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Environmental Impact Assessment and Environmental Quality Standards

I. The issue

Article 3 of the EIA Directive (Directive 2011/92) sets out the basic concept of the EIA as a process which shall identify, describe and assess the effects a particular project is likely to have on the environment. However, if one looks at the following articles of the Directive, the concept of "assessment" seems to have somehow got lost. In particular, Article 8 of the EIA Directive only requires that the results of consultations and the information gathered pursuant to Articles 5, 6, and 7 shall be taken into consideration in deciding on granting consent for the project. This duty to consider relates to the environmental impact report submitted by the developer (Article 5) and the information and views gathered in the consultation of interested authorities, the public at large and, where applicable, foreign authorities (Articles 6 and 7). However, Article 8 of the EIA Directive does not formally require the assessment of the project to also be taken into consideration. Although in the case "Commission v. Ireland" of 2011 the European Court of Justice[1] has clarified that the assessment is independent from the duty to consider and must precede the decision on the admissibility of the project, its role in decision-making on the admissibility of the project remains unclear.

According to the Court, the assessment of the likely significant effects associated with the project is a task of the competent authorities. This may be too narrow a view. If one looks at Article 5 and Annex IV of the Directive regarding the information to be generated by the developer in the environmental report, there are some elements of an environmental assessment. (Article 3(3)(c)). The developer's obligation to describe the likely significant effects of the proposed project as well as the forecasting methods used to assess the effects on the environment (Article 3(3)(c), Annex IV points 4 and 5) implies that the developer must undertake some assessment. Moreover, the consultation of interested authorities and the public has to do with the assessment of the likely effects of the project on the environment. Therefore, one has to distinguish between the assessment in the strict sense to be carried out by the competent authorities and the assessment in the broad sense in which all other relevant actors are involved.

In any case, the Directive does not address the question of criteria to be used for the assessment of the likely effects the project may have on the environment. The same is true for the criteria to be used in the following stage, that is, taking the information gathered in the EIA process into consideration in making a decision on the admissibility of the project. These questions are almost entirely left to the member states. It should be clear that in order to assess the likely significant environmental effects of a project and

[1] Judgement of 3 March 2011, Case C-50/09, Commission /Ireland, 2011 ECR I-873, paras. 36-41.

take this assessment into consideration in making a decision on the project one needs criteria.

This raises the following questions:

-- Against what criteria does the competent authority (and likewise already the developer in determining the significance of effects) need to assess the effects predicted and described in the environmental report, in the framework of the consultations and eventually also by the competent authority itself?

-- How does this assessment enter into the decision-making process on the project? Is there a difference between the assessment criteria and the criteria applied in deciding on the admissibility of the project?

These questions will be discussed under the perspective of the role of environmental quality objectives and environmental quality standards.

II. Existing practice

1. Member state implementation of Articles 3 and 8 EIA Directive

a) General evaluation

The dearth of clear directions on the part of the EIA Directive as to the concept of assessment of the project has led many member states to closely follow the wording of the Directive and say almost nothing about the assessment phase of the EIA process. The European Commission seems to have no objections against this practice; it has only challenged Ireland's transposition of the Directive.[2] By contrast, the duty to take the EIA results into consideration has been fully implemented.

Some member states such as Sweden and Belgium (Flanders) mention the assessment in the goals provision of their EIA laws. As far as I can see, there has not been either extensive discussion about the criteria for assessing the project and considering the EIA results in the decision-making process in the majority of EU member states.[3] However, it may be assumed that existing EU and member state environmental quality standards must be applied or at least considered in decision-making on the admissibility of the project.

b) Germany

The perhaps most comprehensive regulation seems to exist in Germany.[4] Section 11 of the EIA Act requires the competent authority, on the basis of information and comments

[2] See European Commission, Report on the application and effectiveness of the EIA Directive, COM (2009) 378, p. 3-4.

[3] See, e.g., Christopher Wood, Environmental Impact Assessment: A Comparative Review, 2nd ed. 2003, p. 6, 8 and 11; J. Holder, Environmental Assessment: The Regulation of Decision-Making, 2005, p. 101 et seq.; Liam Cashman, Environmental Impact Assessment: A Major Instrument for Achieving Integration, in: Marco Onida (ed.), Europe and the Environment, 2005, p. 63 et seq.; David Hughes et al., Environmental Law, 4th ed., 2002, p. 214 et seq., 217; Michel Prieur, Droit de l'environnement, 6th ed. 2011, paras. 96, 108; id., Étude d'impact et protection de la nature, in: 20 ans de protection de la nature, Société française de droit de l'environnement, 1998, p. 6; Michel Badré, Évaluation environnementale, autorité environnementale, des objets juridiques nouveaux?, Droit de l'environnement 2009, no. 173.

