

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2011/92/EU on the assessment of the effects of certain public and private
projects on the environment**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2011/92/EU has harmonised the principles for the environmental *impact* assessment of projects by introducing minimum requirements (with regard to the type of projects subject to assessment, the main obligations of developers, the content of the assessment and the participation of the competent authorities and the public), and contributes to a high level of protection of the environment and human health. *Member States are free to lay down more stringent protective measures in accordance with the Treaty.*

- (2) The mid-term review of the sixth Environment Action Programme ¹ and the latest Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the EIA Directive (Directive 85/337/EEC) ², the predecessor to Directive 2011/92/EU, stressed the need to improve the principles of environmental *impact* assessment of projects and adapting the Directive to the policy, legal and technical context, which has evolved considerably.
- (3) It is necessary to amend Directive 2011/92/EU in order to strengthen the quality of the environmental *impact* assessment procedure, *align the procedure with the principles of smart regulation* and enhance coherence and synergies with other Union legislation and policies, as well as strategies and policies developed by Member States in areas of national competence.
- (3a) In order to coordinate and facilitate the assessment procedures for cross-border projects, in particular in order to conduct consultations according to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo-Convention), the Member States concerned may set up, on the basis of equal representation, a joint body.*
- (3b) The mechanisms set out in Regulation (EU) No... establishing the Connecting Europe Facility, Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and Regulation (EU) No ... of the European Parliament and of the Council on the Union guidelines for the development of the Trans-European Transport Network, which are relevant for EU co-financed infrastructure projects, may also facilitate the implementation of the requirements of Directive 2011/92/EU.*

¹ COM(2007) 225.

² COM(2009) 378.

- (3c) *Directive 2011/92/EU should also be revised in a way that ensures that environmental protection is improved, resource efficiency increased and sustainable growth supported in Europe. To this end, the procedures it lays down should be simplified and harmonised.*
- (4) Over the last decade, environmental issues, such as resource efficiency *and sustainability*, biodiversity *protection*, climate change, and [...] risks *of accidents and disasters*, have become more important in policy making. *They* should therefore also constitute *important* elements in assessment and decision-making processes [...].
- (5) In its Communication entitled ‘Roadmap to a Resource Efficient Europe’³, the Commission committed itself to including broader resource efficiency *and sustainability* considerations in the context of the revision of Directive 2011/92/EU.
- (6) The Soil Thematic Strategy ⁴ and the Roadmap to a Resource-Efficient Europe underline the importance of the sustainable use of soil and the need to address the unsustainable increase of settlement areas over time (land take). Furthermore, the final document of the United Nations Conference on Sustainable Development held in Rio de Janeiro on 20-22 June 2012 recognises the economic and social significance of good land management, including soil, and the need for urgent action to reverse land degradation. Public and private projects should therefore consider and limit their impact on land, particularly land take, and soil, including on organic matter, erosion, compaction and sealing, including through appropriate land use plans and policies at national, regional and local levels.
- (7) The United Nations Convention on Biological Diversity ("the Convention"), to which the European Union is party, requires assessment, as far as possible and as appropriate, of the significant adverse effects of projects on biological diversity, which is defined in Article 2 of the Convention, with a view to avoiding or minimising such effects. This prior assessment of impacts should contribute to attaining the Union headline target adopted on 2010 ⁵ of halting biodiversity loss and the degradation of ecosystem services by 2020 and restoring them where feasible.

³ COM(2011) 571.

⁴ COM(2006) 231.

⁵ European Council conclusions, March 2010.

- (8) The measures taken to avoid, **prevent**, reduce and, if possible, offset significant adverse effects on the environment, **in particular on species and habitats protected under Council Directive 92/43/EEC⁶ and Directive 2009/147/EC of the European Parliament and of the Council⁷**, should contribute to avoiding any deterioration in the quality of the environment and any net loss of biodiversity, in accordance with the Union's commitments in the context of the Convention and the objectives and actions of the Union Biodiversity Strategy up to 2020⁸.
- (8a) **With a view to ensure high level of protection of marine environment, especially species and habitats, environmental impact assessment and screening procedures for projects in the marine environment should take into account the characteristics of the projects with particular regard to technologies used (e.g. seismic surveys using active sonars). For this purpose the requirements of Directive 2013/30/EU of the European Parliament and of the Council⁹ may also facilitate the implementation of the requirements of this Directive.**
- (9) Climate change will continue to cause damage to the environment and compromise economic development. **In this regard, it is appropriate to assess the impact of projects on climate (e.g. greenhouse gas emissions) and their vulnerability to climate change [...].**

⁶ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna, OJ L 206, 22.7.1992, p. 7.

