

## Alternatives in EIA

Outline of presentation at ELNI conference, 23/24 May 2013

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### I. Development of rules on alternatives testing

#### 1. Single project testing

- Developer devises projects considering alternatives, related to specific goal which can be economic (product, service) or public service
- Focus on performance of (revenue form) the project at least cost
- Identification of the most efficient project
- Project tested (EIA, environmental protection criteria)

Problem:

Narrow margin of solutions: yes/no/conditions; more optimal solutions disregarded

#### 2. Alternatives testing

- Choice must be disclosed
- Project plus alternatives to be tested (EIA, environmental protection)

Advantage:

Internalisation of environmental effects into early stage of project elaboration

Broader margin of possible solutions

### II. Problems of construction of alternatives testing

#### 1. Determination of selection of alternatives

“Subjective”: choice of developer

EIA Directive 2011/92 Art. 5 (d): ) 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

Negative experience: alternatives rarely disclosed

“Objective”: choice according to objective criteria (reasonableness); power of authority to ask for consideration of additional alternative

COM(2012)628 Art. 5 (d): reasonable alternatives relevant to the proposed project and its specific characteristics

#### 2. Scope of alternatives: “reasonableness”

What means “reasonable alternatives relevant to the proposed project” (“vernünftige Alternativen zu dem vorgeschlagenen Projekt”, “alternativas razonables pertinentes para el proyecto propuesto,” “relevante redelijke alternatieven”, “des solutions de substitutions raisonnables en rapport avec le projet proposé », “relevanta alternativ till projektet”

- criteria of inclusion:
  - o Zero alternative: COM(2012)628 Annex IV 2.:”identification of the least environmentally impacting one”
  - o COM(2012)628 Annex IV2: “description of the technical, locational or other aspects (e.g. in terms of project design, technical capacity, size and scale) of the alternatives considered”

- Distinction alternatives within project and of projects (eg alternative routes vs alternative transportation modes, see German court jurisprudence concerning approval of infrastructure projects) => hardly supported by wording (des solutions de substitution raisonnables en rapport avec le projet)
- the objective of the project
  - what objectives are legitimate?
    - any
    - only justifiable ones
    - only public interest
  - Level of abstraction important for width of spectre
- criteria of exclusion
  - Curtailment of goal attainment: a certain degree to be tolerated (eg less transport throughput on alternative route)
  - Alternative at disposition of developer (eg land property in case of relocation)
  - additional costs of alternative: not to be excessive (eg tunneling of site)
  - adverse side effects (eg of road line on development of settlement)
- levels of decision: alternatives to be ticked off at higher level? (eg transportation modes on level of high level planning)
  - COM(2012)628 Art. 5 (1): “taking into account ... 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.
  - Draft EP Env Committee Report: passage to be deleted
  - My suggestion: Abschichtung at higher levels should be possible but if not done properly lower level must refer back or consider alternative itself; access to courts must be available concerning higher level decision, eg implicitly
- intensity of EIA of alternatives
  - Directive 2011/92 Annex IV 2: “An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects” => rough estimate
  - COM(2012)628 Annex IV 2: “A description, of the technical, locational or other aspects (e.g. in terms of project design, technical capacity, size and scale) of the alternatives considered, including the identification of the least environmentally impacting one, and an indication of the main reasons for the choice made, taking into account the environmental effects.
  - Draft EP Env Committee Report: “Those alternatives, including the assessment of the effects of the nonimplementation of the project (baseline scenario), shall enable a comparative assessment to be made of the various solutions proposed in order to allow the most sustainable alternative, with the least environmental impact, to be chosen.
  - My suggestion: some kind of EIA necessary; the intensity of EIA depends on the need to make a comparative assessment. The more divergent the alternative the more extensive EIA needed
- Zero alternative
  - See EP Env Committee Report: “including the assessment of the effects of the nonimplementation of the project (baseline scenario)”; less clear in Dir 2011/92 and COM(2012)
  - Problem: how to take objective of developer into account. If any of his objectives is accepted zero alternative must only be chosen if it allows achievement of developer’s objective.