[4] Consequently, there is quite extensive legal discussion on assessment and consideration of the EIA in deciding on the project; see, , e.g., Thomas Bunge, in: Peter-Christoph Storm & Thomas Bunge (eds.),

generated in the EIA process as well as investigations of its own, to elaborate a summary description of the environmental impacts of the project and the measures to avoid, reduce or compensate significant adverse effects. Section 12 mandates the competent authority to assess the relevant environmental impacts contained in the summary description and take this assessment into consideration in deciding on the admissibility of the project with a view to effective environmental precaution pursuant to applicable laws. The general view is that the reference to precaution and applicable laws both encompasses the decision on the project and the preceding assessment of its environmental impacts. The German Administrative Rules on EIA share this interpretation.

It seems clear that under German law the assessment criteria must in principle be based on the statutes to be applied in the procedure for granting development consent. This has two reasons. On the one hand, Germany belongs to the few EU member states that follow the integration model. Apart from the spatial planning level (construction plan or federal highway plan) which constitutes the superior tier of development consent, the EIA is integrated in the permit procedure for industrial and infrastructure facilities. On the other hand, the EIA is understood as a procedural tool which only aims at improving the quality of the decision on the development consent. Therefore, it is deemed that the EIA assessment cannot be more demanding than the prerequisites for granting development consent. In this sense, the German EIA Administrative Rules (part 0.6) provide that the assessment of the environmental effects is equivalent to the interpretation and application of the statutory environmental requirements, in particular environmental quality requirements such as the prevention of significant risk, water related quality objectives or objectives for the conservation of nature and landscape. In the decision-making process, countervailing concerns may have to be taken into consideration where the normative programme of the relevant law requires so or permits it.

The assessment requirements are specified with respect to the categories of projects subject to EIA. Where legally binding or non-binding environmental quality standards exist, these standards must in principle be applied. Otherwise, the Administrative Rules (Annex 1) contain a list of orientation criteria with respect to interventions into nature and landscape, impacts on surface waters and soil contamination (much of which appear to be obsolete in view of more recent standard setting). Moreover, the holistic assessment with respect to the interaction between environmental media and a potential shifting of problems is addressed although it is underlined that this can only be done within the limits of the applicable environmental laws (part 0.6.2.1).

Although the German concept appears quite narrow, it should be applauded as an attempt to specify the assessment criteria. However, one should keep in mind that a good legal framework alone does not ensure a proper functioning of the EIA process.

Handbuch der Umweltverträglichkeitsprüfung, Looseleaf ed., 2013, § 12; Martin Beckmann, in: Werner Hoppe & Martin Beckmann, Gesetz über die Umweltverträglichkeitsprüfung, 4th ed. 2012,, § 12; Reinhard Wulfhorst, in: Landmann & Rohmer (eds.), Umweltrecht, Looseleaf ed., 2013, § 12 UVPG; Wilfried Erbguth & Alexander Schink, Gesetz über die Umweltverträglichkeitsprüfung, 2nd ed. 1996, § 12.

An empirical study published in 2008 came to the conclusion that in Germany there are considerable deficiencies in the application of the assessment requirement and – as a result of a classification of effects as insignificant or compensated – also in the practical implementation of the duty to consider.[5]

2. European jurisprudence

In the relatively long history of European jurisprudence on the EIA the legal meaning of the assessment process and the contents of the duty to consider have not played a major role. To my knowledge, there is not a single case where the European Court of Justice has addressed the role of environmental quality objectives and standards in the EIA process. There are some more recent Court decisions which have dealt with the scope of the assessment.[6] According to the Court, interactions between different environmental media as well as cumulative effects caused by several projects must be included in the EIA whilst the mere loss of value of material assets is not part of the assessment. The most important holding is the case "Commission v. Ireland" of 2011[7] which has addressed the meaning of and the responsibility for the assessment. This holding is based on the view that the assessment constitutes a substantive obligation which is distinct from the procedural obligations (collection and exchange of information and consultation) established by Articles 4 to 7 of the Directive.