⁷ Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds, OJ L 20, 26.1.2010, p. 7.

⁸ COM(2011) 244.

⁹ Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations, OJ L 178, 28.6.2013, p. 66.

(10) Following the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on a Community approach on the prevention of natural and man-made disasters ¹⁰, in its conclusions of 30 November 2009, the Council of the EU invited the Commission to ensure that the implementation review and further development of EU initiatives take into consideration disaster risk prevention and management concerns and the United Nations Hyogo Framework for Action Programme (2005-2015), which stresses the need to put in place procedures for assessment of the disaster risk implications of major infrastructure projects.

(10a) To ensure a high level of protection of the environment, precautionary actions need to be taken for certain projects which because of their vulnerability to major accidents and/or natural disasters (e.g. flooding, sea level rise, earthquakes) are likely to have significant adverse effects on the environment. For such projects, it is important to consider the vulnerability (exposure and resilience) of these projects to major accidents and/or disasters, the risk of these occurring and the implications for the likelihood of significant adverse effects on the environment. To avoid duplications, relevant information available and obtained through risk assessments carried out pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and the Council ¹¹ and Council Directive 2009/71/EURATOM ¹² or relevant assessments carried out pursuant to national legislation may be used provided that the requirements of this Directive are met.

¹⁰ COM(2009) 82.

¹¹ *Directive 2012/18/EU of the European Parliament and the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, OJ L 197, 24.7.2012, p. 1.*

¹² *Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations, OJ L 172, 2.7.2009, p. 18.*

- (11) ***For the*** protection and promotion of cultural heritage ***comprising urban historical sites*** and landscapes, which are an integral part of the cultural diversity that the Union is committed to respect and promote in accordance with Article 167(4) of the Treaty on the Functioning of the European Union, ***the*** definitions and principles developed in relevant Council of Europe Conventions, in particular the Convention for the Protection of the Architectural Heritage of Europe, ***the European Convention for the Protection of the Archeological Heritage***, the European Landscape Convention, the Framework Convention on the Value of Cultural Heritage for Society ***can be useful. Addressing the visual impacts of projects, namely the change in the appearance or view of the built or natural landscape and urban areas, in environmental impact assessments, is important to better preserve historical and cultural heritage and the landscape.***
- (12) When applying Directive 2011/92/EU, it is necessary to ensure [...] smart, sustainable and inclusive growth, in line with the objectives set out in the Commission's Communication entitled 'Europe 2020 – A strategy for smart, sustainable and inclusive growth'¹³.
- (12a) With a view to strengthening public access and transparency, timely environmental information with regard to the implementation of this Directive should also be accessible in electronic format. Member States should therefore establish at least a central portal or points of access, at the appropriate administrative level, that allow the public to access that information easily and effectively.***
- (12b) Experience has shown that in cases of projects, or parts of projects, serving defence purposes, including projects related to activities by allied forces on the territory of Member States in accordance with international obligations, the application of the provisions of Directive 2011/92/EU may result in the disclosure of relevant confidential information which would undermine defence purposes. Provision should therefore be made to authorise Member States not to apply that Directive in appropriate cases.***

¹³ COM(2010) 2020.

(13) Experience has shown that, *as regards projects having as their sole purpose the response given to* cases of civil emergency, compliance with the provisions of Directive 2011/92/EU may have adverse effects *inter alia on the environment*, and provision should therefore be made to authorise Member States not to apply that Directive in appropriate cases.

