the burden of necessary technical and professional training on the developer and not the competent authority.</p> <p>The immediate consequence will be that the screening procedure will become a ping pong process, where the competent authority has to ask for much of the information needed in order to make a decision. This may very well result in a 'mini'-EIA, which most certainly not will be in anyone's interest.</p> <p>We propose the insertion of the reservation of knowledge deleted.</p>

Presidency compromise text	DK comments
<p><i>on the environment, detailing where relevant any features which include a description of the measures envisaged to avoid, prevent, and or reduce what might otherwise have been any significant adverse effects on the environment, where it is decided that no environmental impact assessment needs to be carried out pursuant to Articles 5 to 10; (d) be made available to the public.</i> [Integrated in paragraph 6].</p>	
<p>6. The competent authority shall make its determination decision pursuant to paragraph 2 within three months from the date of the receipt from request for development consent and provided that the developer has submitted all the requisite of the required information pursuant to paragraph 4. Depending on the nature, complexity, location and size of the proposed project However, the competent authority may extend this period where this is necessary because of the nature, complexity, location or size of the project and, that deadline by a further 3 months; in that case, the competent authority shall inform the developer of the reasons justifying the extension and of the date when its determination is expected. The determination of the competent authority shall be made available to the public.</p> <p>Where the project is made subject to an environmental impact assessment in accordance with Articles 5 to 10, the decision pursuant to paragraph 2 of this Article shall include the information set out in Article 5(2).</p>	<p>Indeed, the substantial difference of the Presidency's proposal and that of the Commission is insignificant, when one reads the proposal independently of para 5.</p> <p>Consequently, we would prefer the time frame to be optional.</p>
Article 5	
<p>1. Where an environmental impact assessment must be carried out in accordance with Articles 5 to 10, the developer shall prepare an environmental impact assessment report in accordance with Article 3 which provides, as relevant, the information specified in Annex IV. The environmental impact assessment report shall be based on an opinion the determination pursuant to paragraph 2 of this Article, where such an opinion was given, and include the information that may reasonably be required for making informed decisions on the significant adverse environmental impacts effects on the environment of the proposed project, taking into account current knowledge and methods of assessment, the characteristics, technical capacity and location of the project, the characteristics of the potential impact, alternatives to the proposed project and the</p>	<p>Please, note our previous remarks regarding the term 'adverse' and role of article 1, para 2 (g).</p> <p>We welcome the insertion of the term 'as relevant' in the first sentence, which we also have suggested earlier on. We find it more in line with the requirement of the Directive to describe a specific project and to ensure an adjustment of the description of the project accordingly.</p>

Presidency compromise text	DK comments
<p>extent to which certain matters (including the evaluation of alternatives) are more appropriately assessed at different levels including the planning level, or on the basis of other assessment requirements. The detailed list of information to be provided in the environmental report is specified in Annex IV. Developers may, with a view to avoiding duplication of assessment, take into account the results of a strategic environmental assessment under Directive 2001/42/EC, or other relevant assessments under Union legislation, in preparing the environmental impact assessment report.</p>	
<p>2. The competent authority, after having consulted the authorities referred to in Article 6(1) and shall, where it considers it appropriate to do so by reason of the nature of the project in question, or when requested to do so by the developer, shall determine issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report. The competent authority shall consult the developer, who shall provide such information as the competent authority requires, and shall also consult with the authorities referred to in Article 6(1) before it gives its opinion. Where a scoping opinion is given by the competent authority, subsequent requests to the developer for additional information may only be made if these are justified by new circumstances or directly relevant to making an informed decision on any significant adverse effects on the environment and are duly explained by the competent authority, in accordance with paragraph 1 of this Article. In particular, it shall determine:</p> <p>(a) the decisions and opinions to be obtained;</p> <p>(b) the authorities and the public likely to be concerned;</p> <p>(c) the individual stages of the procedure and their duration;</p> <p>(d) reasonable alternatives relevant to the proposed project and its specific characteristics;</p> <p>(e) the environmental features referred to in Article 3 likely to be significantly affected;</p> <p>(f) the information to be submitted relevant to the specific characteristics of a particular project or type of project;</p> <p>(g) the information and knowledge available and obtained at other levels of decision-making or through other Union legislation, and the</p>	<p>The proposed amendment of the Commission’s proposal reinstates scoping as optional. When considering the quality of scoping as a way of streamlining the process for the competent authority as well as the developer, we opt for the Commission’s proposal.</p> <p>We would also like to point at the use of scoping, when the developer submit a comprehensive draft of the environmental impact assessment report to the competent authority. In such cases the competent authority should still determine the scope and the level of detail of the report. The developer should be informed of the content in order to adjust the submitted report accordingly.</p>

