

Proposal for a Directive of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EEC and 96/61/EC

(2001/C 154 E/12)

(Text with EEA relevance)

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(Submitted by the Commission on 18 January 2001)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Community legislation in the field of the environment aims to contribute to preserving, protecting and improving the quality of the environment and protecting human health.
- (2) Community environmental legislation includes provisions for public authorities and other bodies to take decisions which may have a significant effect on the environment as well as on personal health and well-being.
- (3) Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues.
- (4) Participation, including participation by associations, organisations and groups, in particular non-governmental organisations promoting environmental protection, should accordingly be fostered.
- (5) On 25 June 1998 the Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environ-

mental Matters ('the Aarhus Convention'). Community law should be properly aligned with that Convention with a view to its ratification by the Community.

- (6) Among the objectives of the Convention is the desire to guarantee rights of public participation in certain kinds of environmental decision-making in order to contribute to the protection of the right to live in an environment which is adequate to personal health and well-being.
- (7) Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I to the Convention and on activities not so listed which may have a significant effect on the environment.
- (8) Article 7 of the Aarhus Convention provides for public participation concerning plans, programmes and policies relating to the environment.
- (9) Article 9(2) and (4) of the Aarhus Convention provides for access to judicial or other procedures for challenging the substantive or procedural legality of acts or omissions subject to the public participation provisions of Article 6 of the Convention.
- (10) Provision should be made in respect of certain directives in the environmental area which require Member States to produce plans and programmes relating to the environment, so as to ensure public participation consistent with the provisions of the Aarhus Convention, in particular Article 7 thereof.
- (11) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment ⁽¹⁾, and Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ⁽²⁾ should be amended to ensure that they are fully compatible with the provisions of the Aarhus Convention, in particular Articles 6 and 9(2) and (4) thereof.

⁽¹⁾ OJ L 175, 5.7.1985, p. 40, Directive as amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5).

⁽²⁾ OJ L 257, 10.10.1996, p. 26.

(12) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAVE ADOPTED THIS DIRECTIVE

Article 1

Public participation concerning plans and programmes

1. For the purposes of this Article 'the public' shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

2. Member States shall ensure that the public are given early and effective opportunities to participate in the preparation and review of the plans or, as the case may be, programmes required to be drawn up under the provisions listed in Annex I.

To that end, Member States shall ensure that:

- (a) the public are informed, whether by public notices or other appropriate means, about any proposals for such plans or programmes or for their review and that relevant information about such proposals is made available to the public;
- (b) the public are entitled to express comments and opinions before decisions on the plans and programmes are made;
- (c) in making those decisions, due account shall be taken of the results of the public participation.

3. Member States shall identify the public entitled to participate for the purposes of paragraph 2, including relevant non-governmental organisations, such as those promoting environmental protection.

The detailed arrangements for public participation under this Article shall be determined by the Member States so as to secure a wide participation by the public.

Reasonable time-frames shall be provided allowing sufficient time for each of the different stages of public participation required by this Article.

Article 2

Amendment of Directive 85/337/EEC

Directive 85/337/EEC is amended as follows:

1. In Article 1(2) the following definitions are added:

'"the public" means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

"the public concerned" means the public affected or likely to be affected by, or having an interest in, the development consent procedure; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.'

2. Article 6 is amended as follows:

(a) Paragraphs 2 and 3 are replaced by the following:

'2. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the development consent procedure. Paragraphs 3, 4 and 5 shall apply for the purposes of such participation.

3. The public shall be informed, whether by public notices or other appropriate means, of the following matters early in the development consent procedure and, at the latest, as soon as information can be provided:

- (a) the request for development consent;
- (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
- (c) details of the competent authorities responsible for taking the decision or from which relevant information can be obtained or to which comments or questions can be submitted;
- (d) the nature of possible decisions or, where there is one, the draft decision;
- (e) any information gathered pursuant to Article 5;
- (f) the main reports and advice issued to the competent authority or authorities during the development consent procedure, including any opinions on the request expressed by any authorities consulted under paragraph 1;

(g) an indication of the times and places where and means by which the relevant information will be made available;

(h) details of the arrangements for public participation made pursuant to paragraph 5.'

(b) The following paragraphs 4 and 5 are added:

'4. The public concerned shall be entitled to express comments and opinions to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements, for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and for consulting the public concerned (for example by written submissions or by way of a public enquiry), shall be determined by the Member States. Reasonable time-frames shall be provided, allowing sufficient time for each of the different stages provided for in this Article.'

3. Article 7 is amended as follows:

(a) In paragraph 1, 'Environmental Impact Assessment procedure' is replaced by 'development consent procedure'.

(b) Paragraph 2 is replaced by the following:

'2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the development consent procedure, the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information required to be given or made available pursuant to Article 6(3) and (5).'

(c) Paragraph 5 is replaced by the following:

'5. The detailed arrangements for implementing the provisions of this Article shall be determined by the Member States concerned and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the development consent procedure for the project.'

4. In Article 9, paragraph 2 is replaced by the following:

'2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article.

The consulted Member States shall ensure that that information is made available to the public concerned in their own territory.'

5. The following Article 10a is inserted:

'Article 10a

Member States shall ensure that, in accordance with the relevant national legal system, the public concerned has access to a review procedure before a court of law or another body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

Any such procedure shall be expeditious and shall not be prohibitively expensive.'

6. Annex I is amended in accordance with Annex II to this Directive.

Article 3

Amendment of Directive 96/61/EC

Directive 96/61/EC is amended as follows:

1. Article 2 is amended as follows:

(a) the following paragraph is added to point 10:

'For the purposes of point (b), any change to or extension of an operation, where such a change or extension in itself meets the appropriate criteria or thresholds set out in Annex I, shall be deemed to be substantial';

(b) the following points 13 and 14 are added:

'13. "the public" shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

14. "the public concerned" shall mean the public affected or likely to be affected by, or having an interest in, the taking of a decision on the issuing or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.'

