



EU ENVIRONMENTAL IMPACT ASSESSMENT (EIA) LEGISLATION



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WORKSHOP ON EIA LEGISLATION

CASE STUDY I: DIRECT EFFECT OF THE EIA DIRECTIVE

<Case study I: Direct effect of the EIA Directive>

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

General remarks:

The following case study is based on Case C-72/95, *Kraaijeveld and others v. Gedeputeerde staten van zuid-Holland*, 26 October 1996

Facts of the case

In 1958 the Netherlands adopted the law “Deltawet” (or Delta Law) providing for the construction of works intended to reinforce high-water protection along the Rotterdam Waterway and along the waters communicating with it.

Furthermore, when implementing the EIA Directive and in accordance with its Article 4(2) and Annex II, the Netherlands defined a size threshold below which no EIA was required for dyke construction.

Pursuant to the Delta Law, a project of a new dyke line in the West, Central and East Sliedercht was approved by the Ministry of Transport and Water Control in 1990. Subsequently, a new zoning plan for that sector was adopted by the Slidrecht Municipal Council in 1992.

The new dyke line affected the activities of the Kraaijeveld company by cutting its access to some of the navigable waterways thus seriously damaging the company’s business.

As a consequence, Kraaijeveld brought an action before a national court seeking annulment of the decision related to the new zoning plan.

The court observed that no EIA was conducted due to the size of the works which was less than the minimum laid down by national legislation.

The Dutch authorities put forward the fact that Article 4(2) allows the Member States to take discretionary measures in establishing criteria or thresholds for projects in order to determine whether or not they need to undergo an EIA. Kraaijeveld argued that the Kingdom of Netherlands had not properly implemented the directive given the fact that those thresholds were designed in such a fashion that all dyke reinforcement projects remained outside the obligation of performing an EIA.

The Dutch national court referred to the Court of Justice of the European Union (CJEU) for a preliminary ruling in order to determine whether or not the Directive should be interpreted in such a way that an EIA was necessary for this project. The national court stated that it was possible to argue that the measure of discretion which Article 4(2) allows the Member States in establishing criteria and thresholds is limited by the expression “likely to have significant effects on the environment by virtue *inter alia* of their nature, size or location” in Article 2(1). Furthermore, the national court asks whether or not an individual can directly rely upon the obligation deriving from Article 2(1) before a national court, and whether it must be applied by the national court even if it was not in fact invoked by the individual.

How would you decide as administrative judge?



<Topics for discussion / Questions >

1. Does the existence of criteria and thresholds under Article 4(2) allow a MS to exempt a group of projects from an EIA? What is the relevance of Article 2(1) insofar?
2. Does Article 2(1) read in conjunction with Article 4(2) have direct effect? In other words, does it allow an individual to invoke a clear, precise and unconditional right conferred to him by Article 2(1)?
3. Even if the individual himself does not invoke the direct effect of Article 2(1), has the national court an obligation to apply it?