



EU ENVIRONMENTAL IMPACT ASSESSMENT (EIA) LEGISLATION



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WORKSHOP ON EIA LEGISLATION

CASE STUDY II: SCREENING

<Screening Case>

Legal framework: *Articles 1, 2 and 4 and Annexes I - III of EIA Directive 85/337/EEC as amended through Directive 97/11/EC, Directive 2003/35/EC and Directive 2009/31/EC*

General remarks

The following case study is based on Case C-435/97, *WWF and Others*, submitted for preliminary rulings through the ECJ.

Facts of the case

An airfield which has been used for some 70 years for military purposes, for private flying and also to a limited extent for civil purposes shall be transformed into an airport which can be used commercially, with the aim of having regular scheduled flights as well as charter and cargo flights.

The works and alterations envisaged are essentially the following: renewal of the existing runway, construction of access roads and car parks, construction of a control tower with air traffic control installations, construction of a departure building and of a hangar, the carrying out of the necessary connections and diversions etc., and extension of the runway from 1 000 to 1 400 metres.

This restructuring of the airport was provided for in the regional development plan approved by regional Law N° 3.

The project was considered then by the competent regional authority as 'simplified environmental assessment', provided for by regional Law N° 27. According to this Law N° 27 the extension or alteration of existing airports requires an EIA only for airports with a runway length of 2 100 metres or more. The simplified environmental assessment does not require public participation. The details of planned airport modification were approved subsequently by the competent authority.

An NGO has challenged before the national court the legality of the contested measures on the ground that the simplified procedure followed for approving the project is not in conformity with the requirements of the EIA Directive. It claims, since the project is likely, by virtue of its nature, size and location, to have significant effects on the environment, it falls within Article 2(1) of the Directive and should have been made subject to the assessment procedure under Article 4(2) thereof in conjunction with Annex II and not to a mere 'environmental impact study', followed by an examination of the project by the regional authority which do not meet the Directive requirements.

According to the developer D the Directive is inapplicable to the project at issue for three fundamental reasons:

First, it is merely a small-scale project to improve an airport, which does not have a significant effect on the environment because it is designed to improve air traffic and remedy the environmental harm caused by that traffic.

Next, the project is not subject to an EIA under the Directive because it falls within the projects included in Annex II. It was excluded from an EIA through regional Law N° 27 which was adopted within the limits of discretion conferred to Member States in Article 4(2) of the Directive.

Finally, since the project serves both civil and military purposes and Law N° 3/95, approving the regional development plan, makes provision for it, the exceptions respectively set out in Article 1(4) and (5) of the EIA Directive apply.

The applicants in the main proceedings have challenged those arguments. They contend that, by allowing the national authorities not to subject to a full EIA a project likely to have significant effects on the environment, Law N° 27/92 is not in conformity with the Directive.

How would you decide as administrative judge?

<Topics for discussion / Questions >

1. Do Articles 4(2) and 2(1) of the EIA Directive confer on a Member State the right to exclude from the EIA procedure established by the Directive from the outset the project for the restructuring of an airport with a runway shorter than 2,100 metres, even if it has significant effects on the environment?
2. To what extent does Article 2 of the EIA Directive allow a Member States to introduce and use alternative assessment procedures to that of an ordinary environmental impact assessment?
 - a) What minimum requirements must such an assessment satisfy in order to be in compliance with the objectives of the EIA Directive?
 - b) Would the participation of the public be a requirement of such alternative environmental assessment?
3. When assessing whether the modification of an airport shall be made subject to an EIA what must be taken into account: Only the direct effects of the works envisaged or also the indirect environmental impact resulting from the increased airport activity?
4. May the airport modification be exempted from the Directive requirements pursuant to Article 1(4) because it simultaneously serves both civil and military purposes? What if the airfield is predominantly used for military purposes?
5. Is Article 1(5) of the EIA Directive applicable in this case, where national Law No.3 adopts the regional development plan and the alteration of the airport is approved under a subsequent separate administrative procedure?
6. If the Directive has been incorrectly transposed, is Article 4(2) in conjunction with Article 2(1), vertically directly effective (self-executing), i.e. may individuals rely on those provisions before a court in the sense that the authorities of the Member State are required to subject the projects at issue (here: airfield) to a full environmental assessment?