


ASECAP POSITION PAPER



AMENDMENT OF DIRECTIVE 2011/92/EU ON THE ASSESSMENT OF THE EFFECTS OF CERTAIN PUBLIC AND PRIVATE PROJECTS ON THE ENVIRONMENT

May 2013



ASECAP FULL MEMBERS			Companies	Km
Austria		ASFINAG Autobahnen- und Schnellstraßen- Finanzierungs-Aktiengesellschaft	3*	2.177,4*
Croatia		HUKA Hrvatska Udruga Koncesionara za Autoceste s naplatom cestarine	4*	1.288,5*
Denmark		SUND & BAELT Holding A/S	2*	34*
Spain		SEOPAN Association of Work and Infrastructure Concessions Companies	33*	3.404,01*
France		ASFA Association professionnelle des Sociétés Françaises concessionnaires ou exploitantes d'Autoroutes et d'ouvrages routiers	23*	9.048,1*
Greece		TEO Fonds Routier National Hellénique	8*	1.658,5*
Hungary		AKA Alföld Koncessziós Autópálya Zrt.	5*	1.145,1*
Ireland		ITIA Irish Tolling Industry Association	9*	337*
Italy		AISCAT Associazione Italiana Società Concessionarie Autostrade e Trafori	27*	5.813,5*

Norway	 NORVEGFINANS Norske Vegfinansieringsselskapers Forening	NORVEGFINANS Norske Vegfinansieringsselskapers Forening	38*	911*
Netherlands		N.V.Westerscheldetunnel	1*	20*
Poland		AWSA Autostrada Wielkopolska	4*	468*
Portugal		APCAP Associação Portuguesa das Sociedades Concessionárias de Auto-Estradas ou Pontes com Portagens	21*	2.942,6*
United Kingdom		Macquarie Motorway Group	1*	42*
Serbia		Public Enterprise "Roads of Serbia"	1*	603*
Slovenia		DARS Družba za avtoceste v Republiki Sloveniji, d.d.	1*	607*
ASECAP ASSOCIATE MEMBERS			Companies	Km
Germany		TOLL COLLECT GmbH	1*	14.064,4*
Morocco		ADM Société Nationale des Autoroutes du Maroc	1*	1.416*
Slovak Republic		NDS Národná diaľničná spoločnosť	1*	633*

Czech Republic		KTS KAPSCH Telematic Services	1*	1.422,7*
Russian Federation		State Company "Russian Highways" (AVTODOR)	2*	229,2*
TOTAL ASECAP NETWORK			187*	48.265,01*

*Source: 2014 ASECAP Statistical Bulletin

ASECAP is the European Association of Operators of Toll Road Infrastructures. It gathers members from 21 countries and represents 187 companies and organizations that cover a network of over 48 000 km of motorways, bridges and tunnels, mainly along the Trans-European Road Network.

ASECAP's purpose is to defend and develop the system of motorways and road infrastructures in Europe applying tolls as a means to ensure the financing of their construction, maintenance and operation.

Moreover, ASECAP exchanges among its members information regarding the construction, maintenance and operation of toll road infrastructure, and promotes and organizes study meetings for its members on technical, administrative and financial issues aimed at the deployment of efficient traffic management, providing to the end users a high quality road service at an appropriate cost. For that purpose, it also collects technical and statistical data and participates in select projects.

ASECAP maintains relations with relevant international organizations, the EU institutions and the industry's main stakeholders, promoting the interests of ASECAP members regarding the deployment of a holistic cooperative transport approach.

INTRODUCTION

On 26 October 2012, the European Commission made a proposal for amending Directive 2011/92/EU of 13 December 2012 on the assessment of the effects of certain public and private projects on the environment. The changes proposed by the Commission aim at simplifying and rendering more effective the so-called Environmental Impact Assessment (EIA) Directive and to bring it in line with the current environmental and socio-economic context.

The proposal is at present subject to the ordinary legislative procedure. ASECAP and its members would therefore like to convey their point of view to the EU's co-legislators, so as to ensure that the revised EIA Directive will not entail any excessive burden for the road infrastructure sector in general and for toll road infrastructure operators in particular.

While generally welcoming the objectives that underpin the Commission's proposal, ASECAP and its members would in the first place like to ensure that the pursued reduction of unnecessary administrative burdens is effectively achieved.

ASECAP POSITION

ASECAP and its members welcome the European Commission's intention to clarify, simplify and rationalize the EIA procedure, as these objectives present a direct benefit for road infrastructure operators involved in projects subject to assessment in accordance with the Directive.

However, ASECAP and its members are of the opinion that certain elements of the European Commission's proposal may have undesired effects as they may become a

source of uncertainty and may even increase complexity and rigidity. In addition to the five considerations below, addressed to the European Institutions as well as public authorities more generally, the last section of the present paper contains related amendments to the text of the draft Directive proposed by the European Commission.