III. The European Commission's proposal for an amendment of the EIA Directive

As regards the assessment process and the duty to consider the EIA results, the Commission's proposal for an amendment of the existing EIA Directive[8] makes an attempt to cure some of the existing deficiencies. The definition of the EIA in the new Article 2 paragraph 2(g) now explicitly mentions the assessment by the competent authority as part of the EIA process. It can also be derived from the new Article 8 that the assessment is a task of the competent authority. Besides, the developer has to take major steps of environmental assessment for identifying and describing the potential impacts of the project in the environmental report (Article 5 in conjunction with Annex IV point 5). According to the Commission's proposal, Article 8 relating to the duty of consideration will undergo major changes. As under the existing directive, the result of consultations and the information gathered pursuant to Articles 5 to 7 shall be taken into consideration in the development consent procedure. To this end the decision to grant development consent shall contain as piece of "information", inter alia, the environmental assessment of the competent authority as required under Article 3 (new Article 8(1)(2)(a)). Moreover, the consent must contain a statement summarising how

[5] Martin Führ et al., Evaluation des UVP-Gesetzes des Bundes, Sofia Berichte SB 01, 2008, p. 104-122, 122-139; short version: Kilian Bizer, Jaqui Dopfer & Martin Führ, Evaluation of the German Act on EIA, Elni Review 2/2008, p. 70, at 73-74,

[6] Judgement of 16 March 2006, Case C-332/04, Commission/Spain, 2006 ECR I-40*, para. 33; Judgement of 24 November 2011, Case C-404/09, Commission/Spain (not yet in official collection), paras. 78-80; Judgement of 14 March 2013, Case C-420/11, Leth/Republic of Austria, paras 26-30 (not yet in official collection).

[7] Supra note 1; see also European Court of Justice, Judgement of 4 May 2006, Case C-508/03, Commission /United Kingdom, 2006 ECR I-3969, para. 103.

[8] COM (2012) 628 final.

environmental considerations have been integrated into the consent and how the results of the consultations and the information gathered pursuant to Articles 5 to 7 have been integrated or otherwise addressed (new Article 8(1)(2)(d)). Taken together, these requirements seem to ensure that the competent authority must take the assessment into consideration in the decision-making process. Nevertheless, one wonders why the Commission has not deemed it appropriate to just follow the language of the European Court of Justice: The competent authority must assess the likely impact of the project and this assessment must precede the decision on granting development consent. It is quite simple.

Moreover, the Commission's proposal does not say anything about the relevant criteria applicable to the assessment to be carried out and the decision on the admissibility of the project to be taken by the competent authority. It does contain such criteria with respect to the assessment elements of the environmental report, that is, the description of the likely significant effects of the project. In this respect, it provides that the developer shall take into account "the environmental protection objectives established at EU or Member State level which are relevant to the project" (Annex IV point 5).

IV. Discussion and recommendations

1. General remarks

As regards the assessment of the project and the consideration of the EIA results in making a decision on the admissibility of the project, the Commission's proposal only makes a small step in the right direction. There is a need for more specific and ambitious rules.

Article 3 makes it clear that the assessment is on the direct and indirect environmental effects of the project. To this end the authority should not only be empowered to require, if necessary, an amendment of the environmental report, as Article 8(2) of the proposal suggests, which of course is an import feature of the EIA process, but also use supplemental information gathered by itself for assessing the environmental effects of the project. What is even more important is that the assessment of the environmental effects of the project in Article 8 should be formally elevated from an information tool to an indispensable element of the substantive decision on the project. In this respect, the Draft Report of the Environment Committee of the European Parliament[9] is preferable, although in obliging the permit authority to assess the results of the environmental report and the results of consultations in the permit procedure it gives the impression that the assessment is not the final step of the EIA but only is part of the permit procedure. That this position is not tenable becomes evident if one considers the prevailing member practice according to which the EIA procedure is not integrated into the development consent procedure but entirely separate from it. It is hardly conceivable that a separate EIA proceeding could be concluded without an assessment carried out by the authority competent for the EIA, the more so since the assessment will often be binding on the permit authorities.

[9] PE508.221v01-00, 2012/0297(COD), Amendment 35.

