

## **DIRECTIVE 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment**

Incorporated and adapted by Ministerial Council Decision 2016/13/MC-EnC of 14 October 2016 on amending the Treaty establishing the Energy Community and adapting and implementing Directive 2001/42/EC of the European Parliament and of the Council.

*The adaptations made by Ministerial Council Decision 2016/13/MC-EnC are highlighted in **bold and blue**.*

### **Article 1** **Objectives**

The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

### **Article 2** **Definitions**

For the purposes of this Directive:

- (a) "plans and programmes" shall mean plans and programmes, including those co-financed by the **European Union, or international financial institutions**, as well as any modifications to them:
- which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and
  - which are required by legislative, regulatory or administrative provisions;
- (b) "environmental assessment" shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;
- (c) "environmental report" shall mean the part of the plan or programme documentation containing the information required in Article 5 and Annex I;
- (d) "The public" shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

### Article 3

#### Scope

1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.
2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,
  - (a) which are prepared for **network energy, or, provided that they contain network-energy related issues, in the fields of** agriculture, forestry, fisheries, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive **2011/92/EU**, or
  - (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.
3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the **Contracting Parties** determine that they are likely to have significant environmental effects.
4. **Contracting Parties** shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.
5. **Contracting Parties** shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose **Contracting Parties** shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive.
6. In the case-by-case examination and in specifying types of plans and programmes in accordance with paragraph 5, the authorities referred to in Article 6(3) shall be consulted.
7. **Contracting Parties** shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made available to the public.
8. The following plans and programmes are not subject to this Directive:
  - plans and programmes the sole purpose of which is to serve national defence or civil emergency,
  - financial or budget plans and programmes.
9. <...><sup>1</sup>

### Article 4

#### General obligations

1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.
2. The requirements of this Directive shall either be integrated into existing procedures in **Contracting**

<sup>1</sup> Not applicable in accordance with Article 2(2) of Decision 2016/13/MC-EnC.

**Parties** for the adoption of plans and programmes or incorporated in procedures established to comply with this Directive.

3. Where plans and programmes form part of a hierarchy, **Contracting Parties** shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, *inter alia*, avoiding duplication of assessment, **Contracting Parties** shall apply Article 5(2) and (3).

### **Article 5**

#### **Environmental report**

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

3. Relevant information available on environmental effects of the plans and programmes and obtained at other levels of decision-making or through other Community legislation may be used for providing the information referred to in Annex I.

4. The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report.

### **Article 6**

#### **Consultations**

1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.

2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.

3. **Contracting Parties** shall designate the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes.

4. **Contracting Parties** shall identify the public for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive,

including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.

5. The detailed arrangements for the information and consultation of the authorities and the public shall be determined by the **Contracting Parties**.

### **Article 7**

#### **Transboundary consultations**

1. Where a **Contracting Party** considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another **Contracting Party**, or where a **Contracting Party** likely to be significantly affected so requests, the **Contracting Party** in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other **Contracting Party as well as to the Secretariat**.

2. Where a **Contracting Party** is sent a copy of a draft plan or programme and an environmental report under paragraph 1, it shall indicate to the other **Contracting Party** whether it wishes to enter into consultations before the adoption of the plan or programme or its submission to the legislative procedure and, if it so indicates, the **parties** concerned shall enter into consultations concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects.

Where such consultations take place, the **parties** concerned shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the **Contracting Party** likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time-frame.

3. Where **Contracting Parties** are required under this Article to enter into consultations, they shall agree, at the beginning of such consultations, on a reasonable timeframe for the duration of the consultations.

### **Article 8**

#### **Decision making**

The environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

### **Article 9**

#### **Information on the decision**

1. **Contracting Parties** shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any **party** consulted under Article 7 are informed and the following items are made available to those so informed:

(a) the plan or programme as adopted;

(b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and,

(c) the measures decided concerning monitoring in accordance with Article 10.

2. The detailed arrangements concerning the information referred to in paragraph 1 shall be determined by the **Contracting Parties**.

### **Article 10**

#### **Monitoring**

1. **Contracting Parties** shall monitor the significant environmental effects of the implementation of plans and programmes in order, *inter alia*, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action.