Presidency compromise text	DK comments
<p>methods of assessment to be used. The competent authority may also seek assistance from accredited and technically competent experts referred to in paragraph 3 of this Article. Subsequent requests to the developer for additional information may only be made if these are justified by new circumstances and duly explained by the competent authority. [Last sentence of this paragraph integrated in paragraph 2.]</p>	
<p>3. To <u>guarantee ensure</u> the completeness and <u>suffieient</u> quality of the environmental-<u>impact assessment</u> reports referred to in Article 5(1), the competent authority shall:</p> <p>(a) <u>examine the environmental impact assessment report having regard to the requirements of this Directive, with particular reference to Article 3 and paragraph 1 of this Article;</u> the developer shall ensure that the environmental report is prepared by accredited and technically competent experts or</p> <p>(b) the competent authority shall ensure that the environmental report is verified it has available to it, or accesses as necessary, sufficient technical expertise to assess the quality of the report or ensure that the report has been prepared by accredited and technically competent experts and/or committees of national experts.;</p> <p>(c) <u>seek supplementary information from the developer necessary to rectify any deficiency in the report.</u></p> <p>Where accredited and technically competent experts assisted the competent authority to prepare the determination referred to in Article 5(2), the same experts shall not be used by the developer for the preparation of the environmental report.</p> <p>The detailed arrangements for the use and selection of accredited and technically competent experts (for example qualifications required, assignment of evaluation, licensing, and disqualification), shall be determined by the Member States.</p>	<p>Please, note our previous remarks regarding the term ‘adverse’ and role of article 1, para 2 (g).</p> <p>It was mentioned at the last WPE that some responsibility must be assumed by the competent authority. Obligatory scoping and assuming responsibility helps the competent authority to focus the task of evaluating the environmental impact assessment report. This also helps the developer by cutting down the subsequent ping pong between the competent authority and the developer.</p> <p>We will suggest that the proposal from the Commission is adopted.</p>
Article 6	
<p>1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for <u>development consent</u>. To that end, Member States shall designate the authorities to be consulted, either in general</p>	<p>Please, note our remarks regarding article 1, para 2 (c) regarding the proposed definition of consent.</p>

Presidency compromise text	DK comments
<p><i>terms or on a case-by- case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.</i></p>	
<p><i>Para 2, (a) the request for development consent;</i></p>	<p>Please, note our remarks regarding article 1, para 2 (c) regarding the proposed definition of consent.</p>
<p><i>Para 4, 4. The public concerned shall be given early and effective opportunities to participate in the environmental decision- making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.</i></p>	<p>Please, note our remarks regarding article 1, para 2 (c) regarding the proposed definition of consent.</p>
<p><i>6. Reasonable time-frames for the different phases shall be provided, allowing sufficient time: (a) for informing the authorities referred to in Article 6(1) and the public and (b) for the authorities referred to in Article 6(1) and the public concerned to prepare and participate effectively in the environmental decision-making subject to the provisions of this Article.</i></p>	
<p><i>7. The time-frames for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) shall not be shorter than 30 days or longer than 60 days. In exceptional cases, where the nature, complexity, location or size of the proposed project so require, the competent authority may extend this time frame by a further 30 days; in that case, the competent authority shall inform the developer of the reasons justifying the extension.</i></p>	<p>We welcome the Presidency’s proposal, but at the same time we find the developer will need some sort of safeguard against an infinite EIA-process.</p>
Article 7	
<p><i>Para 1. Where a Member State is aware that a project is likely to have significant adverse effects on the environment in another Member State or where a Member State likely to be significantly adversely affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia</i></p>	<p>Please, note our remarks regarding ‘adverse’ in article 1, para 1, and article 4.</p>
<p><i>Para 3. The Member States concerned, each insofar as it is concerned, shall also:</i></p>	<p>Please, note our remarks regarding ‘adverse’ in article 1, para 1.</p>