(13a) Member States have several options for implementing the Directive relating to the integration of environmental impact assessments into national procedures. Accordingly, the elements of these procedures may vary. Due to this fact, the reasoned conclusion by which the competent authority finalizes its examination of the environmental aspects of the project may be part of an integrated development consent procedure or may be incorporated in another binding decision required to comply with the aims of this Directive.

(13b) In order to ensure a high level of protection of the environment and human health, the environmental impact assessment and screening procedures should take account of the impacts of the whole project, including, where relevant, its subsurface and underground, during the construction, operational and, where relevant, demolition phases.

(13c) With a view to reach a complete assessment of the direct and indirect effects of the project on the environment, the competent authority should undertake an analysis by examining the substance of the information provided by the developer and received through consultations as well as a consideration of the supplementary information, where appropriate.

(13d) In cases of projects adopted by a specific act of national legislation, Member States should ensure that the objectives of this Directive related to public consultation are achieved through the legislative process.

- (13e) The objectivity of the competent authorities should be ensured. Conflicts of interest may inter alia be prevented by a functional separation of the competent authority from the developer. In cases where the competent authority is also the developer, Member States should at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions of those authorities performing the duties arising from Directive 2011/92/EU.*
- (14) The information which the developer is required to supply in order to enable the competent authority to determine whether projects, ***their changes or extensions***, listed in Annex II of Directive 2011/92/EU should be subject to an environmental ***impact*** assessment (screening procedure) should be specified ***focussing on the key aspects that allow the competent authority to make its determination. The determination should be made available to the public.***
- (14a) The screening procedure should ensure that an environmental impact assessment is only required for projects likely to have significant effects on the environment.*
- (15) The selection criteria laid down in Annex III of Directive 2011/92/EU, which are taken into account by the Member States in order to determine which projects should be subject to assessment on the basis of their significant [...] effects on the environment, should be adapted and clarified [...]. ***For instance, experience has shown that*** projects using or affecting valuable resources, projects proposed for environmentally sensitive locations, or projects with potentially hazardous or irreversible effects ***are often likely to have significant effects on the environment.***
- (16) When determining whether significant [...] effects ***on the environment*** are likely to be caused ***by the project***, the competent authorities should identify the most relevant criteria to be considered and ***take account of*** information that may be available following other assessments required by Union legislation in order to apply the screening procedure effectively ***and transparently***. In this regard, it is appropriate to specify the content of the screening ***determination***, in particular where no environmental ***impact*** assessment is required.

- (16a) *Moreover, taking into account spontaneous comments that might have been received from other sources, such as members of the public or public authorities, even though no formal consultation is required at the screening stage, constitutes a good administrative practice.*
- (17) *In order to improve the quality of the assessment, to simplify the procedures and to streamline the decision-making process, [...] the competent authority should, where requested by the developer, issue an opinion on the scope and level of detail of the environmental information to be submitted in the form of an environmental impact assessment report (scoping). [...]*
- (18) The environmental **impact assessment** report of a project to be provided by the developer should include **a description** of reasonable alternatives **studied by the developer which are** relevant to the [...] project, including **as appropriate an outline of** the likely evolution of the **current** state of the environment without implementation of the project (baseline scenario), as a means to improve quality of the assessment process and to allow integrating environmental considerations at an early stage in the project's design.
- (19) [...] Data and information included in the environmental **impact assessment** reports, in accordance with Annex IV of Directive 2011/92/EU **should be complete** and of sufficiently high quality. With a view to avoiding duplication of the assessment, **the results of other assessments under national or Union legislation such as Directive 2001/42/EC of the European Parliament and the Council¹⁴ or Council Directive 2009/71/EURATOM should, where relevant and available, be taken into account.**
- (19a) *Experts used to prepare environmental impact assessment reports should be qualified and competent. Sufficient expertise in the relevant field of the project concerned is required for the purpose of its examination by the competent authorities in order to ensure a high level of quality and the completeness of the provided information.*

¹⁴

Directive 2001/42/EC of the European Parliament and the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7.2001, p.30.