It is also disappointing that the Commission has not deemed it appropriate to establish basic rules for the assessment of the likely significant effects of the project by the competent authority and their consideration in the decision on the project which are the core elements of the whole EIA process. It is submitted that recourse to environmental quality objectives and standards is crucial for increasing the relevance of the EIA for the outcome of the decision on the project.[10]

The Commission's proposal explicitly only refers to quality objectives, which might lead to the impression that environmental quality standards shall not be relevant. Environmental quality standards are a tool to convert environmental quality objectives into numerical scales and thus make them fit for application on the ground. There is no reason to discard environmental quality standards, as a matter of principle, for the purpose of assessing the environmental effects of a project in the framework of the EIA. This appears cogent where, as under Article 10(3) of the Water Framework Directive and, with respect to air quality standards, under national law (e.g., the Netherlands and partly also Germany), the quality standards must be applied when taking a decision on the project. Even when they are understood as mere planning targets it would seem that the competent authority cannot grant development consent if the additional emissions from a new facility will render compliance with the standards practically impossible. Therefore, environmental quality standards should relevant for the assessment at least in the sense that they must be considered.

There are a number of environmental quality objectives at EU level that might be used for assessment. Examples include the various environmental quality objectives of the Water Framework Directive, the non-deterioration requirement contained in the Air Quality Framework Directive, the critical loads concept underlying the NEC Directive, the waste management hierarchy of the Waste Directive and the conservation obligations for protected habitats set out in the Habitat Directive. Moreover, there are a number of environmental quality standards in EU environmental regulation. Examples are the water quality standards for dangerous substances under Directive 2008/105, the various air quality standards established by the Air Quality Framework Directive as well as the air quality target values for heavy metals and PAH set forth by Directive 2004/07.

Member state law supplements the EU environmental quality objectives in particular by quality objectives for nature conservation outside protected areas and structural changes of soil and it adds to the EU quality standards national quality standards for water and soil.

However, it should be noted that compared to the substances that are being emitted from industrial facilities, the number of EU and member state environmental quality standards is quite limited. There remains a certain gap.

Even if the suggestions made above about necessary clarifications of the proposal were followed, there remain some problems:

[10] See generally on the issue of relevance: Carys Jones, Stephen Jay, Paul Slinn & Christopher Wood, Environmental assessment: dominant or dormant?, in: Jane Holder & Donald McGillivray (eds.), Taking Stock of Environmental Assessment: Law, Policy and Practice, 2007, p. 17, 30 et seq.

-- How close should be the link to the normative programme of the decision-making process, that is, the consideration of the assessment in taking a decision on the admissibility of the project?
-- What if the existing environmental quality objectives and quality standards are deemed to be inadequate, for example do not sufficiently consider precautionary requirements? Can the assessment serve as a means to "correct" the relevant prerequisites for granting consent?
-- What if there are no legal environmental quality objectives and quality standards? Can one take recourse to planning objectives and targets, emission standards and scientific criteria?

2. Relevance of the prerequisites for granting consent

At the outset it should be underlined that the requirement to "consider" environmental quality objectives and quality standards in the assessment process is not necessarily equivalent to their "application" but can be understood so as to stand for a more limited relevance of such objectives and standards.

a) Anticipated effect of the consent prerequisites in the EIA process?

Since the EIA is designed to prepare a decision to grant development consent for a project, it does not in principle appear unreasonable to orient the assessment at the prerequisites for granting such consent. This does not mean that the assessment must already balance environmental against development concerns where the normative programme of the consent procedure requires so. The assessment has only to do with the environment. It is not tantamount to decision-making on the project. However, the question is why one should extensively assess something that will be entirely irrelevant in the decision-making process regarding development consent?

b) Broad prerequisites for granting consent

Accepting an anticipated effect of the environment-related consent prerequisites in the assessment phase of the EIA process does not pose any serious problems where applicable law provides for a broad scope of concerns to be addressed and a broad margin of planning discretion. In such instances which are typical for the authorisation of infrastructure facilities and to a certain extent also the siting of industrial facilities, the competent authority has to balance all affected interests against one another and ideally try and achieve an optimal solution.[11] The scope of the decision is not limited to pollution but also includes impacts on nature and landscape. In particular, it should also consider whether the adverse effects caused by the project can be kept well below the applicable standards. Consequently, the assessment of the likely significant adverse affects on the environment associated with the project in question should take a broad view and consider, where suggested by a perceived inadequacy of existing quality

[11] This also is the German view although one considers the assessment to be equivalent to interpretation and application of existing environmental law; see Federal Administrative Court, Judgement of 25 January 1996, BVerwGE 100, 238, 245.