Presidency compromise text	DK comments
<p>(a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6(1) and the public concerned in the territory of the Member State likely to be significantly <u>adversely</u> affected; and</p> <p>(b) ensure that the authorities referred to in Article 6(1) and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.</p>	
<p>5. The detailed arrangements for implementing paragraphs 1 to 4 of this Article, including the establishment of time-frames for consultations, shall be determined by the Member States concerned, on the basis of the arrangements and time-frames referred to in Article 6(5) and (6), and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.</p>	<p>No comments.</p>
Article 8	
<p>1. The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 shall be taken into consideration in the development consent procedure. To this end, the decision to grant development consent shall contain the following information: the competent authority shall:</p> <p>(a) taking into account the environmental impact assessment report and any supplementary information provided by the developer, the result of consultations (including with the public concerned and the authorities referred to in Article 6(1), and its own examination, reach a conclusion as to whether the project would have significant adverse effects on the environment the environmental assessment of the competent authority referred to in Article 3 and the environmental conditions attached to the decision, including a description of the main measures to avoid, reduce and, if possible, offset significant adverse effects;</p> <p>(b) consider whether, where significant adverse effects on the environment have been identified, it is appropriate that consent should be given for the project. the main reasons for choosing the project as adopted, in the light of the other alternatives considered, including the likely</p>	<p>Please, note our comments regarding article 1, para 2 (g) regarding the environmental report.</p> <p>Please, note our remarks regarding article 1, para 1, regarding the term ‘adverse’.</p> <p>The Presidency’s proposal seems to narrow down the scope of information to be provided for in the environmental impact assessment report. Apart from paying consideration to the responsibility of the competent authority we cannot quite find the beneficial effects of the proposal. Maybe the Presidency can clarify that.</p> <p>We would, however, prefer the proposal from the Commission.</p> <p>Further, we do not see the point of deleting the reference to consultations or the alternatives.</p>

Presidency compromise text	DK comments
<p>evolution of the existing state of the environment without implementation of the project (baseline scenario); (c) a summary of the comments received pursuant to Articles 6 and 7; (d) a statement summarising how environmental considerations have been integrated into the development consent and how the results of the consultations and the information gathered pursuant to Articles 5, 6 and 7 have been incorporated or otherwise addressed. For projects likely to have significant adverse transboundary effects, the competent authority shall provide information for not having taken into account comments received by the affected Member State during the consultations carried out pursuant to Article 7.</p>	
<p>2. <u>Where is it proposed to give consent to a project despite the identification of significant adverse effects on the environment, the competent authority shall ensure that such effects are monitored and appropriate mitigation and compensation measures are implemented. The developer shall provide information on the effectiveness of the measures, including any unforeseen or unintended consequences of such measures.</u> If the consultations and the information gathered pursuant to Articles 5, 6 and 7 conclude that a project will have significant adverse environmental effects, the competent authority, as early as possible and in close cooperation with the authorities referred to in Article 6(1) and the developer, shall consider whether the environmental report referred to in Article 5(1) should be revised and the project modified to avoid or reduce these adverse effects and whether additional mitigation or compensation measures are needed. If the competent authority decides to grant development consent, it shall ensure that the development consent includes measures to monitor the significant adverse environmental effects, in order to assess the implementation and the expected effectiveness of mitigation and compensation measures, and to identify any unforeseeable adverse effects. The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the proposed project and the significance of its environmental effects. Existing monitoring arrangements resulting</p>	<p>Please, note our remarks regarding article 1, para 1, regarding the term ‘adverse’.</p> <p>We cannot help thinking that mitigating and compensating measures to counter the adverse effect underline our point in our remarks to article 1, para 1.</p> <p>We are not in favour of this proposed revision of the provision.</p>