- (20) With a view to ensuring transparency and accountability, the competent authority should be required to substantiate its decision to grant development consent in respect of a project, indicating that it has taken into consideration the results of the consultations carried out and the relevant information gathered.
- (21) [...] *Member States should* ensure that [...] mitigation and compensation measures *are implemented and appropriate procedures regarding the monitoring of significant adverse effects on the environment resulting from the construction and operation of the project are determined, inter alia, in order to identify unforeseen significant adverse effects to be able to undertake appropriate remedial action*. Such monitoring should not duplicate or add to monitoring required pursuant to other Union *and national* legislation.
- (22) *Member States should ensure that* the various steps of the environmental *impact* assessment of projects *are carried out within a reasonable period of time, depending on the nature, complexity, location and size of the project*, in order to stimulate more efficient decision-making and increase legal certainty [...]. Such time-frames should under no circumstances compromise the high standards for the protection of the environment, particularly those resulting from other Union environmental legislation, and effective public participation and access to justice.

(23) In order *to improve the effectiveness* of the assessment, reduce administrative complexity and increase economic efficiency, where the obligation to carry out [...] assessments *related to environmental issues* arises simultaneously from this Directive and [...] Directive 2009/147/EC *of the European Parliament and of the Council* [...] and/or Council Directive 92/43/EEC, Member States should *ensure that* coordinated *and/or* joint procedures fulfilling the requirements of *these* Union *legislative texts* are provided, *where appropriate and taking into account their specific organisational characteristics. Where the obligation to carry out assessments related to environmental issues arises simultaneously from this Directive and from other Union legislation, such as Directive 2001/42/EC of the European Parliament and the Council, Directive 2000/60/EC of the European Parliament and of the Council*¹⁵, *Directive 2010/75/EU of the European Parliament and of the Council*¹⁶, *Directive 2008/98/EC of the European Parliament and of the Council*¹⁷ *and Directive 2012/18/EU of the European Parliament and of the Council*, Member States *may* provide for coordinated *and/or* joint procedures fulfilling the requirements of the relevant Union legislation. *When coordinated or joint procedures are set up, Member States should designate an authority responsible for performing the corresponding duties. Taking into account institutional structures, Member States may, where they deem it necessary, designate more than one authority.*

(23a) *Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. Member States are free to decide the kind or form of those penalties. The penalties thus provided for should be effective, proportionate and dissuasive.*

¹⁵ *Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1.*

¹⁶ *Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), OJ L 334, 17.12.2010, p. 17.*

¹⁷ *Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste, OJ L 312, 22.11.2008, p. 3.*

(24) *In compliance with the principles of legal certainty and proportionality, in order to ensure that the transition from the existing regime laid down by Directive 2011/92/EU to the new regime that will result from this Directive is as smooth as possible, it is appropriate to lay down transitional measures. Those measures should ensure that the regulatory environment in relation to the environmental impact assessment is not altered, with regard to a particular developer, when any procedural steps have already been initiated under the existing regime and the development consent or another binding decision required to comply with the aims of this Directive has not yet been granted to the project. Accordingly, the related provisions of Directive 2011/92/EU prior to its amendment by this Directive should apply to projects for which the screening procedure has been initiated, the scoping procedure has been initiated (where scoping was requested by the developer or required by the competent authority) or the environmental impact assessment report is submitted before the time-limit for transposition [...].*

(25) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

[...]

(28) Since the objective of this Directive, namely to ensure a high level of protection of the environment and of human health, through the establishment of minimum requirements for the environmental *impact* assessment of projects, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scope, seriousness and transboundary nature of the environmental issues to be addressed, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(29) Directive 2011/92/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2011/92/EU is amended as follows:

(1) Article 1 is amended as follows:

[...]

(b) in paragraph 2, the following definition is added:

'(g) "environmental impact assessment" [...] ***means the process consisting of:***

(i) the preparation of an environmental impact assessment report by the developer as referred to in Article 5(1) and 5(2);

(ii) the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;

(iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3) and any relevant information received through the consultations;

(iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and

(v) *the integration of the reasoned conclusion into any of the decisions referred to in Article 8a.;*

(c) *paragraph 3 is replaced by the following:*

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, *or parts of projects*, having as their sole purpose [...] defence or *projects having as their sole purpose* the response to civil emergencies, if they deem that such application would have an adverse effect on those purposes.;

(d) *paragraph 4 is deleted.;*

(2) [...] Article 2 *is amended as follows:*

(a) *in paragraphs 1 and 2, the term "consent" is replaced by "development consent";*

(b) paragraph 3 is replaced by the following:

3. *For projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Council Directive 92/43/EEC and/or Directive 2009/147/EC of the European Parliament and the Council, Member States shall ensure that coordinated and/or joint procedures fulfilling the requirements of the relevant Union legislation listed above are provided, where appropriate.*

For projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union legislation other than the Directives listed above, Member States may provide for coordinated and/or joint procedures.

