



EUROPEAN COMMISSION

DIRECTORATE-GENERAL
REGIONAL POLICY

Convergence, Competitiveness and Cross-border programmes Denmark, Estonia, Finland, Latvia,
Lithuania, Poland, Sweden

The Director

Brussels, 20 10.2009*009779
DG REGIO.H1/MT/spD(2009) 880600

Subject: Section F.3 of the application form for major projects (Annex XXI and XXII of Regulation (EC) No 1828/2006)

Following the request of the Ministry of Regional Development addressed to the Commission services during the seminar on preparation of energy projects in 2007-13 which took place in Warsaw on 5 June 2009, I would like to present to you the position of Commission services on the content of section F.3 of the major project application form.

Section F.3.1 of the application form relates to the development consent. The development consent procedures are regulated by the national legislation. The point F.3.1 is of relevance for the compliance with the EIA Directive¹, but also for the general feasibility and maturity of the project. Generally, the Member States require development consents for major projects before they can start (irrespective of whether the EIA was required or not). Therefore, this information is interesting not only for checking environmental compliance but also for understanding of the preparedness of the project. Another argument in favour of such understanding of the application form is point F.3.2.1 which refers also to projects not covered by the Annexes of the Directive. Therefore, point F.3.1 relates to all projects (i.e. these which are covered by the Annexes of the Directive and those which are not covered). The link of point F.3.1 with the EIA Directive derives from the requirement of the Directive which obliges the MS to conduct all the procedures foreseen by the Directive (assessment, consultation, decision on EIA) prior to the development consent.

Hence, Commission services' suggestion for filling point F.3.1 of the application form is to refer to the development consent for all types of projects which under the Polish law require the development consent to implement the project. The Commission is aware of the so called 'tacit agreement' for some projects. For such projects, we suggest including appropriate explanation that the project is subject to the tacit agreement procedure and

¹ COUNCIL DIRECTIVE of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment

Mr Adam Zdziebło
Under-Secretary of State
Ministry of Regional Development
ul. Wspólna 2/4
00-926 Warszawa
Poland

the subsequent points should be filled in accordingly. The Commission is also aware that the Polish development consent procedure is a multi-stage process. Therefore, we suggest including all information in relation to all stages of the procedure and enclosing appropriate copies of the intermediate and final decisions.

Section F.3.2 of the application form relates to the compliance with the EIA Directive. Under point F.3.2.1, the applicant has to mark the appropriate box indicating whether the project falls under the scope of the Annexes of the EIA Directive.

Regarding point F.3.2.2, if the project falls under Annex I, then the applicant is requested to enclose the following documents to the application form:

- (1) the information referred to in Article 9 (1) of the Directive

Article 9(1) of the EIA Directive refers to the decision of the competent authority on granting or refusing the development consent and mentions the following information:

- the content of the decision and any conditions attached thereto,
- having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process,
- a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

Generally, the above-mentioned information is included in the decision on the development consent. Therefore, the document to be provided is a copy of the development consent. If the development consent procedure is multi-stage, then copies of all intermediate and final decisions should be provided.

- (2) the non-technical summary² of the Environmental Impact Study carried out for the project;

A non-technical summary to be provided should be the non-technical summary referred to under Article 5(3) of the Directive. Therefore, this should be a copy of the document which has been subject to the national consultations and used in the EIA procedure. The Commission will not accept any non-technical summaries developed, especially for the purpose of the application form. As mentioned already, the purpose of the check carried out by the Commission is to verify evidence of the compliance with the EIA Directive. The non-technical summary which has not been used in the EIA procedure would not serve that purpose.

- (3) information on consultations with environmental authorities, the public concerned and, if applicable, with other Member States.

The applicant is required to provide information on consultations with environmental authorities, the public concerned and with other Member States, in the case when the

² Prepared under Article 5 (3) of Directive 85/337/EEC, as amended.

transboundary consultations have been carried out. The form in which this information is to be provided is not specified. Hence, this information can be included for example in a copy of a decision/opinion of appropriate authorities or the information note provided by the applicant, etc. The information should describe the consultation process (when, where, by what means, what comments were submitted and how they were taken into account, etc) and the results of the consultations.

Regarding point F.3.2.3 which relates to Annex II projects, the competent authority must carry out a screening in order to determine whether the project is likely to have significant negative effects on environment according to Article 4.2 of the EIA Directive. The screening has to take account of the criteria listed under Annex III of the Directive according to Article 4.3 of the EIA Directive. If the screening shows that negative effects on environment are likely, the project has to be subject to an EIA and the documents to be attached to the application form are the same as mentioned under point F.3.2.2.

If however, the screening shows that there are not likely significant effects on environment, then there is no need to carry out the EIA. In such case, the applicant should mark the box 'no' under point F.3.2.3 and provide appropriate explanation in the application form. The explanation should refer to the screening determination made by the competent authority or alternatively the applicant can enclose a copy of the screening decision. If the copy of the decision is to be enclosed, it should be accompanied by all necessary information about the reasons why there is no need to carry out the EIA.



Charlina Vitcheva

Copy: Mr Kremlis, Head of Unit, DG ENV B.4,
Ms Charzynska, DG ENV B.4
REGIO H1 Archives