Presidency compromise text	DK comments
<p>from other Union legislation may be used if appropriate.</p>	
<p>3. When all necessary information gathered pursuant to Articles 5, 6 and 7 has been provided to the competent authority, including, where relevant, specific assessments required under other Union legislation, and the consultations referred to in Articles 6 and 7 have been completed, the competent authority shall conclude its environmental impact assessment of the project within three months.</p> <p>Depending on the nature, complexity, location and size of the proposed project, the competent authority may extend that deadline by a further 3 months; in that case, the competent authority shall inform the developer of the reasons justifying the extension and of the date when its decision is expected.</p>	<p>We welcome the Presidency's proposal.</p>
<p>4. Before a decision to grant or refuse development consent is taken, the competent authority shall verify whether the information in the environmental report referred to in Article 5(1) is up to date, in particular concerning the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects.</p>	<p>We do not see the point of deleting this provision.</p>
Article 9	
<p>1. When a decision to grant or refuse development consent <u>for a project</u> has been taken, the competent authority or authorities shall inform the public and the authorities referred to in Article 6(1) thereof, in accordance with the appropriate procedures, and shall make available to the public the following information:</p> <p>(a) the content of the decision and any conditions attached thereto, <u>including any conditions requiring measures to avoid, prevent, reduce or offset significant adverse effects on the environment, and any conditions in relation to monitoring of mitigation and compensation measures;</u></p> <p>(b) having examined the environmental report and the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process;</p> <p>(c) <u>a summary of the results of the consultations</u></p>	

Presidency compromise text	DK comments
<p>and the information gathered pursuant to Articles 5, 6 and 7 and how these have been incorporated or otherwise addressed a description of the main measures to avoid, reduce and, if possible, offset the significant adverse effects;</p> <p>(d) the conclusion of the competent authority as to whether the project would have significant adverse effects on the environment and how this has been taken into account a description, where appropriate, of the monitoring measures referred to in Article 8(2).</p>	
<p>3. Member States may also decide to make available to the public the information referred to in paragraph 1 or paragraph 2 as soon as it is available, when the competent authority concludes its environmental impact assessment of the project.</p>	
Article 12	
<p>2. In particular, every six years from from the date specified in Article 2(1) of Directive XXX [OPOCE please introduce the n° of this Directive] Member States shall inform the Commission of:</p> <p>(a) the number of projects referred to in Annexes I and II made subject to an assessment in accordance with Articles 5 to 10;</p> <p>(b) the breakdown of assessments according to the project categories set out in Annexes I and II;</p> <p>(c) the breakdown of assessments undertaken by type of developer;</p> <p>(d) the number of projects referred to in Annex II made subject to a determination in accordance with Article 4(2);</p> <p>(e) the average duration of the environmental impact assessment process;</p> <p>(f) the average cost of the environmental impact assessments.</p>	<p>We welcome the deletion of point c) and f).</p>
Article 12 a	
<p>The Commission shall be empowered to adopt delegated acts, in accordance with Article 12b, concerning the selection criteria listed in Annex III and the information referred to in Annexes II.A and IV, in order to adapt them to scientific and technical progress.</p>	
Article 12 b	
<p>1. The power to adopt delegated acts is conferred on the Commission subject to the condition laid down in this Article.</p>	

Presidency compromise text	DK comments
<p>2. The delegation of power referred to in Article 12a shall be conferred on the Commission for an indeterminate period of time from the [date of the entry into force of this Directive].</p> <p>3. The delegation of power referred to in Article 12a may be revoked at any time by the European Parliament or by the Council. A revocation decision shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a date specified therein. It shall not affect the validity of any delegated acts already in force.</p> <p>4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p> <p>5. A delegated act adopted pursuant to Article 12a shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of the notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.</p>	
Article 2	
<p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 2 years] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a document explaining the relationship between them and this Directive. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p>The previous experience of correct adopting the Directive in national legislation calls for providing the Commission with the adequate tools for this work. Such a tool is the communication of the text to the Commission. By securing adequate and correct information regarding the adoption of the Directive, the less uncertainty and less litigation.</p> <p>We suggest that the sentence is undeleted.</p>
<p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>	

