



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.3.2008
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2008/0052 (CNS)

Proposal for a

COUNCIL DECISION

on the approval on behalf of the European Community of the Protocol on Strategic Environmental Assessment to the 1991 UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context

(presented by the Commission)

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EXPLANATORY MEMORANDUM

The 1991 UN/ECE Convention on transboundary Environmental Impact Assessment (the Espoo Convention), building on existing EIA law, established procedures for consulting Parties likely to be affected by transboundary environmental impacts of proposed projects. The Convention entered into force in 1997. The European Community signed it on 26th February 1991 and ratified it on 24th June 1997. Its main provisions are implemented by Directive 97/11/EC.

The ability to avoid adverse environmental effects at project level may be constrained by decisions already taken in plans or policies. For this reason, it is widely accepted that a similar process of assessment should be carried out at those levels. This is generally known as strategic environmental assessment (SEA). With this in mind, the Espoo Convention already required the Parties, '*to the extent appropriate, [to] endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.*'

EU legislation on SEA is contained in Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (the 'SEA Directive'). The SEA Directive applies to a broad category of plans and programmes, and sets out detailed requirements for assessing and reporting on their environmental effects. It includes a provision on transboundary effects inspired by the Espoo Convention.

The fifth Ministerial Conference "Environment for Europe" held in Kiev, Ukraine in May 2003 adopted the Protocol on Strategic Environmental Assessment to the 1991 UN/ECE Espoo Convention on Environmental Impact Assessment in Transboundary Context (SEA Protocol). The Commission, on behalf of the European Community, signed the SEA Protocol on 21st May 2003.

The Protocol's objectives are set out in Article 1. They are to provide for a high level of protection of the environment, including health, and to ensure that these concerns are integrated into measures and instruments designed to further sustainable development.

The Protocol's substantive obligations fall into three groups.

First, there are general provisions on assistance and guidance to the public, recognition of and support to relevant associations, promotion of the Protocol's objectives internationally, and the rights of persons exercising their rights under the Protocol not to be penalized or discriminated against on grounds of citizenship, etc.

Second, there are provisions dealing with the environmental assessment of certain plans and programmes. These are divided into two groups; one (Article 4(2)) for which assessment is mandatory except in certain limited cases, and one (Article 4(3)) which requires assessment when Parties consider they are likely to have significant effects. There are detailed provisions on the different stages of the environmental assessment.

Third, the Protocol builds on the provision referring to policies in the Espoo Convention by establishing requirements on policies and legislation. Parties are to '*endeavour to ensure that environmental, including health, concerns are considered and integrated to the extent appropriate*', in preparing policies and legislation that are likely to have significant effects on the environment, including health. In so doing, they must consider '*the appropriate principles and elements*' of the Protocol. They must determine, where appropriate, the practical

arrangements for so doing and report to the Meeting of Parties on their application of these requirements. The European Community, in conformity with its Strategy on Sustainable Development and Better Regulation, intends to implement Article 13 of the Protocol on Strategic Environmental Assessment to the Espoo Convention through the impact assessment procedures set out in the Communications on Impact Assessment¹, which address in a balanced manner the economic, social and environmental components of sustainable development.

References throughout the Protocol to ‘the environment’ or ‘environmental’ are always qualified by the phrase *‘including health’*. Human health is already included in the elements of the environment on which information must be provided in the environmental report required under the SEA Directive. The strengthening of the references in the Protocol is intended to give added weight to an aspect of the environment which is often disregarded in current EIAs. It is not intended to imply that a medical assessment should be carried out. This is clear from the definition of *‘environmental, including health, effect’* which covers essentially the same environmental factors as are to be covered in environmental reports under the Directive.

Several aspects of the EU dimension deserve consideration. The EC and the Member States have been among the leaders in developing the concept and practice of SEA and they should confirm their support by ratifying the Protocol.

Upon ratification of the Protocol the Community will be bound by its requirements to the extent that its activities fall within the scope of the Protocol. Ratification by the EC and the Member States would ensure a sufficient number of ratifications for the Protocol to come into force (16 are needed).

In view of the above considerations, it is appropriate for the Community to approve (see article 1) the Protocol on Strategic Environmental Assessment to the Espoo Convention on environmental impact assessment in a transboundary context.

¹ Communication on Impact Assessment (COM (2002) 276 final; Communication "Better regulation for Growth and Jobs in the European Union" COM(2005)97 of 16 March 2005; Commission Guidelines on Impact Assessment as updated on 15 March 2006; "Better Regulation and enhanced Impact Assessment" (28 June 2007).

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular article 175(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 Commission²,

Having regard to the opinion of the European Parliament³,

Whereas:

- (1) On 21 May 2003, on the occasion of the fifth Ministerial Conference “Environment for Europe” held in Kiev, Ukraine, 21-23 May 2003, the Commission, on behalf of the European Community⁴, signed the Protocol on Strategic Environmental Assessment to the 1991 UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context.
- (2) The Protocol helps to protect the environment by providing for the assessment of the likely significant environmental, including health, effects of plans and programmes and, to the extent appropriate, policies and legislation, thereby integrating environmental, including health, concerns into measures and instruments designed to further sustainable development.
- (3) The Protocol on Strategic Environmental Assessment to the 1991 UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context should be approved by the European Community,

² OJ C [...], [...], p.[...].

³ OJ C [...], [...], p.[...].

⁴ Council Decision of 19 May 2003

HAS DECIDED AS FOLLOWS:

Article 1

1. The Protocol on Strategic Environmental Assessment (the SEA Protocol) to the Espoo Convention on Environmental Impact Assessment in a Transboundary Context, is hereby approved on behalf of the European Community.
2. The text of the SEA Protocol is attached to this Decision.

Article 2

1. The President of the Council is hereby authorised to designate the person(s) empowered to deposit the instrument of approval of the SEA Protocol with the Secretary-General of the United Nations, acting in his capacity as Depositary, in accordance with Article 22 of the Protocol.
2. At the same time, the designated person(s) shall deposit the declaration of competence set out in the Annex to this Decision, as required by Article 23(5) of the Protocol.

Done at Brussels,

*For the Council
The President*

ANNEX

Declaration by the European Community in accordance with Article 23(5), of the Protocol on Strategic Environmental Assessment

The European Community declares that, in accordance with the Treaty establishing the European Community, and in particular Article 175(1) thereof, it is competent to enter into international agreements, and to implement the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems.

Moreover the European Community declares that it has already adopted legal instruments, including Directive 2001/42/EC of the European Parliament and the Council concerning the assessment of the effects of certain plans and programmes on the environment, binding on its Member States, covering matters governed by this Protocol, and will submit and update, as appropriate, a list of those legal instruments to the Depositary in accordance with Article 23(5) of the Protocol.

The European Community is responsible for the performance of those obligations resulting from the Protocol which are covered by Community law.

The exercise of Community competence is, by its nature, subject to continuous development.