objectives and standards, also the precautionary principle.[12] Environmental quality standards then only mark the minimum level of protection. It also would seem to be a matter of course that complex issues such as the interaction between environmental media, cumulative effects, accumulation over time, combined effects of different pollutants and the total pollution load should enter into the assessment. The additional element of the following phase of decision-making on the project is that the assessment may be specified, supplemented or, where national law permits that, revised and non-environmental concerns be introduced.

c) More limited prerequisites for granting consent

Difficulties may arise when the prerequisites for granting consent for the project are more limited. This is especially a problem for the integration model of the EIA, less for the separation model. An important example is presented by the Industrial Emissions Directive (IED). Two aspects have to be distinguished: The scope of application of the IED is limited to pollution; it does not include the physical impairment of nature and landscape (habitat protection, national regime regarding other interventions into nature and landscape and the like). Where such impacts on nature and landscape are identified, described and assessed, the information so generated is only useful for decision-making processes governed by other laws. However, these processes may constitute elements of a multi-stage development consent procedure[13] or may even be, as in Germany, integrated in the IPPC consent procedure.

On the other hand, within the limited scope of the IED, that is, pollution, there seems to be some room for an assessment beyond existing environmental quality standards. The IED aims at avoiding a transfer of pollution from one environmental medium to another and reflects this concept in its permit requirements (Articles 11(b) and 14(1)(a) in conjunction with Article 3(10) IED).[14] However, it is an open question whether and to what extent an overall assessment or a quantitative or at least qualitative balancing between different impacts on environmental media is warranted or at least permissible. While this is accepted in some member states, others insist on a separate assessment of all likely effects. Moreover, beyond consideration of interactions the Directive's goals provision of achieving a high level of protection of the environment as a whole (Article 1 IED) is not reflected in its operative provisions. It is doubtful to what extent cumulative effects from several projects, the accumulation of pollutants over time, combined effects of different pollutants and the total pollution load are relevant in the decision-making process for granting consent for the operation of the planned industrial facility. Cumulative and combined effects certainly can and need to be considered when they constitute significant pollution. However this is not necessarily true for the accumulation of pollutants over time where it is difficult to conclude that this may constitute a present significant risk. In particular, the total pollution load, that is, a situation where several environmental quality standards are almost exceeded but still just met, causes difficulties. There is no significant pollution since the standards mark

[12] To the same extent: Jones, Jay, Slinn & Wood, supra note 10, p. 42.
[13] See, e.g., European Court of Justice, Commission v. United Kingdom, supra note 7, paras. 102-106.
[14] See Federal Administrative Court, supra note 11, at 245/246.

the borderline between significant risk and precaution. At most, preventive measures in accordance with Article 11(a) IED could be deemed to encompass these two aspects of pollution.

The proposal (Article 3(d)) explicitly requires the inclusion of the interaction between public health, biodiversity and environmental media in the assessment. It also refers to cumulative effects with respect to the assessment to be made in the environmental report. Given the relevant provisions of the IED and the jurisprudence of the European Court of Justice,[15] consideration of such effects belongs to the "acquis communautaire". Dealing with combined effects of different pollutants, accumulation over time and total pollution loads remains an open question and should be specifically addressed in the Directive.

3. Assessment and inadequate quality objectives and standards

This leads to the question as to whether the assessment can be used to "correct" inadequate environmental standards. This might be relevant for gaps of regulation or inadequate specification of environmental quality objectives by quality standards, especially due to a neglect of precaution and an accommodation for development interests, in other words when the environmental concerns have been "balanced away" by development concerns. Some German authors believe that such a corrective concept is inherent in Section 12 of the German EIA Act whereby the assessment has to be carried on "with a view to effective environmental precaution pursuant to existing laws."[16] The majority opinion considers the reference to the precautionary principle as merely declaratory, meaning that the precautionary principle has to be considered in the assessment to the extent it is reflected in the existing environmental and planning laws. What is meant in this latter view is precaution pursuant and within the limits of the relevant laws, not "free" precaution. This is also the position of the German Administrative Rules on the Environmental Impact Assessment.

