CEEP OPINION

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CEEP position on the proposal for a directive amending Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment (COM 2012/628)

Executive Summary:
CEEP fears that the proposed changes to the eia-directive will lead to more administrative burden for both authorities and operators rather than streamlining and improving the environmental impact assessments.
The planned changes to the screening procedure turn the screening into a small environmental impact assessment on its own, which does not correspond to its original purpose, that is to distinguish in a simple manner between projects having severe environmental impacts from those having not.
CEEP considers that the additional burden caused by the assessment of reasonable alternatives and by the obligatory involvement of external expertise is not necessary nor proportionate to improve the quality of environmental impact assessments.
CEEP asks for a clarification of the application of the eia-directive on the exploitation of unconventional fossil fuel resources.
In order to ensure legal security the new directive should only apply to new projects.

Preliminary Remarks:

Public Enterprises and enterprises providing services of general interest are affected by the European rules on environmental impact assessments both as developers and authorities. They have therefore a strong interest in rules which are clear and simple, but which also leave enough flexibility to find practical solutions on the ground in reasonable timelines. Against this background, CEEP welcomes the intention of the European Commission to simplify the directive and to improve its applicability.

Nonetheless, CEEP has serious doubts that the proposed changes to the EIA-directive will correspond to this intention. The proposal will considerably extend the requirements (number of criteria to take into consideration, number of projects to assess), both developers and authorities have to fulfill before, during and even after the environmental impact assessment. Given scarce resources on both the developers' and the authorities' side, the new administrative burden foreseen in the proposal of the Commission will neither lead to simpler nor to better environmental impact assessments. A real integration with the other EU legislation and regulations (e.g. water, industrial emissions, …) is needed.

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CEEP would like to recall that the environmental impact assessment is a purely procedural instrument which does not improve as such the quality of the environment, but rather serves to provide the authority with the information it needs to make the best decisions. But one should not forget that the generation as well as the assessment of the information represents a high workload for both authorities and operators. Given the - at best - indirect effects of the environmental impact assessment this workload should be kept adequate and proportionate. The directive should also leave room to find solutions which best fit with the situation on the ground.

On the basis of these general considerations CEEP would like to highlight the following points:

Recital 6: Soil and land

CEEP welcomes that many provisions of the proposal upgrade the significance of soil and land as valuable resources. Especially we welcome the clarification in Recital 6 that the impacts on land take, organic matters, soil erosion etc. shall be part of the environmental impact assessment. Nevertheless this should be done in accordance with the existing EU legal provisions in these areas or the current official discussions for setting new thematic framework.

Article 1 IIa: Application to demolition works

CEEP is worried about the fact that the extension of the application of the directive to demolition works creates new substantial burden for enterprises. This new burden could seriously threaten important environmental objectives, i.e. brownfield regeneration and reuse, because it sets incentives to plan new projects on greenfields, where no demolition works are necessary, rather than on areas already in use.

Article 1 III: Exemption of projects responding to civil emergencies

CEEP appreciates the new flexibility given to member states to exclude projects having as their sole purpose response to civil emergencies.

Article 2 III: Appointment of one authority to facilitate the procedure

CEEP does not see the added-value and necessity of appointing a single centralised authority to facilitate consensus building among the authorities involved. Especially in federalist member states, such a provision adds another layer of complexity and delays without solving any conflict.

Article 3/ Annex IV: Climate change and biodiversity

CEEP doubts that the integration of the global challenges of climate change and biodiversity is appropriate. The effect of a single local project on these global challenges will hardly be measurable. To be able to do so, new complex concepts (complex impact, cumulative effects) will need to be developed and shared by the different stakeholder communities to be fully and efficiently implemented. Some of these concepts are still studied and discussed in the research and development area.

Therefore, the old wording requiring an assessment on flora, fauna and climate seems to be more realistic.

Article 4, Annex II.A: Screening

The ambitious extension of the provisions on the screening procedure in article 4 seems to be appropriate to turn the screening procedure into an environmental assessment on its own. This is hardly in line with the rationale of the screening procedure, that is to separate projects having severe environmental impacts from those projects who have not. The screening procedure therefore is an important tool to concentrate scarce resources on those projects which are really relevant. This rationale is put into question if the screening is already so demanding that important administrative and financial resources are bound. The Commission proposal risks turning the screening procedure into an *édition miniature* of the entire EIA.