Presidency compromise text	DK comments
Article 3	
<p>Projects for which the request for [...] consent was submitted introduced before the date referred to in the first subparagraph of Article 2(1) and for which the environmental impact assessment <u>report referred to in Article 3 of Directive 2011/92/EU</u> has not been <u>supplied to the competent authority or authorities</u> concluded before that date shall be subject to the obligations referred to in Articles 3 to 11 of Directive 2011/92/EU as amended by this Directive.</p>	<p>We have earlier on addressed the transitional challenge faced by large scale transboundary projects, which are implemented in at least two Member States, when the Member States transpose the adopted amendments to the Directive. The implementation of such projects is very complicated and requires long term planning, which makes it very difficult to incorporate transitional changes to legislation not known at the time of planning the procedures.</p> <p>We would like to propose an exemption of large scale transboundary projects, which are implemented in at least two Member States, from the transitional provision in article 3, and instead accepting them as subject to the obligations of Directive 2011/92/EU, when the initial EIA-report is not supplied to the competent authority or authorities before the date referred to in the first subparagraph of Article 2(1).</p>
ANNEXES	
<p>(1) The following Annex II.A is inserted:</p> <p><i>'ANNEX II.A</i> INFORMATION REFERRED TO IN ARTICLE 4(4)</p> <p>1. A description of the project, including in particular:</p> <p>a) a description of the physical characteristics of the whole project, including, where relevant, its subsurface, during the construction and operational phases;</p> <p>b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.</p> <p>2. A description of the aspects of the environment likely to be significantly <u>adversely</u> affected by the proposed project.</p> <p>3. A description of the any likely significant <u>adverse</u> effects of the proposed project on the environment resulting from:</p> <p>(a) the expected residues and emissions and the production of waste;</p> <p>(b) the use of natural resources, in particular soil, land, water, and biodiversity, <u>fauna and flora including hydromorphological changes</u>.</p> <p>4. A description of the measures envisaged to avoid, prevent, or reduce <u>or offset</u> any significant adverse effects on the environment.'</p>	

Presidency compromise text	DK comments
<p>(2) Annexes III and IV are replaced by the following:</p> <p><i>'ANNEX III</i> SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3) 1. CHARACTERISTICS OF PROJECTS The characteristics of projects must be considered with particular regard to:</p> <p>(a) the size of the project, including, where relevant, its subsurface; (b) cumulation with other projects and activities; (c) the use of natural resources, in particular land, soil, water, and biodiversity fauna and flora, including hydromorphological changes; (d) the production of waste; (e) pollution and nuisances; (f) the risks natural and man-made disaster risks and risk of accidents, with particular regard to hydromorphological changes, substances, or technologies or living organisms used, to specific surface and subsurface conditions or alternative use, and to the probability and likelihood of major accidents or disasters relevant to the project and the vulnerability of the project to these risks; (g) impacts of the project on climate change (in terms of greenhouse gas emissions including from land use, land use change and forestry), contribution of the project to an improved resilience, and the impacts of climate change on the project (e.g. if the project is coherent with a changing climate); (h) impacts of the project on the environment, in particular on land (increase of settlement areas over time land take), soil (organic matter, erosion, compaction, sealing), water (quantity and quality), air and biodiversity (population quality and quantity and ecosystem degradation and fragmentation); (i) the risks to human health (e.g. due to water contamination or air pollution); (j) impact of the project on cultural heritage and landscape.</p> <p>2. LOCATION OF PROJECTS The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to: the existing and planned land use, including land take and fragmentation; the relative abundance, availability, quality and regenerative capacity of natural resources</p>	

Presidency compromise text	DK comments
<p>(including soil, land, water, and biodiversity, <u>fauna and flora</u>) in the area; the absorption capacity of the natural environment, paying particular attention to the following areas:</p> <p>(i) wetlands, riparian areas, river mouths; (ii) coastal zones; (iii) mountain and forest areas; nature reserves and parks; permanent pastures, agriculture areas with a high nature value; areas classified or protected under Member States' legislation; Natura 2000 areas designated by Member States pursuant to Directive 2009/147/EEC of the European Parliament or of the Council and Council Directive 92/43/EEC; areas protected by international conventions; areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or <u>it is considered</u> likely <u>that there could to</u> be such a failure;</p> <p>(vii) densely populated areas; (viii) landscapes and sites of historical, cultural or archaeological significance.</p> <p>3. <u>TYPE AND CHARACTERISTICS OF THE POTENTIAL IMPACT</u> The potential significant <u>adverse</u> effects of projects <u>on the environment</u> must be considered in relation to criteria set out under 1 and 2 above, with particular regard to:</p> <p><u>(-aa) the impact of the project on climatic factors, for example the nature and magnitude of greenhouse gas emissions;</u> <u>(-ab) the impact of the project on the environment, in particular on land, soil, water, air, biodiversity, fauna and flora;</u> <u>(-ac) the impact of the project on cultural heritage and landscape;</u></p> <p>(a) the magnitude and spatial extent of the impact (geographical area and size of the population likely to be affected); (b) the nature of the impact; (c) the transboundary nature of the impact; (d) the intensity and complexity of the impact; (e) the probability of the impact; (f) the duration, frequency and reversibility of the impact; (g) the speed of onset of the impact; (h) the cumulation of impacts with the impacts of other projects (in particular existing and/or approved) by the same or different developers;</p>	