Under the coordinated procedure, *Member States shall endeavour to coordinate the various individual assessments of environmental impacts of a particular project* required by the *relevant* Union legislation *by designating an authority for this purpose*, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

Under the joint procedure, *Member States shall endeavour to provide for a single assessment of environmental impacts of a particular project, required by the relevant Union legislation*, without prejudice to any provisions to the contrary contained in other relevant Union legislation.

[...]

The Commission shall provide guidance regarding the setting up of any coordinated or joint procedures for projects simultaneously subject to assessments under this Directive and Directives 92/43/EEC, 2009/147/EC, 2010/75/EU and 2000/60/EC.';

(c) *in paragraph 4, the first subparagraph is replaced by the following:*

'4. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project from the provisions laid down in this Directive, where the application of these provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met.';

(d) *the following paragraph is added:*

'5. Without prejudice to Article 7, in cases where a project is adopted by a specific act of national legislation, Member States may exempt that project from the provisions related to public consultation laid down in this Directive, provided the objectives of this Directive are met.

Where this exemption is used, Member States shall inform the Commission of any application which they have made of this provision every two years from the date specified in Article 2(1) of Directive XXX [OPOCE please introduce the n° of this Directive].';

(3) Article 3 is replaced by the following:

'Article 3

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case [...], the direct and indirect significant effects of a project on the following factors:

- (a) population *and* human health;
- (aa) biodiversity, 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 **;
- (b) land, soil, water, air and climate [...];
- (c) material assets, cultural heritage and the landscape;
- (d) the interaction between the factors referred to in points (a), (aa), (b) and (c).

[...]

* OJ L 206, 22.7.1992, p.7.

** OJ L 20, 26.1.2010, p.7. '

The effects on these factors include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

(4) Article 4 is amended as follows:

(a) paragraphs 3 and 4 are replaced by the following:

3. *When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. Member States may set thresholds or criteria determining when projects need not undergo either the determination under paragraphs 4 and 5 nor an environmental impact assessment, and/or thresholds or criteria determining when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.*
4. *Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment arising from other Union legislation. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.';*

[...]

(b) The following paragraphs 5 and 6 are added:

'5. The competent authority shall make its **determination**, on the basis of the information provided by the developer **in accordance with paragraph 4** taking into account, where relevant, the results of [...] preliminary verifications or assessments of the effects on the environment arising from other Union legislation. The **determination** shall:

[...]

(b) **where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III, or**

(c) **where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment [...];**

(d) be made available to the public.

6. **Member States shall ensure that** the competent authority **makes** its **determination as soon as possible and** within **a period of time not exceeding 90 days**, provided that the developer has submitted all the requisite information **pursuant to paragraph 4. In exceptional cases, for instance** depending on the nature, complexity, location **or** size of the [...] project, the competent authority may extend that deadline [...]; in that case, the competent authority shall inform the developer **in writing** of the reasons justifying the extension and of the date when its determination is expected.

[...];

- (5) In Article 5, paragraphs 1, 2 and 3 are replaced by the following:

- '1. Where an environmental impact assessment **is required**, the developer shall prepare **and submit** an environmental **impact assessment** report. **The information to be provided by the developer shall include at least:**
- (a) **a description of the project comprising information on the site, design, size and other relevant features of the project;**
 - (b) **a description of the likely significant effects of the project on the environment;**
 - (c) **a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;**
 - (d) **a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the environmental effects;**

(e) a non-technical summary of the information referred to in points (a) to (d);

and any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected.