2. In Article 6(1), first subparagraph, the following indent is added:

‘— the main alternatives studied by the applicant, in outline.’

3. Article 15 is amended as follows:

(a) Paragraph 1 is replaced by the following:

‘1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the procedure for the taking of decisions on the issuing or the updating of a permit or of permit conditions. The procedure set out in Annex V shall apply for the purposes of such participation.’

(b) The following paragraph 5 is added:

‘5. When a decision has been taken, the competent authority shall inform the public in accordance with the appropriate procedures and shall make available to the public the following information:

(a) the content of the decision, including a copy of the permit and of any conditions and any subsequent updates; and

(b) the reasons and considerations on which the decision is based.’

4. The following Article 15a is inserted:

‘Article 15a

Access to justice

Member States shall ensure that, in accordance with the relevant national legal system, the public concerned has access to a review procedure before a court of law or another body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

Any such procedure shall be expeditious and shall not be prohibitively expensive.’

5. Article 17 is amended as follows:

(a) In paragraph 1, the first sentence is replaced by the following:

‘Where a Member State is aware that the operation of an installation is likely to have significant negative effects on the environment of another Member State, or where

a Member State likely to be significantly affected so requests, the Member State in whose territory the application for a permit pursuant to Article 4 or Article 12(2) was submitted shall forward to the other Member State any information required to be given or made available pursuant to Annex V at the same time as it makes it available to its own nationals.’

(b) The following paragraphs 3 and 4 are added:

‘3. The results of any consultations pursuant to paragraphs 1 and 2 must be taken into consideration when the competent authority reaches a decision on the application.

4. The competent authority shall inform any Member State which has been consulted pursuant to paragraph 1, of the decision reached on the application and shall forward to it the information referred to in Article 15(5). That Member State shall take the measures necessary to ensure that that information is made available to the public concerned in its own territory.’

6. An Annex V is added, as shown in Annex III to this Directive.

Article 4

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith communicate them to the Commission.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 5

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 6

Addressees

This Directive is addressed to the Member States.

ANNEX I

PROVISIONS FOR PLANS AND PROGRAMMES REFERRED TO IN ARTICLE 3

- (a) Article 7(1) of Council Directive 75/442/EEC on waste ⁽¹⁾.
- (b) Article 6 of Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances ⁽²⁾.
- (c) Article 5(1) of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources ⁽³⁾.
- (d) Article 6(1) of Council Directive 91/689/EEC on hazardous waste ⁽⁴⁾.
- (e) Article 14 of Council Directive 94/62/EC on packaging and packaging waste ⁽⁵⁾.
- (f) Article 8(3) of Council Directive 96/62/EC on ambient air quality assessment and management ⁽⁶⁾ (including plans referred to in Articles 3(4), 5(4) and 5(5) of Council Directive 1999/30/EC relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air ⁽⁷⁾).
- (g) Article 14 of Council Directive 99/31/EC on the landfill of waste ⁽⁸⁾.

⁽¹⁾ OJ L 194, 25.7.1975, p. 39. Directive as amended by Council Directive 91/156/EEC (OJ L 78, 18.3.1991, p. 32).

⁽²⁾ OJ L 78, 26.3.1991, p. 38. Directive as amended by Directive 98/101/EC (OJ L 1, 5.1.1999, p. 1) and supplemented by Directive 93/86/EEC (OJ L 264, 23.10.1993, p. 51).

⁽³⁾ OJ L 375, 31.12.1991, p. 1.

⁽⁴⁾ OJ L 377, 31.12.1991, p. 20. Directive as amended by Directive 94/31/EC (OJ L 168, 2.7.1994, p. 28).

⁽⁵⁾ OJ L 365, 31.12.1994, p. 10.

⁽⁶⁾ OJ L 296, 21.11.1996, p. 55.

⁽⁷⁾ OJ L 163, 29.6.1999, p. 41.

⁽⁸⁾ OJ L 182, 16.7.1999, p. 1.

ANNEX II

In Directive 85/337/EEC, Annex I, the following paragraph 22 is added:

- '22. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the appropriate criteria or thresholds set out in this Annex.'

ANNEX III

In Directive 96/61/EC, the following Annex V is added:

'ANNEX V

PUBLIC PARTICIPATION IN DECISION-MAKING

1. The public shall be informed (by public notices or other appropriate means) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can be provided:
 - (a) the application for a permit or, as the case may be, the proposal for the updating of a permit or of permit conditions, including in all cases the description of the elements listed in Article 6(1);
 - (b) where applicable, the fact that a decision is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 17;
 - (c) details of the competent authorities responsible for taking the decision or from which relevant information can be obtained or to which comments (or questions) can be submitted;
 - (d) the nature of possible decisions or, where there is one, the draft decision;
 - (e) where applicable, the details relating to a proposal for the updating of a permit or of permit conditions;
 - (f) the main reports and advice issued to the competent authority in connection with the taking of the decision;
 - (g) an indication of the times and places where or means by which the relevant information will be made available;
 - (h) details of the arrangements for public participation and consultation made pursuant to paragraph 4.
 2. The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.
 3. The results of the consultations held pursuant to this Annex must be taken into consideration in the taking of a decision.
 4. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and consulting the public concerned (for example by written submissions or by way of a public enquiry) shall be determined by the Member States. Reasonable time-frames shall be provided allowing sufficient time for each of the different stages provided for in this Annex.'
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