Presidency compromise text	DK comments
<p>(i) the aspects of the environment likely to be significantly affected; (k) the any relevant information and findings relating to on environmental effects obtained from assessments required under other EU legislation; (l) the possibility of reducing impacts effectively.</p>	
<p>ANNEX IV</p> <p>INFORMATION REFERRED TO IN ARTICLE 5(1)</p> <p>1. Description of the project, including in particular:</p> <p>(a) a description of the physical characteristics of the whole project, including, where relevant, required demolition works its subsurface, and the water use and land-use requirements during the construction and operational phases; (b) a description of the main characteristics of the production processes, for instance, nature and quantity of the materials, energy and natural resources (including water, land, soil, and biodiversity, fauna and flora) used; (c) an estimate, by type and quantity, of expected residues and emissions (water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the construction and operation of the proposed project.</p> <p>2. A description7 of the technical, locational or other aspects reasonable or viable alternative methods of undertaking the project (e.g. in terms of project design, technical capacity, size and scale) of the alternatives considered, including the identification of the least environmentally impacting one, and an indication of the main reasons for selecting the chosen option the choice made, taking into account including a comparison of the environmental effects.</p> <p>3. A description of the relevant aspects of the existing state of the environment and a general outline of the likely evolution thereof without implementation of the project (baseline scenario) as far as it can be assessed with reasonable effort. This description should cover any existing environmental problems relevant to the project, including, in particular, those relating to any areas of a particular environmental importance and the use of natural resources.</p>	<p>Para 3: We find that the deletion of the last sentence will narrow down the scope of the provision, so we prefer the inclusion of the sentence.</p> <p>Para 4: We find that the deletion of most of the provision will narrow down the scope of the provision, so we prefer the inclusion of deleted.</p> <p>Para 5, point (b): We find that the deletion of ‘also in the light of changing climatic conditions’ will narrow down the scope of the provision, so we prefer the inclusion of the deleted.</p> <p>Para 5, point (f): We find that the deletion of the point will narrow down the scope of the provision, so we prefer the inclusion of the deleted point.</p> <p>Para 5, last paragraph: We find that the deletion of ‘positive and negative’ will result in loss of precision, so we prefer the inclusion of ‘positive and negative’.</p> <p>Para 7: We find that the deletion of ‘including the preparation of a post project analysis of the adverse effect on the environment’ will narrow down the scope of the provision, so we prefer the inclusion of the deleted.</p> <p>Para 10: We find that the deletion of the point will narrow down the scope of the provision, so we prefer the inclusion of the deleted point.</p>

Presidency compromise text	DK comments
<p>4. A description of the <i>aspects factors</i> of the environment <i>specified in Article 3</i> likely to be significantly affected by the <i>proposed</i> project; <i>including, in particular, population, human health, fauna, flora, biodiversity and the ecosystem services it provides, land (land take), soil (organic matter, erosion, compaction, sealing), water (quantity and quality), air, climatic factors, climate change (greenhouse gas emissions, including from land use, land use change and forestry, mitigation potential, impacts relevant to adaptation, if the project takes into account risks associated with climate change), material assets, cultural heritage, including architectural and archaeological ones, landscape; such a description should include the inter-relationship between the above factors, as well as the exposure, vulnerability and resilience of the above factors to natural and man-made disaster risks.</i></p> <p>5. A description of the likely significant effects of the <i>proposed</i> project on the environment resulting from, inter alia:</p> <p>(a) the <i>construction and</i> existence of the project;</p> <p>(b) the use of natural resources, in particular land, soil, water, biodiversity, <i>fauna and flora the ecosystem services it provides</i>, considering as far possible the availability of these resources <i>also in the light of changing climatic conditions</i>;</p> <p>(c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the elimination of waste;</p> <p>(d) the risks to human health, cultural heritage or the environment (e.g. due to accidents or disasters);</p> <p>(e) the cumulation of effects with other projects <i>and activities</i>;</p> <p><i>(f) the greenhouse gas emissions, including from land use, land use change and forestry;</i></p> <p>(g) the technologies and the substances used.</p> <p><i>(h) hydromorphological changes.</i></p> <p>The description of the likely significant effects should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, <i>positive and negative</i> effects of the project. This description should take into account the environmental protection objectives established at EU or Member State level which are relevant to the project.</p>	