The environmental *impact assessment* report shall be based on *an opinion* pursuant to paragraph 2 of this Article, *where such an opinion was issued*, and include the information that may reasonably be required for making *a reasoned conclusion* on the *significant effects of the project on the environment*, taking into account current knowledge and methods of assessment [...]. *The developer shall, with a view to avoiding duplication of assessment, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report.*

2. *Where requested by the developer, the competent authority, taking into account the information provided by the developer in particular on the specific characteristics of the project (including its location and technical capacity) and its likely impact on the environment, shall 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 in accordance with paragraph 1 of this Article. The competent authority shall consult the authorities referred to in Article 6(1) before it gives its opinion.*

Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.

[...]

3. To **ensure** the completeness and [...] quality of the environmental **impact assessment report** [...]:

(a) the developer shall ensure that the environmental **impact assessment** report is prepared by [...] competent experts; **and**

(b) the competent authority shall ensure that **it has, or accesses as necessary, sufficient expertise to examine the** environmental **impact assessment** report;

(c) **where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to making the reasoned conclusion on the significant effects of the project on the environment.**

[...];

(6) Article 6 is amended as follows:

(-a) paragraph 1 is replaced by the following:

'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 or local and regional competences are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent, taking into account, where appropriate, the cases referred to in Article 8a(3). To that end, Member States shall designate the authorities to be consulted, either in general 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.'

(-aa) in paragraph 2, the introductory sentence is replaced by the following:

'2. In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed electronically and by public notices or by other appropriate means of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:';

(-ab) paragraph 5 is replaced by the following:

'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 inquiry) shall be determined by the Member States. Member States shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.';

(a) paragraph 6 is replaced by the following:

'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.';

(b) the following paragraph 7 is added:

'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 [...].';

(7) [...] Article 7 **is amended as follows:**

(a) **in paragraph 4, the following sentence is added:**

'Any such consultations may be conducted through an appropriate joint body.'

(b) paragraph 5 is replaced by the following:

'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), (6) **and (7)**, 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.';

(8) Article 8 is replaced by the following:

'Article 8

1. The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 shall be **duly** taken into **account** in the development consent procedure.';

(8a) The following Article is added after Article 8:

'Article 8a

1. [...] The decision to grant development consent shall **incorporate at least** the following information:
 - (a) **the reasoned conclusion referred to in Article 1(2)(g)(iv);**
 - (b) **any environmental** conditions attached to the decision **as well as** a description of **any features of the project and/or** measures **envisaged** to avoid, **prevent or** reduce and, if possible, offset significant adverse effects **and, where appropriate, monitoring measures.**

[...]
2. **The decision to refuse development consent shall state the main reasons for the refusal.**
3. **In the case of Member States making use of procedures referred in Article 2(2) other than procedures for development consent, the requirements of paragraphs 1 and 2, as appropriate, shall be deemed to be fulfilled when any decision issued in these procedures contains the information referred to in those paragraphs and there are mechanisms in place which enable the fulfillment of the requirements of paragraph 5.**

4. *In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effect on the environment.*

The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the [...] project and the significance of its effects *on the environment*.

Existing monitoring arrangements resulting from other Union *and national* legislation may be used if appropriate *with a view to avoiding duplication of monitoring*.

- 4a. *Member States shall ensure that the competent authority takes any decision referred to in paragraphs 1 to 3 of this Article within a reasonable period of time.*
5. *The competent authority shall be satisfied that the reasoned conclusion referred to in Article 1(2)(g)(iv), or any of the decisions referred to in paragraph 3, is still up to date when taking a decision to grant development consent. To that effect, Member States may set timeframes for the validity of the reasoned conclusion referred to in Article 1(2)(g)(iv) or any of the decisions referred to in paragraph 3.¹*

(9) *In Article 9 [...], paragraph 1 is replaced by the following:*

- '1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform *promptly* the public and the authorities referred to in Article 6(1) thereof, in accordance with the *national* procedures, and shall *ensure that* the following information *is available to the public and to the authorities referred to in Article 6(1), taking into account, where appropriate, the cases referred to in Article 8a(3):*

- (a) the content of the decision and any conditions attached thereto *as referred to in Article 8a(1) and (2)*;
- (b) [...] the main reasons and considerations on which the decision is based, including information about the public participation process. *This also includes the summary of the results of the consultations and the information gathered pursuant to Articles 5, 6 and 7 and how these have been incorporated or otherwise addressed, in particular the comments received from the affected Member State referred to in Article 7.*

[...]

