

**Weighing environmental risks and socio-economic benefits  
in view of alternative solutions  
EU law – plans and projects**

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# Plans and programmes

## Directive 2001/42

Art.3 (The environmental report shall identify, describe and evaluate) „reasonable alternatives, taking into account the objective and geographical scope of the plan or programme“.

Annex I (h): (The environmental report shall give) „an outline of the reasons for selecting the alternatives dealt with“

## Directive 1083/2006

- National strategic reference framework (Art.28): -
- Operational programme (Art.32): -
- Major projects (Art.39): cost benefit analysis, risk assessment alternatives: -

## Directive 92/43

Art.6(4) (In the case of a negative assessment) „in the absence of alternative solutions, a plan or project (may go through for overriding public interests)“

# Projects

## Directive 85/337 environment impact assessment

Art.5(3) „an outline of the main alternatives studied and an indication of the main reasons for this choice“.

## Espoo Convention on transboundary impact assessment

App.II: (the developer shall submit to the other State) „a description, where appropriate, of reasonable alternatives (for example locational or technological) to the proposed activity and also the no-action alternative“.

Art.5: (consultations may take place on) „possible alternatives to the proposed activity, including the no-action alternative“.

## Directive 92/43:

p.m.

# **Under Dir.85/337, there is no obligation to examine alternatives**

Contested; however, never has the Commission taken any action, where alternatives were not examined. The wording of Article 5 seems clear.

**Zero-alternative under EU law is (only)  
mandatory for transboundary projects**

Espoo Convention is part of EU law

## **Under EU law, only *reasonable* alternatives have to be examined, not *all* alternatives**

Court of Justice, C-239/04: „it is not aparent from the file that the authorities examined solutions falling outside that SPA., although on the basis of information supplied by the Commission, it cannot be ruled out immediately that such solutions were capable of amounting to alternative solutions.. even if they were..liable to present certain difficulties“.

**EU law refers only to projects (plans) which the developer himself is capable of realising**

This refers more to national practice; it is, however, tolerated by the Commission (example: energy plant v. alternative energy measures)

# **EU law does not require to examine alternative projects**

**Building a railway instead of a motorway**

**The underlying reason is that the developer has to make, under  
Dir.85/337 (and under Dir.92/43) the environmental impact  
statement which then is to be assessed by the administration**



**There is no EU EIA requirement – and thus no  
alternative examination – for transnational  
networks or projects**

Attempts to introduce one, failed (Decision 1364/2006).

Thus, a motorway which crosses three MSt, has to undergo three  
national EIAs

**Alternatives are *national* alternatives. Mst  
need not examine alternatives in other MSt**

Examples: Lisbon Airport; Baltic Sea Pipeline.

Administrations have the obligation to consult transnationally,  
but not to examine the environment in other States – and they  
can physically not make such examination

# **Within a MSt, alternatives include alternatives in other regions or municipalities**

Commission, Trupbach-case 2003. Member States seem reluctant to accept this (Mühlenberger Loch)

**The burden of proof that there is a reasonable alternative, is with the administration, except in cases of Article 6(4) of Dir.92/43**

Case C-239/04;

Botniabanen

Mühlenberger Loch

# **Reg.1083/2006 does not provide for alternative plans**

This appears to be in contradiction with Dir.2001/42, but is tolerated by the Commission and in Member States (TGV-programme in Spain)

# **Alternative provisions could perhaps be changed with regard to habitats (plans and projects)**

Stronger alternative provisions in general appear excessive.  
It appears almost impossible to go beyond the wording of the  
Espoo Convention