Presidency compromise text	DK comments
<p>6. The A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment referred to in point 5, as well as an account of including details of difficulties (e.g. technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved and their influence on the effect estimates and selection of the preferred alternative.</p> <p>7. A description of the measures envisaged to avoid, prevent or reduce any identified significant adverse effects on the environment referred to in point 5 and, where appropriate, of any proposed monitoring arrangements; including the preparation of a post-project analysis of the adverse effects on the environment. This description should explain the extent to which significant adverse effects are avoided, prevented or reduced and should cover both the construction and operational phases.</p> <p>8. An assessment of the risks and likelihood of major accidents or disasters relevant to the project and the vulnerability of the projects to those risks. natural and man-made disaster risks and risk of accidents to which the project could be vulnerable and. Where appropriate, this should include a description of the measures envisaged to prevent such events risks, as well as measures regarding and details of the preparedness for and proposed response to such emergencies (e.g. measures required under Directive 96/82/EC as amended).</p> <p>9. A non-technical summary of the information provided under the above headings.</p> <p>10. An indication of any difficulties (technical deficiencies or lack of knowhow) encountered by the developer in compiling the required information and of the sources used for the descriptions and assessments made, as well as an account of the main uncertainties involved and their influence on the effect estimates and selection of the preferred alternative.'</p>	

AUSTRIA

For the discussion in WPE on 9 July starting with Article 6 of the EIA Directive Austria submits the following comments:

1. Changes of the EIA Directive 2011/92/EU

Art. 6:

para. 6

AT asks the Presidency to explain the changes in **substance** compared to the existing wording of the Directive.

Art. 8:

para. 1

First sentence and letter a:

In principle AT welcomes the new text proposal. However, the meaning of the new wording “taking into account” and “reach a conclusion” is unclear. Art. 8 refers to the **decision** of the competent authority and not to the “consent **procedure**”. See also Art. 1 para. 3 letter g: “integration of this conclusion in the consent **decision**”. Art. 8 should better determine what the competent authority has to consider in its decision and which criteria have to be taken into account for decision making. Since these are lacking, the authority may also permit a project with significant negative environmental impacts. This certainly would contradict the aim to protecting the environment and human health. For that reason AT already suggested to insert requirements which are similar to those in Art. 11 of the IED 2010/75/EU. AT holds on its previous written proposal in this context.

letter b:

The new wording “consider” contradicts Art. 9 para. 1 letter a, which obliges the authority to include any conditions requiring measures to avoid, prevent, reduce or offset significant adverse effects on the environment and any conditions in relation to monitoring of mitigation and compensation measures **into the decision**. Moreover Art. 8 should impose an obligation on the authority to determine such measures and therefore read as follows:

AT proposal:

„(b) ~~consider whether~~, where significant adverse effects on the environment have been identified, it is ~~appropriate that consent should be given for the project~~. determine measures to avoid, prevent, reduce or offset significant adverse effects on the environment, and any conditions in relation to monitoring of mitigation and compensation measures;”

para. 2:

Instead of „Where is it proposed to give consent“ AT suggests the wording: „*Where consent is given*“, as the authority does not **suggest** a consent but is competent to **give a consent**.

Concerning the wording „The developer shall provide information ...” in the last sentence of para. 2 we kindly ask the Presidency to explain the meaning of para. 2. As for AT the EIA authority includes monitoring obligation and mitigation and compensation measures in its decision as conditions. Does the new wording now ask the developer to inform the authority by (a kind of) report about the effectiveness of the measures, including any unforeseen or unintended consequences of? If yes, within which time-frame?

para 3 and 4:

AT welcomes the deletion of para 3 and 4.

Art. 9

para 1:

The obligation in **letter d** is unclear as AT is of the opinion that this obligation is already part of **letter a to c**. In addition this obligation does not fit in the chronology of the EIA procedure: Usually the EIA procedure ends with a **final decision** but not with a **conclusion** of the authority.

