



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**

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### **CASE STUDY III: PUBLIC PARTICIPATION**

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## <Public participation Case>

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### General remarks

The following case study is partly based on Case C-215/06, *Ireland v. Commission*.

### Facts of the case

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An energy society, X., built a terrestrial wind farm in a natural and agricultural site of a Member State (MS). This project, one of the largest terrestrial wind-energy developments in Europe, required, among others, the destruction of areas of coniferous forest amounting to 263 hectares as well as peat and mineral extraction.

Various consents were applied for and obtained:

- Applications for consent relating to the first two phases of the development, each involving 23 wind turbines, were submitted on 4 and 18 December 1997. Fresh applications were lodged on 23 January 1998, since the earlier applications for consent were held to be invalid. Permission was issued on 12 March 1998.
- On 5 October 2000, an application was made for consent for a third phase of works relating, inter alia, to 25 turbines and service roadways, which was approved on 15 November 2001.
- On 20 June 2002, the developer applied for consent to alter the first two phases of the development, i.e. to change the type of wind turbine and those changes were authorised on 30 July 2002.
- In October 2005, when the consent granted for the first two phases of the works had expired, the developer applied for renewal of that consent, which was granted in November 2005.

Concerning the first two phases of construction of the wind farm, an environmental impact assessment has been carried out, according to the provisions of MS's law. However, the public was not informed of the content of this EIA and was not given any chance to participate.

As far as the third phase of work is concerned, an EIA was carried out. Public information and participation was insured through a public debate that lasted three months and a public enquiry which lasted a month.

When the developer decided to alter the first two phases of the works, the project was prior to consent submitted to a commission, composed of representatives of the State's and locals administrations, environmental associations and local associations.

No EIA or public information and participation preceded the last authorisation which was granted in 2003.

A non-governmental association, whose object is the protection of nature and the environment, as well as inhabitants of the nearest town challenged the four authorisations in due time in front of the MS's competent jurisdiction.

They claim that none of the authorisation was delivered in conformity with Directive 85/337 since:

- There has been no public information and participation following the EIA concerning the first two phases of the project;
- The information that has been made available to the public about the reasons why the authorisation was granted for the third phase was given on a separate document and was insufficient.
- Public participation was inadequate before the authorisation to alter the first two phases of the project was granted;
- There should have been an EIA and public debate on the renewal of the consent granted for the first two phases.

On the other hand, the MS contends that:

- When consents were applied for, in 1997 and in 1998, for the first two phases, neither Annex I nor Annex II to Directive 85/337 referred to that category of project as being among those within its scope. Accordingly, it was thus not necessary that consent be preceded by an environmental impact assessment as governed by that directive;
- Given the little importance of the changes done to the first two phases, the consultation of a commission ensured sufficient public participation;
- No EIA was necessary for the renewal of the consent.

## <Topics for discussion / Questions >

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1. If the decisions challenged had been taken according to your national law, would the plaintiffs all have legal standing?
2. Do you think the first two phases of the project should have been authorized without prior public information and participation?
3. With regards to the provisions of the Directive, was the consultation of a commission an adequate step before granting the authorisation to alter the first two phases?
4. Do you think an EIA and public participation were necessary before the renewal of the consent?
5. Do you think that the circumstance that the reasons for the authorisation of the third phase were given on a separate document and were insufficient has an effect on the lawfulness of the authorisation?