1. Scope of the Directive – inclusion of demolition works

The proposed inclusion of demolition works in the definition of “projects” covered by the EIA Directive, in accordance with the related case law of the Court of Justice of the EU, is **not intended to widen the scope of the Directive as such**. However, this should be reflected explicitly in the newly proposed Directive, so as to dispel any doubt regarding the principle that demolition works only require assessment in accordance with the Directive in case of significant effects on the environment.

In fact, as part of the public service offered by road infrastructure operators, these operators may have to undertake demolition works, in particular regarding buildings and road equipment, which often have only minor incidences on the environment. Unless such demolition works fall under cases listed in Annexes I or II of the EIA Directive, there is no added value from an environmental perspective to make them subject to assessment in accordance with the Directive. Therefore, it is suggested to clarify this point in the preamble of the amending act, or to adapt Annexes I and II accordingly and list any other cases in which demolition works with significant effects on the environment are made subject to assessment.

2. Scope of the Directive – achievement of objectives through other means

The European Commission proposes to clarify the conditions for exempting projects the details of which are adopted by a specific act of national legislation from the application

of the EIA Directive on the basis of Art. 1(4). The basic underlying idea is that such exemptions should only be granted if the objectives of the Directive are achieved effectively through other means.

While these objectives may indeed be achieved effectively through the legislative process related to projects the details of which are adopted by a specific act of national legislation, it is essential to take into account that **also the application of non-legislative procedures** may yield the same result. This is for example the case with certain administrative instructions or circular letters applicable to the road infrastructure sector and implemented in actual fact by road infrastructure operators, by means of which competent authorities clarify the details of projects and make them subject to inter-administrative consultations before opening a public enquiry.

Failing to take into account that non-legislative processes may give equivalent guarantees would constitute an element of rigidity and would lead competent authorities to require an assessment in accordance with the Directive in all cases. This would entail undesired knock-on effects for developers in terms of complexity and in terms of the duration of authorization procedures, while also undermining the transparency and openness that is often brought about by the above-mentioned non-legislative processes.

3. Screening procedure

This newly proposed Directive may significantly slow down the screening procedure, namely because of the introduction of Annex II.A specifying the information to be provided by the developer pursuant to Article 4(3) and because of the modifications to Annex III laying down the selection criteria to be taken into consideration by the competent authority pursuant to Article 4(4). In their current wording, the proposed

modifications to the text of the EIA Directive in force are likely to generate an **excessive information burden for the developer**, in order to consider whether a project is subject to an impact assessment rather than for the impact assessment itself.

The proposed modifications would then complicate the administrative procedure, both for the developer and for the authority responsible for the verification of the information. They may also incite competent authorities to require an assessment in accordance with the Directive in any event, with similar undesired effects as those outlined under point 2.

Therefore, it is suggested either to delete the re-wording of the related provisions on the screening procedure – thus doing away with the introduction of Annex II.A and giving competent authorities the possibility to keep applying existing procedural frameworks – or to re-phrase the proposed provisions so as to limit clearly the information burden imposed upon the developer.

4. Scoping procedure

In the same vein as for the screening procedure, the proposed modifications related to the scoping procedure may **excessively extend the administrative burden for developers** and slow down the applicable procedures. Without questioning the added value of the scoping procedure, it should be possible to exempt a developer from the related obligations having regard to the complexity and environmental sensibility of a project and the expertise that the developer already holds or is able to acquire from a third party.

For instance, bearing in mind their long-standing and recognized expertise and experience on major road infrastructure works, several road infrastructure operators

represented by ASECAP and its members should be able to indicate whether or not an environmental report would bring added value for a given project proposal that is subject to assessment in accordance with the Directive.

5. Respective responsibilities of competent authorities and developers

ASECAP and its members deem that the newly proposed Directive and in particular the new provisions regarding the scoping procedure imply **an improper shift of responsibility from the developers to the competent authorities**. More precisely, it should be avoided that the competent authority indicates to the developer what the most reasonable alternative solutions to a proposed project are, because this choice also depends on considerations of expediency and feasibility that fall under the responsibility of the developer.

For example, in terms of responsibility, a granting authority which has a contractual link with a concession company cannot itself take the place of that concession company, substituting for the concession company's administrative, technical and financial competences. Moreover, going beyond the provisions of the EIA Directive currently in force also may add to the workload of a concession company without facilitating the proper integration of environmental considerations in the project design stage.

Lastly, the developer's final choice is not exclusively dependent on environmental aspects. The developer must also take into consideration the technical, financial, societal, social and financial considerations (balanced cost-benefit ratio) when considering the various solutions available.