The fundamental question in this context is whether the EIA should have a substantive function. The holding of the European Court of Justice in the case "Commission v. Ireland"[17] can be understood to the extent that the Court attributes to the assessment a substantive meaning. However, strictly speaking the Court has only held that the competent authority may use the assessment to evaluate the validity of the environmental report. The fundamental question of the purpose of EIA and its impact on substantive environmental law remains open. The EIA could be considered as a merely procedural tool to improve the quality of the relevant administrative decision on the project, in particular ensure its conformity with the applicable legal requirements or, in other words, ensure that it is an acceptable proposal. In this view which certainly is prevailing, the relevant criteria should always be derived from environmental quality objectives and standards set forth in EU and member state law. By contrast, the EIA

[15] Supra note 6.

[16] In this sense, e.g., Bunge, supra note 4, § 12 paras. 3, 51 et seq.; Axel Vorwerk, Die Bewertung von Umweltauswirkungen im Rahmen der Umweltverträglichkeitsprüfung nach § 12 UVPG, Verw. 29 (1996), 241, 246 et seq., 250 et seq.

[17] Supra note 1.

could also have a substantive function in the sense that it aims at reaching an optimal solution for the environment.[18] In this case a broader view in respect of the applicable assessment criteria would seem to be appropriate.

Such a door-opener can be identified in the new Article 8(2) of the proposal which would empower the competent authority, in case of significant adverse environmental effects being identified, to consider whether the environmental report should be revised and the project modified to avoid or reduce these adverse effects and whether additional mitigation, compensation or monitoring measures or are needed.[19]

In any case, it might be useful to explicitly clarify in the relevant Annex to the Directive that environmental quality objectives and standards are orientation values for assessment but do not necessarily mark the upper level of environmental quality to be aimed at.

4. Assessment in the absence of quality objectives and standards

Finally, the question is what the competent authority shall do in the absence of environmental quality objectives and quality standards.

In the first place, one should consider that there may be environmental quality objectives that are a product of spatial and special environmental planning (e.g., land-use plans, nature conservation plans, protection ordinances for habitats, water management plans) including strategic environmental assessment (SEA). Such objectives may constitute legal norms or, as in the case of the SEA, be otherwise binding. Then they are a normal point of reference for the assessment. Even if they are not, they possess a high degree of legitimacy through the procedural requirements of the relevant planning procedure. Moreover, they are normally geared to the specific environmental conditions in the surroundings of the facility. Therefore, there should be no doubt that they can be used for assessing the adverse effects associated with a project.

Another option is the use of emission standards. The question of whether emission standards can be used for assessing the likely impact of a facility is very important for industrial facilities because the number of pollutants emitted from such facilities is about ten times higher than the number of existing environmental quality standards. Emission standards represent best available techniques, but they may also embody risk-related considerations. Their adoption mostly occurs in a process that ensures that the most recent state of technology is taken into account and entails a fair degree of public participation. By and large such standards may be considered as having the necessary degree of legitimacy. Meeting such standards does not necessarily ensure an adequate ambient quality. However, in the absence of a high level of background pollution or cumulative effects from other facilities to be anticipated, compliance with such standards is an indicator of an adequate ambient quality. This leads to the conclusion that emission standards can be used for assessment provided that their constraints are taken into account in the assessment process.

[18] See Wood, supra note 3, p. 11.

[19] See Alexander Kenyeressy, Kritische Analyse des Vorschlags zur Änderung der UVP-Richtlinie, UPR 2013, 139, at 143.

Finally in this context, the role of purely scientific standards must be discussed. The court practice in many EU member states shows that the competent authorities are deemed to be empowered to use such standards to decide on the significance of an impairment of the environment (value of the relevant environmental asset, severity of the impairment or adequacy of mitigation measures) or the existence of hazard or risk to the environment. To this extent such standards can also be used for assessing the likely environmental effects of a project, at least if the competent authority duly reflects their nature, content and limitations.
These considerations suggest that the Directive should explicitly recognise the relevance of the three types of criteria discussed here.

V. Conclusion

To sum up: The Commission's Proposal is, as regards the assessment elements within EIA, but a first step in the right direction and is not entirely satisfactory. Much more remains to be done to give the EIA a realistic chance to influence the outcome of decision-making on the project. Even if one considers that the interface between the EIA and decision-making on the project raises touchy questions due to the different degrees of harmonisation, one should use the chance to introduce meaningful criteria for the assessment of the likely environmental impacts of projects subject to the EIA, both with respect to assessment in the strict sense to be carried out by the competent authority and with respect to the assessment elements of the environmental report and the consultation of interested authorities.