

WORKSHOP ON EU LEGISLATION

ENVIRONMENTAL IMPACT ASSESSMENT



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Screening Stage under the EIA Directive



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and

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Meaning of Screening

Screening is that part of the EIA process which determines **whether an EIA is required for a particular project**. It is the first stage of the EIA process.

Screening is **regulated in Article 4 EIA Directive 85/337/EEC as amended**. Two types of projects are distinguished:

Projects listed in **Annex I** → **Mandatory EIA** of 23 different types of projects, as well as their changes / extensions (point 22)

Projects listed in **Annex II** → **EIA is discretionary** for 12 groups of projects, as to be determined through:

- a) a **case-by-case examination**, or
- b) **thresholds or criteria** set by the Member State or
- c) **both procedures**



Project

What is a "project"?

Article 1:

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources

(C-2/2007, preliminary ruling, Belgium)

Does an agreement between public authorities and a private undertaking, signed with a view to having that undertaking become operational, featuring an exact description of work on the infrastructure to be carried out a project?



(C-2/2007, preliminary ruling, Belgium)

ECJ:

An agreement such as the one at issue is not a project within the meaning of Directive 85/337.

It is for the national court to determine, on the basis of the applicable national legislation, whether such an agreement constitutes a development consent within the meaning of Article 1(2) of Directive 85/337.

It is necessary, in that context, to consider whether that consent forms part of a procedure carried out in several stages involving a principal decision and implementing decisions.

The effects which a project may have on the environment must be identified and assessed as soon as it is possible to identify and assess all the effects, i.e. at the time of the principal decision.



Number of EIAs in Member States

| Country | in 2007 | Country | in 2007 |
|----------------|---------|----------------|---------|
| France | 3600 | Hungary | 124 |
| Poland | 2200 | Netherlands | 122 |
| Spain * | 1054 | Czech Republic | 108 |
| Germany | 1000 | Cyprus | 89 |
| Slovakia | 809 | Estonia | 85 |
| Greece | 445 | Finland | 37 |
| United Kingdom | 310 | Austria | 30 |
| Ireland ** | 197 | Latvia | 11 |
| Belgium | 186 | Malta | 10 |
| Denmark * | 125 | | |

* in 2006 ** in 2008

Source: GHK Study for DG Environment, September 2010



Exclude certain Annex II projects in advance from EIA

(C-133/94, EU-Commission / Belgium)

Case:

The Flemish legislation excludes totally and definitively from EIA certain classes of projects mentioned in Annex II.

Belgian Government (supported by Germany):

In the light of the state of the environment in Flanders, only some categories of projects mentioned in Annex II, which come within the thresholds and other criteria which it has established, ought, by reason of their nature, to be subjected to EIA. Member States are entitled to consider generally that the characteristics of certain projects listed in Annex II are such that an EIA is unnecessary.



(C-133/94, EU-Commission / Belgium, also see C-301/95, EU-Commission / Germany)

ECJ:

Member States may always specify certain "types" of projects as being subject to EIA or may establish criteria and/or thresholds for determining which projects are to be subject to EIA, but that power is conferred **within each of the classes listed in Annex II**.

The Community legislature itself considered that all the classes of projects listed in Annex II may possibly have significant effects on the environment depending on the characteristics exhibited by those projects at the time when they were drawn up.

The criteria and/or the thresholds mentioned in Article 4(2) are designed to facilitate the examination of the actual characteristics exhibited by a given project **but do not allow to exempt in advance from that obligation certain whole classes of projects listed in Annex II** which may be envisaged on the territory of a Member State.



Exempting waste recovery installation from EIA

(C-486/04, EU-Commission / Italy)

Case:

Italian legislation exempts from EIA a project for the incineration of combustible materials derived from waste ("CMW") and of biomass with a capacity exceeding 100 tonnes per day.

Italy:

The EIA directive and the actual wording of Annex I, points 9 and 10 and to that of Annex II, point 11(b) apply only to installations which carry out waste disposal, thus excluding from its scope waste recovery installations.



(C-486/04, EU-Commission / Italy)

ECJ:

The **concept of waste disposal for the purpose of Directive 85/337** is an independent concept which must be given a meaning which fully satisfies the objective of the EIA Directive.

Accordingly, that concept, which is not equivalent to that of waste disposal for the purpose of Directive 75/442 (waste framework directive), must be understood in the wider sense as **covering all operations leading either to waste disposal, in the strict sense of the term, or to waste recovery.**

To exempt installations for waste recovery covered by point 11(b) of Annex II from the assessment of environmental effects does not fulfill the requirements of the EIA Directive.