2. In order to comply with paragraph 1, existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication of monitoring.

### **Article 11**

#### **Relationship with other Community legislation**

1. An environmental assessment carried out under this Directive shall be without prejudice to any requirements under Directive **2011/92/EU** and to any other Community law requirements.

2. For plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other **Energy Community** legislation, **Contracting Parties** may provide for coordinated or joint procedures fulfilling the requirements of the relevant **Energy Community** legislation in order, *inter alia*, to avoid duplication of assessment.

3. For plans and programmes co-financed by **international financial institutions**, the environmental assessment in accordance with this Directive shall be carried out in conformity with the specific provisions in relevant **Energy Community** legislation.

**Article 12****Information, reporting and review**

1. **Contracting Parties** and the **Secretariat** shall exchange information on the experience gained in applying this Directive.
2. **Contracting Parties** shall ensure that environmental reports are of a sufficient quality to meet the requirements of this Directive and shall communicate to the **Secretariat** any measures they take concerning the quality of these reports.
3. <...>
4. <...><sup>2</sup>

**Article 13****Implementation of the Directive**

**1. Contracting Parties shall inform the Energy Community Secretariat of the laws, regulations and administrative provisions brought into force to comply with the relevant provisions of Directive 2001/42/EC in accordance with Article 12 of the Treaty establishing the Energy Community by 1 January 2018.**

**When Contracting Parties adopt those provisions, they shall contain a reference to this Decision and Directive 2001/42/EC or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Contracting Parties.**

**2. Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision and Directive 2001/42/EC.**

**Contracting Parties shall implement the provisions adopted according to this Decision by 31 March 2018.<sup>3</sup>**

3. The obligation referred to in Article 4(1) shall apply to the plans and programmes of which the first formal preparatory act is subsequent to the date referred to in paragraph 1. Plans and programmes of which the first formal preparatory act is before that date and which are adopted or submitted to the legislative procedure more than 24 months thereafter, shall be made subject to the obligation referred to in Article 4(1) unless **Contracting Parties** decide on a case by case basis that this is not feasible and inform the public of their decision.

4. Before 21 July 2004, **Contracting Parties** shall communicate to the **Secretariat**, in addition to the measures referred to in paragraph 1, separate information on the types of plans and programmes which, in accordance with Article 3, would be subject to an environmental assessment pursuant to this Directive. The **Secretariat** shall make this information available to the **Contracting Parties**. The information will be updated on a regular basis.

<sup>2</sup> Not applicable in accordance with Article 2(2) of Decision 2016/13/MC-EnC.

<sup>3</sup> The text displayed here corresponds to Article 3 of Decision 2016/13/MC-EnC.

**Article 14**  
**Entry into force**

**This Decision shall enter into force on the date of its adoption.<sup>4</sup>**

**Article 15**  
**Addressees**

**This Decision is addressed to the Contracting Parties of the Treaty establishing the Energy Community.**

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<sup>4</sup> The text displayed here corresponds to Article 4 of Decision 2016/13/MC-EnC.

## ANNEX I

### Information referred to in Article 5(1)

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

- (a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;
- (b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;
- (c) the environmental characteristics of areas likely to be significantly affected;
- (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;
- (e) the environmental protection objectives, established at international, Community or **Contracting Party** level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;
- (f) the likely significant effects<sup>5</sup> on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;
- (g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;
- (h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of knowhow) encountered in compiling the required information;
- (i) a description of the measures envisaged concerning monitoring in accordance with Article 10;
- (j) a non-technical summary of the information provided under the above headings.

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<sup>5</sup> These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects.



## ANNEX II

### **Criteria for determining the likely significance of effects referred to in Article 3(5)**

1. The characteristics of plans and programmes, having regard, in particular, to
  - the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,
  - the degree to which the plan or programme influences other plans and programmes including those in a hierarchy,
  - the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,
  - environmental problems relevant to the plan or programme,
  - the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).
2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to
  - the probability, duration, frequency and reversibility of the effects,
  - the cumulative nature of the effects,
  - the transboundary nature of the effects,
  - the risks to human health or the environment (e.g. due to accidents),
  - the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),
  - the value and vulnerability of the area likely to be affected due to:
    - special natural characteristics or cultural heritage,
    - exceeded environmental quality standards or limit values,
    - intensive land-use,
  - the effects on areas or landscapes which have a recognised national, Community or international protection status.