[...];

(9a) The following Article is added after Article 9:

'Article 9a

Member States shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.

Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from the Directive 2011/92/EU.'

(9b) In Article 10, the first paragraph is replaced by the following:

'Without prejudice to Directive 2003/4/EC of the European Parliament and of the Council¹⁸, the provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national laws, regulations and administrative provisions, and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.'

(9c) The following Article is added after Article 10:

'Article 10a

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.'

(10) In Article 12, paragraph 2 is replaced by the following:

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, ***where such data is available***, of:

- (a)** the number of projects referred to in Annexes I and II made subject to an assessment in accordance with Articles 5 to 10;
- (b)** the breakdown of assessments according to the project categories set out in Annexes I and II;

[...]

¹⁸

Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, OJ L 41, 14.2.2003, p. 26.

- (d) the number of projects referred to in Annex II made subject to a determination in accordance with Article 4(2);
- (e) the average duration of the environmental impact assessment process.
- (f) **general estimates on** the average **direct** costs of the environmental impact assessments, **including the impacts from the application of the EIA Directive to SMEs**.¹⁹

[...]

- (12) The Annexes to Directive 2011/92/EU are amended as provided in the Annex to this Directive.

Article 2

- 1. **Without prejudice to Article 3**, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] ¹⁹ at the latest. [...]

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.

- 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.

¹⁹

OJ: Please insert the date: 3 years after the entry into force of this Directive.

Article 3

1. Projects *in respect of* which *the determination referred to in Article 4(2) of Directive 2011/92/EU was initiated* before the date referred to in the first subparagraph of Article 2(1) of this Directive [...] shall be subject to the obligations referred to in *Article 4* of Directive 2011/92/EU *prior to its amendment* by this Directive.

2. *Projects in respect of which*
 - (a) *the procedure regarding the opinion referred to in Article 5(2) of Directive 2011/92/EU was initiated, or*

 - (b) *the information referred to in Article 5(1) of Directive 2011/92/EU was provided**before the date referred to in the first subparagraph of Article 2(1) of this Directive, shall be subject to the obligations referred to in Articles 3 and 5 to 11 of Directive 2011/92/EU prior to its amendment by this Directive.*

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

ANNEX

- (1) The following Annex II.A is inserted:

'ANNEX II.A

INFORMATION REFERRED TO IN ARTICLE 4(4)

(INFORMATION PROVIDED BY THE DEVELOPER ON THE PROJECTS LISTED IN ANNEX II)

1. A description of the project, including in particular:
 - (a) a description of the physical characteristics of the whole project ***and***, where relevant, ***demolition works*** [...];
 - (b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
 2. A description of the aspects of the environment likely to be significantly affected by the [...] project.
 3. A description, ***to the extent available***, of ***any*** likely significant effects of the [...] project on the environment resulting from:
 - (a) the expected residues and emissions and the production of waste, ***where relevant***;
 - (b) the use of natural resources, in particular soil, land, water and biodiversity [...].
- [...]

4a. The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.'

(2) Annexes III and IV are replaced by the following:

'ANNEX III

SELECTION CRITERIA REFERRED TO IN ARTICLE 4(3)

(CRITERIA TO DETERMINE WHETHER THE PROJECTS LISTED IN ANNEX II SHOULD BE SUBJECT TO AN ENVIRONMENTAL IMPACT ASSESSMENT)

1. CHARACTERISTICS OF PROJECTS

The characteristics of projects must be considered with particular regard to:

- (a) the size *and design* of the *whole* project [...];
- (b) cumulation with other *existing and/or approved* projects [...];
- (c) the use of natural resources, in particular land, soil, water and biodiversity [...];
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) *the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;*

[...]

- (i) the risks to human health (e.g. due to water contamination or air pollution)

[...].