Thresholds under Article 4 (2), cumulative effect

(C-392/96 Commission / Ireland)

Case:

The Commission alleges that Ireland has transposed Article 4(2) incorrectly by **setting absolute thresholds** for the classes of projects covered by points 1(b) (use of uncultivated land or semi-natural areas for intensive agricultural purposes), 1(d) (initial afforestation/land reclamation) and 2(a) (extraction of peat) of Annex II.

Thresholds set by Ireland:

- Use of uncultivated land for intensive cultural purposes: 100 ha
- Afforestation: 70 ha
- Land reclamation (conversion of land to another type of land use: 100 ha
- Peat extraction projects: 50 ha



(C-392/96 Commission / Ireland)

EU Commission:

Projects which do not exceed the thresholds set may none the less have significant environmental effects. Two factors are important in that regard.

1. Certain sites which are particularly sensitive or valuable may be damaged by projects which do not exceed the thresholds set. That is the case with areas identified as valuable and important for nature conservation and areas of particular archaeological or geomorphological interest.
2. The legislation fails to take account of the cumulative effect of projects. A number of separate projects, which individually do not exceed the threshold set and therefore do not require an impact assessment may, taken together, have significant environmental effects.



(C-392/96 Commission / Ireland)

Ireland:

1. The Commission has failed to prove actual abuse of thresholds through cumulative projects. The theoretical possibility of such abuse does not make the use of thresholds unlawful, their use is envisaged by the Directive.
2. As regards projects for the use of uncultivated land for intensive agricultural purposes, covered by point 1(b) of Annex II to the Directive, sheep grazing as practised in its territory is not intensive agriculture and cannot be considered to be a project within the meaning of Article 1(2).
3. The Commission has submitted no objectively verifiable evidence that afforestation below the threshold has had significant effects. As for land reclamation / peat extraction, the Commission gave just one example of such projects below the threshold which has supposedly had significant effects on the environment.



(C-392/96 Commission / Ireland)

ECJ:

1. A Member State which established criteria or thresholds taking account only of the size of projects, without also taking their nature and location into consideration, would **exceed the limits of its discretion**. **Even a small-scale project can have significant effects on the environment** if it is in a location where the environmental factors set out in Article 3, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration.
2. By setting thresholds for the classes of projects covered by points 1(d) and 2(a) of Annex II **without also ensuring that the objective of the legislation will not be circumvented by the splitting of projects**, Ireland has exceeded the limits of its discretion under Articles 2(1) and 4(2).
3. The Commission has provided various examples of the effects of the Irish legislation as drafted.



(C-227/01, EU-Commission / Spain)

ECJ:

The relevant criterion for the implementation of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment is based on the significant effect that a particular project is **'likely'** to have on the environment.
It is **not** for the Commission to establish the concrete negative effects that a project in fact **has** on the environment.



Limitation of discretion under Article 4 (2)

(C-427/07, EU-Commission / Ireland)

Case:

Commission registered a complaint against Ireland concerning damage to a coastal wetland caused by a private road project.

ECJ:

The construction of a **private road** is an infrastructure project that falls **within point 10(e) of Annex II**. Subjecting private road construction development to an EIA only if that development formed part of other developments meant that any private road construction development carried out in isolation could avoid an EIA even if the development was likely to have significant effects on the environment.



Establishing thresholds / criteria under Article 4 (2)

(C-332/04, EU-Commission / Spain)

Case:

Spanish legislation provides that **only** urban planning and construction of hotel complexes, shopping centers and parking **facilities outside of urban areas are subject to an EIA**, while such projects within urban areas are excluded.

Spain:

In urban areas the environmental impacts of urban development projects are practically nil.



Establishing thresholds / criteria to take into account

(C-332/04, EU-Commission / Spain)

ECJ:

In limiting the EIA of urbanization projects only to those located on non-urban land the Spanish government is limited to applying **the location which is only one of three criteria set forth in Article 2(1)**, regardless of the other two criteria, namely the nature and dimensions of the project.

(C-486/04, EU-Commission / Italy)

ECJ:

When establishing those thresholds and/or criteria, Member States must take account not only of the **size of projects, but also of their nature and location**. In addition, in accordance with Article 4(3), the MS are under an obligation to take into account, when establishing those criteria or thresholds, the relevant selection criteria defined in Annex III.



