

Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC) (repealed)

Article 1

1 This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2 For the purposes of this Directive:

‘project’ means:

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

‘developer’ means:

the applicant for authorization for a private project or the public authority which initiates a project;

‘development consent’ means:

the decision of the competent authority or authorities which entitles the developer to proceed with the project^{[F1];}

^[F2]‘public’ means:

one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

‘public concerned’ means:

the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); 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.]

3 The competent authority or authorities shall be that or those which the Member States designate as responsible for performing the duties arising from this Directive.

^[F1]4 Member States may decide, on a case-by-case basis if so provided under national law, not to apply this Directive to projects serving national defence purposes, if they deem that such application would have an adverse effect on these purposes.]

5 This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.

Textual Amendments

F1 Substituted by [Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.](#)

F2 Inserted by [Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes](#)

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relating to the environment and amending with regard to public participation and access to justice
Council Directives 85/337/EEC and 96/61/EC.

Article 2

[^{F3}1 Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.]

2 The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

[^{F4}2a Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control⁽¹⁾.]

[^{F3}3 Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.]

In this event, the Member States shall:

- [^{F1}a consider whether another form of assessment would be appropriate;
- b make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the exemption decision and the reasons for granting it;]
- c inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, [^{F3}where applicable], to their own nationals.

The Commission shall immediately forward the documents received to the other Member States.

The Commission shall report annually to the Council on the application of this paragraph.

Textual Amendments

- F1** Substituted by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.
- F3** Substituted by Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.
- F4** Inserted by Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

[^{F3} Article 3

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora;
- soil, water, air, climate and the landscape;

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- material assets and the cultural heritage;
- the interaction between the factors mentioned in the first, second and third indents.]

Textual Amendments

- F3** Substituted by [Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.](#)

[^{F3} Article 4

1 Subject to Article 2 (3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2 Subject to Article 2 (3), for projects listed in Annex II, the Member States shall determine through:

a a case-by-case examination,

or

b thresholds or criteria set by the Member State

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

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.

4 Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.]

Textual Amendments

- F3** Substituted by [Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.](#)

[^{F3} Article 5

1 In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

a the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

b the Member States consider that a developer may reasonably be required to compile this information having regard *inter alia* to current knowledge and methods of assessment.

2 Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6 (1) before it gives its opinion. The fact that the authority has given an opinion under

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this paragraph shall not preclude it from subsequently requiring the developer to submit further information.

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

3 The information to be provided by the developer in accordance with paragraph 1 shall include at least:

- a description of the project comprising information on the site, design and size of the project,
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
- the data required to identify and assess the main effects which the project is likely to have on the environment,
- an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects,
- a non-technical summary of the information mentioned in the previous indents.

4 Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, shall make this information available to the developer.]

Textual Amendments

- F3** Substituted by [Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.](#)

Article 6

[^{F31} Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this 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.]

[^{F12} The public shall be informed, whether by public notices or other appropriate means such as electronic media where available, 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:

- 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, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- d the nature of possible decisions or, where there is one, the draft decision;
- e an indication of the availability of the information gathered pursuant to Article 5;
- f an indication of the times and places where and means by which the relevant information will be made available;

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g details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3 Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

- a any information gathered pursuant to Article 5;
- b in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;
- c in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information⁽²⁾, information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4 The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

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.

6 Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.]

Textual Amendments

- F1** Substituted by [Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.](#)
- F3** Substituted by [Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.](#)

^{F3}Article 7

^{F11} Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, *inter alia*:

- a a description of the project, together with any available information on its possible transboundary impact;
- b information on the nature of the decision which may be taken,

and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

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2 If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), 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 pursuant to Article 6(2) and made available pursuant to Article 6(3)(a) and (b).]

3 The Member States concerned, each insofar as it is concerned, shall also:

- a arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6 (1) and the public concerned in the territory of the Member State likely to be significantly affected; and
- b ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.

4 The Member States concerned shall enter into consultations regarding, *inter alia*, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.

[^{F15} The detailed arrangements for implementing this Article may 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 environmental decision-making procedures referred to in Article 2(2) for the project.]]

Textual Amendments

- F1** Substituted by [Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.](#)
- F3** Substituted by [Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.](#)

[^{F3} Article 8

The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.]

Textual Amendments

- F3** Substituted by [Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.](#)

[^{F3} Article 9

[^{F11} When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

- the content of the decision and any conditions attached thereto,
- having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process,

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— a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.]

[^{F12} 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 in an appropriate manner to the public concerned in their own territory.]]

Textual Amendments

- F1** Substituted by [Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.](#)
- F3** Substituted by [Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.](#)

[^{F3} Article 10

The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national 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.

Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.]

Textual Amendments

- F3** Substituted by [Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.](#)

[^{F2} Article 10a

Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

- (a) having a sufficient interest, or alternatively,
- (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

have access to a review procedure before a court of law or another independent and impartial 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.

Member States shall determine at what stage the decisions, acts or omissions may be challenged.

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What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

In order to further the effectiveness of the provisions of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.]

Textual Amendments

- F2** Inserted by [Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC](#).

Article 11

1 The Member States and the Commission shall exchange information on the experience gained in applying this Directive.

[^{F3}2 In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4 (2).]

3 Five years after notification of this Directive, the Commission shall send the European Parliament and the Council a report on its application and effectiveness. The report shall be based on the aforementioned exchange of information.

4 On the basis of this exchange of information, the Commission shall submit to the Council additional proposals, should this be necessary, with a view to this Directive's being applied in a sufficiently coordinated manner.

Textual Amendments

- F3** Substituted by [Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment](#).

Article 12

1 Member States shall take the measures necessary to comply with this Directive within three years of its notification⁽⁹⁾.

2 Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

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^{F5}Article 13

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Textual Amendments

- F5** Deleted by [Council Directive 97/11/EC](#) of 3 March 1997 amending [Directive 85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment.

Article 14

This Directive is addressed to the Member States.

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- (1) [^{F4}OJ No L 257, 10.10.1996, p. 26.]
- (2) [^{F1}OJ L 41, 14.2.2003, p. 26.]
- (3) This Directive was notified to the Member States on 3 July 1985.

Textual Amendments

- F1** Substituted by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.
- F4** Inserted by Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.