



European Commission
DG Environment



European Institute of Public Administration
European Centre for Judges and Lawyers

EU ENVIRONMENTAL IMPACT ASSESSMENT (EIA) LEGISLATION



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WORKSHOP ON EIA LEGISLATION

CASE STUDY I: DIRECT EFFECT OF THE EIA DIRECTIVE SOLUTIONS

1. Does the existence of criteria and thresholds under Article 4(2) exempt the Member States from undertaking an actual examination of the project in order to verify the criteria in article 2(1) of the Directive?

The CJEU ruled that article 4(2) is not to be interpreted as automatically exempting the Member States of their obligation to perform an EIA as it derives from article 2(1).

In a previous judgement (case C-133/194 *Commission v Belgium*, 1996, paragraph 42) the Court had already stated that the criteria and/or thresholds mentioned in article 4(2) are “designed to facilitate examination of the actual characteristics of any given project in order to determine whether it is subject to the requirement of assessment, not to exempt in advance from that obligation certain whole classes of projects listed in Annex II (...)”. In other words and as stated in paragraph 50 of the present ruling, the limits of the discretion conferred to the Member States by article 4(2) “are to be found in the obligation set out in article 2(1) that projects likely, by virtue *inter alia*, of their nature, size or location, to have significant effects on the environment are to be subject to an impact assessment”.

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)?

This key issue questions the possibility for an individual to invoke article 2(1) before the national court in the event that the national legislation does not entirely respect the general purpose of the Directive and allows for projects to automatically be exempted of the obligation of assessment.

The Court reminds that obligations of the Member States deriving from directives are binding (cf. Art 288 (3), TFEU). As a consequence, the discretionary powers conferred to the Member States cannot exceed those of the Directive. Denying an individual the right to invoke a directive before a national court would be incompatible with the binding effect of directives. Paragraph 56 reads: “In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before the national courts (...)”. Therefore, the Court considers that the obligation deriving from article 2(1) is sufficiently precise and unconditional to produce direct effect.

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?

The CJEU considers that obligations deriving from EU legislation are to be treated as the obligations deriving from national legislation. Paragraph 57 reads: “(...) where, by virtue of national law, courts or tribunals must, of their own motion, raise points of law based on binding domestic rules which have not been raised by the parties, such an obligation also exists where binding Community rules are concerned”. Furthermore, the CJEU also invokes the principle of sincere cooperation deriving from article 4(3) TEU in order to underline the role of the national judge (paragraph 58): “(...) it is for national courts to ensure the legal protection which persons derive from the direct effect of provisions of Community law”.