Annex III criteria to take into account

(C-332/04, EU-Commission / Spain)

ECJ:

Indeed, densely populated areas and landscapes of historical, cultural or archaeological significance in points 2(g) and (h) of Annex III of the EIA Directive are among the **selection criteria to be taken into account by Member States, under Article 4(3) of the Directive, in the event of a case-by-case examination or of setting thresholds or criteria for the purpose of Article 4(2)** to determine whether a project should be subject to an assessment. These selection criteria relate more often to urban areas.



Limits of discretion, splitting of projects

(C-142/07 preliminary ruling, Spain)

Facts of the Case:

Project concerns the improving and refurbishing of M-30, a road intended exclusively for motor traffic, without traffic lights, pavements for pedestrians and without bus stops.

The Madrid City Council has split the large M-30 project into 15 independent sub-projects, treated separately, only one of which concerns work on any existing road on a section exceeding five kilometers. The larger project taken as a whole substantially exceeds that threshold.

The execution of the overall scheme will lead to an increase in traffic of nearly 25% and will involve different kinds of works in the urban area surrounding the M-30.



Limits of discretion, splitting of projects

(C-142/07 preliminary ruling, Spain)

Issue at question:

The referring court asks whether the amended directive must be interpreted as meaning that projects for the refurbishment and improvement of virtually the whole of an urban ring road must be made subject to an EIA.

Madrid:

The ring road concerned in the main proceedings is an urban road. The amended directive does not refer to that type of road in Annexes I and II, which mention only motorways, express roads and roads. Those terms are not defined, except, with respect to the notion of express road.



Limits of discretion, splitting of projects

(C-142/07 preliminary ruling, Spain)

ECJ:

The scope of the directive is very wide. It would, therefore, be contrary to the very purpose of the amended directive to allow **any urban road** project to fall outside its scope solely on the ground that the directive does not expressly mention among the projects listed in Annexes I and II those concerning that kind of road.

In addition, the fact that point 7(b) and (c) of Annex I refers to projects for the 'construction' of the types of road mentioned does not mean that projects for refurbishment and improvement of an existing road are excluded from the scope of the amended directive. A project for **refurbishment of a road which would be equivalent, by its size and the manner in which it is carried out, to construction may be regarded as a construction project** for the purposes of that annex.



Limits of discretion, splitting of projects

(C-142/07 preliminary ruling, Spain)

ECJ:

The **purpose of the amended directive cannot be circumvented by the splitting of projects** and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the amended directive.



Splitting of projects

(C-227/01, EU-Commission / Spain)

Case:

Project in question was a 13.2-km-long section of an overall 251 km railway line where doubling of the track of an existing railway line was planned.

Commission:

An EIA was mandatory in the present case, since it involved one of the projects mentioned in point 7 of Annex I.



Splitting of projects

Spain:

1. EIA-Directive was not applicable since the work undertaken merely consisted in improving an already existing railway line by doubling the original single track without constructing a new railway line.
The doubling of the tracks does not in fact have environmental effects beyond those caused by the construction of the original line.
2. Besides, the project at issue is not intended for long-distance traffic within the meaning of point 7, since it links two towns which are only 13.2 km distant from one another.



(C-227/01, EU-Commission / Spain)

ECJ:

1. The wording of Directive 85/337 indicates that its scope is wide and its purpose very broad. **Point 7 of Annex I must be understood to include the doubling of an already existing railway track.** A project of this type will create significant new nuisances, even if only as the result of the adaptation of the railway line with a view to traffic which can attain a speed of 220 km/h. It cannot be considered a mere modification to an earlier project within the meaning of point 12 of Annex II.
2. If the argument of the Spanish Government were upheld (that it is only a short distance), **the effectiveness of Directive 85/337 could be seriously compromised**, since the national authorities concerned would need only to split up a long-distance project into successive shorter sections in order to exclude from the requirements of the Directive both the project as a whole and the sections resulting from that division.



Infringement of national general rules for screening

(C-83/03 Commission / Italy)

ECJ:

Where a Member State defines **general rules** for determining whether projects falling within Article 4(2) of the EIA Directive must be made subject to prior assessment of their effects on the environment before consent is given, **the infringement of those rules necessarily constitutes an infringement of the combined provisions of Articles 2(1) and 4(2) of the EIA Directive.**



Content of Screening Decision

(C-87/02 Commission / Italy)

ECJ:

A **decision** by which the national competent authority takes the view that a project's characteristics do not require it to be subjected to an assessment of its effects on the environment **must contain or be accompanied by all the information** that makes it possible **to check that it is based on adequate screening**, carried out in accordance with the requirements of the EIA Directive.


