



COMMISSION OF THE EUROPEAN COMMUNITIES

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2007/0169 (CNS)

Proposal for a

COUNCIL DECISION

on the approval, on behalf of the European Community, of the first and the second amendments to the UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The UN/ECE Espoo Convention on environmental impact assessment in a transboundary context (hereinafter referred to as the Convention) was signed by the Community and its Member States on 26 February 1991. The Convention was approved by the Community on 27 June 1997¹.
2. The second meeting of the Parties in 2001 adopted decision II/14 on an amendment to the Espoo Convention. The amendment extends the definition of the "public" in article 1(x) of the Convention to clarify that the public that may participate in procedures under the Convention includes civil society and, in particular, non-governmental organizations and opens the Convention for accession by non-ECE member countries upon approval by the Meeting of the Parties. Both expansion of the scope of the term "public" and opening the Convention to states from outside the UN/ECE Region are essential tools to ensure public awareness on environmental issues and to promote a broader implementation and enforcement of environmental legislation. Thus, the first amendment to the Convention contributes to strengthening environmental protection policies and making them more effective.
3. The definition of the "public" is given effect in Community law in relevant provisions under Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive)², as amended by Directives 97/11/EC³ and 2003/35/EC⁴ and is in conformity with the amended text of the Convention.
4. The third Meeting of the Parties in 2004 by decision III/7 adopted a second amendment to the Espoo Convention. This amendment allows affected Parties to participate in scoping, revises the list of activities included in Appendix I of the Convention and addresses institutional issues under the Convention such as review of compliance, powers of the Meeting of the Parties and entry into force of amendments. Relevant Community provisions (EIA Directive) are consistent with this amendment to the Espoo Convention, which will hence not lead to any revision of this legislation.
5. On the occasion of Environment for Europe Ministerial Conference in October 2007 it is important to show that the European Community and the Member States are committed to international environmental policy and act together to further the objectives of environmental conventions enacted within the UNECE forum. The successful Community coordination during the negotiation process should be similarly ensured with regard to the conclusion of the amendments to the Espoo Convention with a view to allow the deposit, as far as possible simultaneously, of the instruments of ratification, approval or acceptance by the Community and the Member States.
6. The Community should now approve these amendments to the Espoo Convention.

¹ *Council Decision of 27 June 1997 on the conclusion, on behalf of the Community, of the Convention on environmental impact assessment in a transboundary context (ESPOO Convention) (proposal OJ C 104, 24.4.1992, p. 5; decision not published).*

² OJ [L175], [5.7.1985], p. [40].

³ OJ [L73], [14.3.1997], p. [5].

⁴ OJ [L156], [25.6.2003], p. [17].

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175 paragraph 1, in conjunction with the first sentence of the first subparagraph of Article 300 (2) and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission ⁵,

Having regard to the opinion of the European Parliament ⁶,

Whereas:

- (1) The UN/ECE Espoo Convention on environmental impact assessment in a transboundary context (hereinafter the Espoo Convention) aims at setting out the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning and imposes on States the general obligation regarding notification and consultation on all major projects that are likely to have a significant adverse environmental impact across borders.
- (2) The Espoo Convention was approved by the Community on 27 June 1997.
- (3) The Meeting of the Parties in 2001 adopted an amendment to the Espoo Convention altering the definition of the "public" so as to include non-governmental organisations and other associations, as well as opening the Convention for accession to countries beyond the UN/ECE Region. Relevant Community law, in particular Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment⁷, incorporates provisions consistent with this amendment to the Espoo Convention.
- (4) The second amendment to the Espoo Convention, adopted by the Meeting of the Parties in 2004, allows affected Parties to participate in scoping, revises the activities listed in Appendix I of that Convention and addresses institutional issues thereunder. This amendment does not change the nature of the obligations of the Parties and the

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ OJ L 175, 5.7.1985, p.40, Directive as last amended by Directive 2003/35/EC of the European Parliament and of the Council (OJ L 156, 25.6.2003, p.17).

list of those activities is already covered by relevant Community legislation, namely Directive 85/337/EEC.

- (5) Amendments to the Espoo Convention are open to ratification, approval or acceptance by the Parties. The European Community and the Member States should take the necessary steps to allow the deposit, as far as possible simultaneously, of the instruments of ratification, approval or acceptance.
- (6) The Community should approve the aforementioned two amendments to the Espoo Convention,

HAS DECIDED AS FOLLOWS:

Article 1

The first and second amendments to the UN/ECE Espoo Convention on environmental impact assessment in a transboundary context are hereby approved on behalf of the Community.

The text of the amendments is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person or persons empowered to deposit the instrument of approval of the amendments with the Secretary-General of the United Nations, acting in his capacity as Depository, in accordance with Article 17 of the Espoo Convention.

Done at Brussels, [...]

For the Council
The President
[...]

**AMENDMENTS TO THE ESPOO CONVENTION ON ENVIRONMENTAL
IMPACT ASSESSMENT IN A TRANSBOUNDARY CONTEXT**

FIRST AMENDMENT

At the end of **Article 1 (x)**, after persons insert:

"and, in accordance with national legislation or practice, their associations, organizations or groups"

In **Article 17**, after paragraph 2, insert a new paragraph reading:

"3. Any other State, not referred to in paragraph 2 of this Article, that is a Member of the United Nations may accede to the Convention upon approval by the Meeting of the Parties. The Meeting of the Parties shall not consider or approve any request for accession by such a State until this paragraph has entered into force for all the States and organizations that were Parties to the Convention on 27 February 2001".

and renumber the remaining paragraphs accordingly.