2. LOCATION OF PROJECTS

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to:

- (a) the existing and *approved* land use [...];
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area *and its underground*;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones *and marine environment*;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks [...];
 - (v) areas classified or protected under Member States' legislation; Natura 2000 areas designated by Member States pursuant to Directive 2009/147/EEC [...] and [...] Directive 92/43/EEC; [...]
 - (vi) 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 *it is considered that there is* such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

3. ***TYPE AND CHARACTERISTICS OF THE POTENTIAL IMPACT***

The ***likely*** significant effects of projects ***on the environment*** must be considered in relation to criteria set out under 1 and 2 above, with [...] regard to ***the impact of the project on the factors specified in Article 3 taking into account***:

- (a) the magnitude and spatial extent of the impact (e.g. 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 ***expected onset***, duration, frequency and reversibility of the impact;

[...]

- (h) the cumulation of impacts with the impacts of other ***existing and/or approved*** projects [...];

[...]

- (l) the possibility of ***effectively*** reducing impacts.

ANNEX IV

INFORMATION REFERRED TO IN ARTICLE 5(1)

(INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT)

1. Description of the project, including in particular:

(-a) a description of the location of the project;

(a) a description of the physical characteristics of the whole project, including, where relevant, ***required demolition works***, and the [...] land-use requirements during the construction and operational phases;

(b) a description of the main characteristics of ***the operational phase (in particular any production process)***, for instance, ***energy demand and energy used***, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) 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.) ***and quantities and types of waste produced during the construction and operation phases.***

2. A description of the ***reasonable alternatives*** (e.g. in terms of project design, ***technology, location***, size and scale) ***studied by the developer, which are relevant to the proposed project and its specific characteristics***, and an indication of the main reasons for ***selecting the chosen option, including a comparison of*** the environmental effects.

3. A description of the relevant aspects of the **current** state of the environment (**baseline scenario**) and **an outline of** the likely evolution thereof without implementation of the project **as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge**. [...]
4. A description of the **factors specified in Article 3** likely to be significantly affected by the [...] project: [...] population, human health, [...] biodiversity (**e.g. fauna and flora**), land (**e.g. land take**), soil (**e.g. organic matter, erosion, compaction, sealing**), water (**e.g. hydromorphological changes**, quantity and quality), air, [...] climate (**e.g. greenhouse gas emissions**, [...] impacts relevant to adaptation [...]), material assets, cultural heritage, including architectural and archaeological **aspects, and** landscape.
5. A description of the likely significant effects of the [...] project on the environment resulting from, inter alia:
 - (a) the **construction and** existence of the project, **including, where relevant, demolition works**;
 - (b) the use of natural resources, in particular land, soil, water **and** biodiversity [...], considering as far **as** possible the **sustainable** availability of these resources [...];
 - (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the **disposal and recovery** of waste;
 - (d) the risks to human health, cultural heritage or the environment (e.g. due to accidents or disasters);
 - (e) the cumulation of effects with other **existing and/or approved** projects [...], **taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources**;

- (f) the ***impact of the project on climate (e.g. the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;***
- (g) the technologies and the substances used.

[...]

The description of the likely significant effects ***on the factors referred to in Article 3*** should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-***term***, medium-***term*** and long-term, permanent and temporary, positive and negative 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.

6. A description of the forecasting methods ***or evidence***, used to ***identify and*** assess the ***significant*** effects on the environment, ***including details of difficulties (e.g. technical deficiencies or lack of knowledge) encountered compiling the required information and*** the main uncertainties involved [...].
7. A description of the measures envisaged to ***avoid***, prevent, reduce ***or, if*** possible, offset any ***identified*** significant adverse effects on the environment [...] and, where appropriate, of any proposed monitoring arrangements (***e.g. the preparation of a post-project analysis***). This description should explain the extent, to which significant adverse effects ***on the environment*** are ***avoided, prevented, reduced or offset***, and should cover both the construction and operational phases.

8. *A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/EURATOM or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.*
 9. A non-technical summary of the information provided under the above headings.
 10. *A reference list detailing the sources used for the descriptions and assessments included in the report [...].*
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