SUGGESTED AMENMENTS

Recital (12a) of the proposed Directive

Addition of a new recital as follows:

“(12a) For the sake of legal clarity, it should be specified that projects covered by the Directive include the execution of both construction and demolition works. Demolition works should be made subject to environmental assessment pursuant to the Directive in the same way as construction works, taking due account of the actual extent of their effect on the environment, in accordance with Annexes I and II to the Directive.”

Recital (13) of the proposed Directive

Modification of the proposed recital as follows:

*“Experience has shown that in cases of civil emergency compliance with the provisions of Directive 2011/92/EU may have adverse effects. **Moreover, for certain types of projects, the objectives of this Directive are achieved through the legislative or administrative rules governing the development consent or the award of the related contracts.** Provision should therefore be made to authorize Member States not to apply that Directive in appropriate cases.”*

Modification of Article 1(4) of Directive 2011/92/EU

(cf. Article 1(1)(c) of the proposed Directive)

Change the proposed modification as follows:

“3. [no change to proposed text]

*4. This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, provided that the objectives of this Directive, including that of supplying information, are achieved through the legislative process **or through applicable administrative regulations.**”*

Modification of Article 4(3) and (4) of Directive 2011/92/EU

(cf. Article 1(4)(a) of the proposed Directive)

Option 1:

Delete the proposed paragraph referring to Annex II.A (and also delete all other references to Annex II.A and to the information provided by the developer pursuant to Annex II.A, as well as Annex II.A in its entirety):

~~*“3. For projects listed in Annex II, the developer shall provide information on the characteristics of the project, its potential impact on the environment and the measures envisaged in order to avoid and reduce significant effects. The detailed list of information to be provided is specified in Annex II.A.*~~

~~*4. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the competent authority shall take account of selection criteria related to the characteristics and location of the project and its*~~

potential impact on the environment. The detailed list of selection criteria to be used is specified in Annex III.”

Option 2:

Change the proposed modification as follows:

*“3. For projects listed in Annex II, the developer shall provide **concise** information on the characteristics of the project, its potential impact on the environment and the measures envisaged in order to avoid and reduce significant effects. The detailed list of **summarised** information to be provided is specified in Annex II.A.*

*4. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the competent authority shall take account of selection criteria related to the characteristics and location of the project and its potential impact on the environment. The detailed list of selection criteria to be used is specified in Annex III. **In the context of such a case-by-case examination, the competent authority should not require the developer to provide information in addition to the summarised information specified in Annex II.A.”***

Modification of Article 5(2) of Directive 2011/92/EU

(cf. Article 1(5) of the proposed Directive)

Change the proposed modification as follows:

*“1. Where an environmental impact assessment must be carried out in accordance with Articles 5 to 10, the developer shall prepare an environmental report, **unless the Member States consider that a developer may reasonably be exempted from this obligation having regard to the complexity and***

environmental sensibility of the project and the expertise that the developer holds or is able to acquire from a third party. The environmental report shall be based on the determination pursuant to paragraph 2 of this Article and include the information that may reasonably be required for making informed decisions on the environmental impacts of the proposed project, taking into account current knowledge and methods of assessment, the characteristics, technical capacity and location of the project, the characteristics of the potential impact, alternatives to the proposed project and the extent to which certain matters (including the evaluation of alternatives) are more appropriately assessed at different levels including the planning level, or on the basis of other assessment requirements. The detailed list of information to be provided in the environmental report is specified in Annex IV.

2. The competent authority, after having consulted the authorities referred to in Article 6(1) and the developer, shall determine the scope and level of detail of the information to be included by the developer in the environmental report, in accordance with paragraph 1 of this Article. In particular, it shall determine:

- a) the decisions and opinions to be obtained;*
- b) the authorities and the public likely to be concerned;*
- c) the individual stages of the procedure and their duration;*
- d) reasonable alternatives **for consideration by the developer** relevant to the proposed project and its specific characteristics;*
- e) the environmental features referred to in Article 3 likely to be significantly affected;*
- f) the information to be submitted relevant to the specific characteristics of a particular project or type of project;*
- g) the information and knowledge available and obtained at other levels of decision-making or through other Union legislation, and the methods of*

assessment to be used.

The competent authority may also seek assistance from accredited and technically competent experts referred to in paragraph 3 of this Article. Subsequent requests to the developer for additional information may only be made if these are justified by new circumstances and duly explained by the competent authority.

3. [no change to proposed text]"

Modification of Annex IV of Directive 2011/92/EU

Change the proposed modification as follows (inter alia in keeping with the current text of Annex IV to Directive 2011/92/EU):

"1. [no change to proposed text]

2. A summarised description of the technical, locational or other aspects (e.g. in terms of project design, technical capacity, size and scale) of the alternatives considered by the developer, including the identification of the least environmentally impacting one, and an indication of the main reasons for the choice made, taking into account notably the environmental effects.

3-10. [no change to proposed text]"

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