At the end of **Article 17**, insert a new paragraph reading:

"7. Any State or organization that ratifies, accepts or approves this Convention shall be deemed simultaneously to ratify, accept or approve the amendment to the Convention set out in decision II/14 taken at the second meeting of the Parties".

SECOND AMENDMENT

In **Article 2**, after paragraph 10, insert a new paragraph reading:

"11. If the Party of origin intends to carry out a procedure for the purposes of determining the content of the environmental impact assessment documentation, the affected Party should to the extent appropriate be given the opportunity to participate in this procedure".

In **Article 8**, after Convention insert:

"and under any of its protocols to which they are a Party"

In **Article 11**, replace paragraph 2 (c) by a new subparagraph reading:

"(c) Seek, where appropriate, the services and cooperation of competent bodies having expertise pertinent to the achievement of the purposes of this Convention";

At the end of **Article 11**, insert two new subparagraphs reading:

"(g) Prepare, where appropriate, protocols to this Convention;

(h) Establish such subsidiary bodies as they consider necessary for the implementation of this Convention".

In **Article 14, paragraph 4**, replace the second sentence by a new sentence reading:

"They shall enter into force for Parties having ratified, approved or accepted them on the ninetieth day after the receipt by the Depository of notification of their ratification, approval or acceptance by at least three fourths of the number of Parties at the time of their adoption".

After **Article 14**, insert a new article reading:

"Article 14 bis

Review of compliance

1. The Parties shall review compliance with the provisions of this Convention on the basis of the compliance procedure, as a non-adversarial and assistance-oriented procedure adopted by the Meeting of the Parties. The review shall be based on, but not limited to, regular reporting by the Parties. The Meeting of Parties shall decide on the frequency of regular reporting required by the Parties and the information to be included in those regular reports.

2. The compliance procedure shall be available for application to any protocol adopted under this Convention".

Replace **Appendix I** to the Convention by the Appendix to this decision;

In **Appendix VI**, after paragraph 2, insert a new paragraph reading:

"3. Paragraphs 1 and 2 may be applied, mutatis mutandis, to any protocol to the Convention".

Appendix

LIST OF ACTIVITIES

1. Crude oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 metric tons or more of coal or bituminous shale per day.

2. (a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and

(b) Nuclear power stations and other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors ¹ (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3. (a) Installations for the reprocessing of irradiated nuclear fuel;

(b) Installations designed:

- - For the production or enrichment of nuclear fuel;
- - For the processing of irradiated nuclear fuel or high-level radioactive waste;
- - For the final disposal of irradiated nuclear fuel;
- - Solely for the final disposal of radioactive waste; or

- - Solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4. Major installations for the initial smelting of cast iron and steel and for the production of non-ferrous metals.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 metric tons finished product; for friction material, with an annual production of more than 50 metric tons finished product; and for other asbestos utilization of more than 200 metric tons per year.

6. Integrated chemical installations.

7. (a) Construction of motorways, express roads ² and lines for long-distance railway traffic and of airports ³ with a basic runway length of 2,100 metres or more;

(b) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road, would be 10 km or more in a continuous length.

8. Large-diameter pipelines for the transport of oil, gas or chemicals.

9. Trading ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 metric tons.

10. (a) Waste-disposal installations for the incineration, chemical treatment or landfill of toxic and dangerous wastes;

(b) Waste-disposal installations for the incineration or chemical treatment of non-hazardous waste with a capacity exceeding 100 metric tons per day.

11. Large dams and reservoirs.

12. Groundwater abstraction activities or artificial groundwater recharge schemes where the annual volume of water to be abstracted or recharged amounts to 10 million cubic metres or more.

13. Pulp, paper and board manufacturing of 200 air-dried metric tons or more per day.

14. Major quarries, mining, on-site extraction and processing of metal ores or coal.

15. Offshore hydrocarbon production. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 metric tons/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.

16. Major storage facilities for petroleum, petrochemical and chemical products.

17. Deforestation of large areas.

18. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year; and

(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 per cent of this flow.

In both cases transfers of piped drinking water are excluded.

19. Waste-water treatment plants with a capacity exceeding 150 000 population equivalent.

20. Installations for the intensive rearing of poultry or pigs with more than:

- 85 000 places for broilers;
- 60 000 places for hens;
- 3 000 places for production pigs (over 30 kg); or
- 900 places for sows.

21. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

22. Major installations for the harnessing of wind power for energy production (wind farms).

1. For the purposes of this Convention, nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

2. For the purposes of this Convention:

- "Motorway" means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:

(a) Is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other by a dividing strip not intended for traffic or, exceptionally, by other means;

(b) Does not cross at level with any road, railway or tramway track, or footpath; and

(c) Is specially signposted as a motorway.

- "Express road" means a road reserved for motor traffic accessible only from interchanges or controlled junctions and on which, in particular, stopping and parking are prohibited on the running carriageway(s).

3. For the purposes of this Convention, "airport" means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (annex 14).