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to: General Secretariat of the Council of the European Union

Subject: Proposal for a Directive of the European Parliament and of the Council
amending directive 2011/92/EU of the assessment of the effects of certain
public and private projects on the environment
[15627/12 - COM (2012) 628 final]
- Opinion on the application of the Principles of Subsidiarity and
Proportionality

Delegations will find annexed a copy of the above opinion¹.

Encl.:

¹ If and when available, a translation can be found at <http://www.ipex.eu/IPEXL-WEB/search.do>



**Tithe an
Oireachtais**
**Houses of the
Oireachtas**

**AN COMHCHOISTE UM CHOMHSHAOL, CULTÚR AGUS
GAELTACHT**

**JOINT COMMITTEE ON ENVIRONMENT, CULTURE AND THE
GAELTACHT**

Contribution to the European Commission on its Proposal for a Directive of the European
Parliament and of the Council amending Directive 2011/92/EU on the assessment of the
effects of certain public and private projects on the environment

February 2013

Feabhra 2013

TITHE AN OIREACHTAIS

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**Contribution of the Joint Oireachtas Committee on Environment, Culture and the
Gaeltacht to the European Commission on its Proposal for a Directive of the European
Parliament and of the Council amending Directive 2011/92/EU on the assessment of the
effects of certain public and private projects on the environment**

1. Introduction

The Joint Committee on Environment, Culture and the Gaeltacht at its meeting of 18 December 2012 discussed the Commission's proposal for a Directive of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment and agreed that the Proposal warranted further scrutiny and noted that there may be a subsidiarity question to be addressed and a decision to be taken as to whether a reasoned opinion would be required in response.

On 18 December 2012, the Joint Committee met with officials from the Department of Environment, Community and Local Government to hear a briefing on the proposal and to consider in particular, concerns raised by the Department that might be relevant to the application of the principle of subsidiarity in the proposed measure.

The Joint Committee wishes to thank the Department for its assistance in relation to the Committee's work on this significant proposal.

2. Decision of the Committee

On 26 February 2013, the Joint Committee agreed the enclosed contribution be forwarded to Mr Phil Hogan TD, Minister for Environment, Community and Local Government, Mr. José Manuel Barroso, President of the European Commission, Mr. Martin Schulz MEP, President of the European Parliament and Mr. Herman Van Rompuy, President of the European Council.

The Joint Committee further agreed that in the interests of interparliamentary cooperation on EU matters to forward to the appropriate Committee in each EU member state national parliament a copy of this report and to ensure that a copy is made available to Ireland's

MEPs and to Mr. Matthias Groote, Chairman of the European Parliament Committee on Environment, Public Health and Food Safety.

Michael McCarthy T.D.

Cathaoirleach

Joint Committee on Environment, Culture and the Gaeltacht

Report on the Joint Committee's Contribution to the European Commission on its Proposal for a Directive of the European Parliament and of the Council amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

1. The Joint Oireachtas Committee on Environment, Culture and the Gaeltacht is pleased to participate in the ongoing dialogue between national parliaments and the European Commission and is grateful for the opportunity it affords to contribute to policy development in the European Union. The Joint Committee intends to avail of the provisions of the Lisbon Treaty to the fullest extent and looks forward to the further enhancement of the political dialogue between the Commission and the Houses of the Oireachtas which is a key factor in the development of better EU policy and laws which properly reflect the concerns and needs of Irish citizens.
2. The Joint Committee has considered the European Commission's proposal in some detail and has held public hearings on the matter with the Department of Environment, Community and Local Government. Following its deliberations the Committee has prepared this contribution which seeks to address the key issues and asks that the Commission take into account the views and positions set out in this contribution when it comes to the ongoing negotiations.
3. The main aim of the proposal which is to enhance policy coherence and synergies with other EU law instruments and 'simplify' procedures, with a view to reducing unnecessary burdens is to be welcomed. Further, the Committee welcomes the aim of strengthening existing provisions concerning the quality of Environmental Impact Assessments that afford a high level of environmental protection.
4. Whilst broadly supporting the aims of the proposals the Committee has some reservations regarding the issue of subsidiarity, specifically, by failing to allow for sufficient flexibility to member states as regards the choice of measures for compliance and their detailed implementation.

5. It is expected that significant problems will arise by imposing mandatory timeframes, which the existing Directive does not. Of particular concern is the provision that consent for projects will be refused if the competent authority is unable to deliver an environmental impact assessment (EIA) within 6 months. There are further subsidiarity concerns with regard to the issue of scoping. Under the existing Directive, scoping (whereby a developer may ask the competent authority to scope what should be included in the environmental impact statement) and EIA are discretionary. The new proposal makes provision for an environmental report where scoping will be mandatory. It is considered that this will give rise to an unnecessary burden being placed on the competent authorities.
6. The Committee is concerned about the overall cost of the administration of this proposal and it should be considered that there is a presumption that the cost burden would be passed on to developers. This is highly contentious especially if these are unnecessary costs that go beyond the requirements of the Directive to lead to improved protection of the environment.
7. Furthermore, the Committee is concerned that the Commission has not demonstrated how the new proposal will significantly lead to enhanced protection of the environment. This leads to questions pertaining to added value and if there is indeed any.
8. In response to the European Court of Justice (ECJ) judgement against Ireland, new EIA Regulations were published in 2012 which take the approach that the planning consent authority and the Environmental Protection Agency are both still responsible for carrying out EIAs in Ireland. The provisions in the proposed Directive changing from a dual to a single EIA consent system would involve a substantial workload in relation to amending the current planning and environmental licensing legislation and represent a fundamental change to the development consent procedure in Ireland. This would be an unwelcome development.

9. The Joint Committee looks forward to receiving the Commission's response to its observations and it hopes that the Committee's recommendations can be taken into account.

Joint Oireachtas Committee on Environment, Culture and the Gaeltacht

Dublin

26 February 2013