Art. 12a and 12b

AT strongly welcomes the deletion of these Articles.

2. Article 2 of the compromise text

AT appreciates the proposed new time-limit for transposition.

3. Article 3 of the compromise text

AT welcomes the new wording of the transitional provision which is an improvement.

4. ANNEX

Annex II.A

Austria agrees with the adaptations made.

Annex III

Number 1

The amendments are in line with the AT position, in particular the limitation on accidents or disasters relevant to the project.

The term **major accidents or disasters** is debatable. “Major accidents” are already defined in the Seveso Directive. However, the scope of project types and, consequently, possible events is much broader in the EIA Directive.

Alternative proposal from AT:

*„(f) the **risks and likelihood** of natural and man-made disaster and of accidents, ~~with particular regard to hydromorphological changes, substances, or technologies or living organisms used, to specific surface and subsurface conditions or alternative use, and to the probability of accidents or disasters and the vulnerability of the project to these risks;~~ **those scenarios shall be taken into account which are, based on a rational assessment, considered to be characteristic for the project type;**”*

Number 2

The amendments are in line with the AT position.

In **letter c (vi)** on grounds of legal uncertainty AT pleads for a deletion of the second clause. This amendment seems problematic for EIA systems with thresholds which are linked to certain designated areas.

Number 3

The amendments are in line with the AT position.

Annex IV

Number 1

The amendments in **letter a** are appreciated.

In **letter b**, due to the diversity of project types, it might be more appropriate to refer not only to production processes but also to the operational phase in general (e.g. infrastructure projects don't have "production processes").

AT proposal:

“(b) a description of the main characteristics of the production processes or the operational phase, for instance, nature and quantity of the materials, energy and natural resources (including water, soil, land, biodiversity, fauna and flora) used;”

The energy demand of a project is only covered by letter b. However, energy is needed not only in production processes or the operational phase. The construction phase could cause a considerable energy demand as well. Therefore, AT proposes the following amendment in **letter c**:

„(c) an estimate, by type and quantity, of expected residues and emissions (water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation, etc.) and the energy demand and nature of energy used resulting from the construction and operation of the ~~proposed~~ project.”

In that case the reference on energy in letter b can be deleted.

Number 2

AT welcomes the compromise text on **alternatives** since it refers to reasonable or viable alternatives. The deletion of the least environmentally impacting alternative is supported as it would cause assessment problems in practice. However, it remains important that the selection of the chosen options encompasses a comparison of the environmental effects.

Number 3

The tightening of the text is fine.

Number 4

The compromise text refers only to the environmental factors specified in Article 3 without giving further hints which parameters and aspects could be of relevance. An exemplary enumeration of such aspects might be useful. In any case, effects like greenhouse gas emissions should not be listed here.

Number 5

In large part, AT agrees with the adaptations made.

In **letter b** it might be useful to refer to the “*sustainable availability of these resources*”.

With regard to **letter f** Austria would like to retain this litera. The greenhouse gas emissions of certain projects (e.g. a steel mill) can be considerable and should therefore be stated explicitly.

Number 6

AT agrees to the adaptation made.

Number 7

AT opposes the deletion of the phrase „*where possible, offset any significant adverse effects*“ in the first sentence. Measures to offset any significant effects should be described in the environmental report.

Moreover, Austria argues to explicitly refer to **energy efficiency measures**.

AT proposal:

*“7. A description of the measures envisaged to **avoid**, prevent, reduce and, where possible, offset any significant adverse effects on the environment **including energy efficiency measures** and,”*

Number 8

AT supports the limitation to accidents or disaster relevant to the project.

Alternatively, amendments could be foreseen in numbers 5 and 7, in this case number 8 could be deleted:

*„5. (d) the risks to human health, cultural heritage or the environment (e.g. due to accidents or disasters **which are, based on a rational assessment, considered to be characteristic for the project type**);*

*7. A description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment referred to in point 5 and, where appropriate, of any proposed monitoring arrangements, including the preparation of a post-project analysis of the adverse effects on the environment. This description should explain the extent to which significant adverse effects are **prevented, reduced or offset** and should cover ~~both~~ the construction and operational phases **as well as project related natural and man-made disaster risks which are, based on a rational assessment, considered to be characteristic for the project type.**”*

Number 10

AT welcomes the deletion (redundant text).