In order to keep the administrative burden of the screening procedure on a proportionate level CEEP proposes to give developers and authorities the flexibility to decide by mutual consent what kind of information should be provided by the developer. To this end, the parameter in Annex II.A should be indicative and not obligatory. To the same end, the authority should have the possibility based on its knowledge of the situation on the ground to exclude a priori non-relevant parameter from the assessment.

The screening procedure could also lead to new obligation for Member States: if the result of the screening procedure is that no EIA is necessary, the decision must include "a description of the measures envisaged avoiding, preventing and reducing any significant effects on the environment". MS should responsibly consider environmental effect even outside the scope of the EIA directive.

CEEP welcomes the introduction of a time-frame for the adoption of the screening decision, but considers a maximum period of up to six months as too long and therefore not appropriate. Once the competent authority has all relevant information at its disposal it should regularly be able to make a decision within 2 months and 4 months in very complex cases respectively.

Finally, CEEP wonders whether simplified provisions could be foreseen for projects and installations which already exist. Firstly, these installations usually have a permit, which means that the authority has already a large share of the information it needs. Secondly, projects concerning existing installations of concern serve to improve the environmental performance of these installations. Both factors justify a lighter screening procedure.

Article 5: Quality of the EIA

CEEP seriously doubts that the new requirement of an assessment of reasonable alternatives is adequate and proportionate. We may remind of the fact that even the Commission expects additional costs for the developer of 15 to 20 % through this single measure alone. Therefore, CEEP asks European Parliament and Council to stick to the wording of the directive 2011/92 currently in force which already asks for "an outline of the main alternatives studied by the developer".

Furthermore, CEEP rejects the obligatory involvement of accredited and technically competent experts. Instead, it should be left to the discretion of the developer and the authority to assess whether they need external expertise and how this expertise can be documented. There are already in most EU countries professionals with the technical competences to undertake the work and professional bodies working in developing competences, harmonizing the practices, with Ethic charts. Some countries have also developed systems for expert certification/ qualification.

An obligation to involve external experts neglects the fact that both developers and authorities can hold expert competence for those kinds of projects they regularly pursue.

Article 5/ Annex IV: Baseline scenario

The requirements concerning the environmental report should be realistic and clearly defined. An obligation to develop long-term scenarios on the development of biodiversity and climate in case of non-implementation and implementation of the project, as suggested by Annex IV, will ask too much of every developer and is therefore not practicable. CEEP seriously doubts that the administrative burden linked with the development of a baseline scenario to be integrated in the environmental report is adequate and proportionate.

Article 8: A posteriori monitoring of projects with potential negative effects

The provisions on the monitoring of potentially adverse environmental projects after the conclusion of the environmental assessment procedure go beyond the scope of the EIA-directive. Monitoring obligations in the EIA-directive would create new inconsistencies and overlaps with similar obligations in other legal acts (e.g. IED and its monitoring provisions for soil and groundwater resources). Therefore, if such monitoring of projects is needed, both the imposition of conditions as well as their monitoring should be part of the permit procedure. The EIA-directive should stick to the identification of such need, but not replace or interfere with the permit procedure.

Annex I: exploitation of unconventional gas and oil

Given the risks for the environment which are linked with the exploitation of unconventional gas and oil-reserves CEEP deems adequate and proportionate to integrate a clear obligation to foresee an environmental impact assessment before issuing permits for these kinds of projects in the directive. In order to adapt the existing point 14 of Annex I to the specific conditions of unconventional gas and oil (cf. recent scientific studies published by EC and national authorities), we propose not to apply the threshold of 500 tons per day and 500.000 cubic metre per day respectively on the extraction of non-conventional oil and gas. The criteria should be adapted to the substance / resource to explore and exploit.

Furthermore, every introduction of substances classified on the basis of regulation 1272/2008 should be subject to an obligatory screening and therefore be integrated in Annex II. Finally, it should be made clear in the directive that article 10 does not hamper the disclosure of these kind of substances.

Annex II: CCS

In order to avoid misinterpretations character I of Annex II number 10 should cover "CO_2" rather than "CO_2-streams".

Article 3: Application of the amended directive on ongoing procedures

CEEP refuses the intention of the European Commission to apply the new directive not only to new projects but also to projects whose environmental impact assessments have already started. In order to ensure legal security and to limit the administrative burden for both authorities and developers CEEP asks to apply the new directive only to projects for which the request for development consent is introduced after the transposition in national law or expiry of the deadline for transposition.
