

ENVIRONMENTAL IMPACT ASSESSMENT OF PROJECTS RULINGS OF THE COURT OF JUSTICE



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Introduction

About the EIA Directive

The Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment¹, as amended, known as the "EIA" (environmental impact assessment) Directive, requires that an environmental assessment to be carried out by the competent national authority for certain projects which are likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location, before development consent is given. The projects may be proposed by a public or private person.

An **assessment is obligatory** for projects listed in **Annex I** of the Directive, which are considered as having significant effects on the environment. These projects include for example: long-distance railway lines, airports with a basic runway length of 2 100 m or more, motorways, express roads, roads of four lanes or more (of at least 10 km), waste disposal installations for hazardous waste, waste disposal installations for non hazardous waste (with a capacity of more than 100 tonnes per day), waste water treatment plants (with a capacity exceeding 150 000 population equivalent).

Other projects, listed in **Annex II** of the Directive, are not automatically assessed: Member States can decide to subject them to an environmental impact assessment on a case-by-case basis or according to thresholds or criteria (for example size), location (sensitive ecological areas in particular) and potential impact (surface affected, duration). The process of determining whether an environmental impact assessment is required for a project listed in Annex II is called screening. This particularly concerns for example the following projects: construction of railways and roads not included in Annex I, waste disposal installations and water treatment plants not including in Annex I, urban development projects, inland waterways, canalization and flood-relief works, changes or extensions of Annex I and II projects that may have adverse environmental effects².

The EIA Directive of 1985 has been amended three times, in 1997³, in 2003⁴ and in 2009⁵:

- Directive 97/11/EC brought the Directive in line with the Espoo Convention on EIA in a Transboundary Context. The Directive of 1997 widened the scope of the EIA Directive by increasing the types of projects covered, and the number of projects requiring mandatory environmental impact assessment (Annex I). It also provided for new screening arrangements, including new screening criteria (at Annex III) for Annex II projects, and established minimum information requirements.
- Directive 2003/35/EC was seeking to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.
- Directive 2009/31/EC amended the Annexes I and II of the EIA Directive, by adding projects related to the transport, capture and storage of carbon dioxide (CO₂).

¹ OJ L 175, 5.7.1985, p.40.

² For further information concerning the screening process see the EIA - Guidance on Screening – 2001: <http://ec.europa.eu/environment/eia/eia-guidelines/g-screening-full-text.pdf>

³ OJ L 73, 14.3.1997, p.5.

⁴ OJ L 156, 25.6.2003, p.17.

⁵ OJ L 140, 5.6.2009, p.114.

List of time-limits for transposition into national law

Directive	Time-limit for transposition
85/337/EEC	3 July 1988
97/11/EC	14 March 1999
2003/35/EC	25 June 2005
2009/31/EC	25 June 2011

The environmental impact assessment must identify the direct and indirect effects of a project on the following factors: human beings, the fauna, the flora, the soil, water, air, the climate, the landscape, the material assets and cultural heritage, as well as the interaction between these various elements.

The developer (the person who applied for development consent or the public authority which initiated the project) must provide the authority responsible for approving the project with the following information as a minimum: a description of the project (location, design and size); possible measures to reduce significant adverse effects; data required to assess the main effects of the project on the environment; the main alternatives considered by the developer and the main reasons for this choice; a non-technical summary of this information.

With due regard for rules and practices regarding commercial and industrial secrecy, this information must be made available to interested parties sufficiently early in the decision-making process:

- the competent environmental authorities likely to be consulted on the authorisation of the project;
- the public, by the appropriate means (including electronically) at the same time as information (in particular) on the procedure for approving the project, details of the authority responsible for approving or rejecting the project and the possibility of public participation in the approval procedure;
- other Member States, if the project is likely to have transboundary effects. Each Member State must make this information available to interested parties on its territory to enable them to express an opinion.

Reasonable time-limits must be provided for, allowing sufficient time for all the interested parties to participate in the environmental decision-making procedures and express their opinions. These opinions and the information gathered pursuant to consultations must be taken into account in the approval procedure.

At the end of the procedure, the following information must be made available to the public and transmitted to the other Member States concerned:

- the approval or rejection of the project and any conditions associated with it;
- the principal arguments upon which the decision was based after examination of the results of the public consultation, including information on the process of public participation;
- any measures to reduce the adverse effects of the project.

In accordance with national legislation, Member States must ensure that the interested parties can challenge the decision in court.

About the Court

For the purpose of European construction, the Member States concluded treaties creating first the European Communities and subsequently the European Union (EU), with institutions which adopt laws in specific fields. The Communities therefore produce their own legislation, known as regulations, directives and decisions. To ensure that the law is enforced, understood and uniformly applied in all Member States, a judicial institution is essential. That institution is **the Court of Justice of the European Union**.

The Court constitutes the judicial authority of the EU and, in cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of EU law. The Court of Justice of the European Union, which has its seat in Luxembourg, consists of three courts: the Court of Justice, the General Court⁶ (created in 1988) and the Civil Service Tribunal⁷ (created in 2004).

The Court of Justice has jurisdiction on various categories of proceedings⁸. Rulings which are mentioned in this booklet come from actions for failure of Member States to fulfil obligations or from references for a preliminary ruling.

- **Actions for failure to fulfil obligations** - These actions enable the Court of Justice to determine whether a Member State has fulfilled its obligations under EU law. Before bringing the case before the Court of Justice, the Commission conducts a preliminary procedure in which the Member State concerned is given the opportunity to reply to the complaints addressed to it. If that procedure does not result in the Member State terminating the failure, an action for infringement of EU law may be brought before the Court of Justice. The action may be brought by the Commission - as, in practice, is usually the case - or by a Member State. If the Court finds that an obligation has not been fulfilled, the State must bring the failure to an end without delay. If, after a further action is brought by the Commission, the Court of Justice finds that the Member State concerned has not complied with its judgment, it may impose on it a fixed or periodic financial penalty. However, if measures transposing a directive are not notified to the Commission, it may propose that the Court impose a pecuniary penalty on the Member State concerned, once the initial judgment establishing a failure to fulfil obligations has been delivered.
- **References for a preliminary ruling** - The Court of Justice cooperates with all the courts of the Member States, which are the ordinary courts in matters of EU law. To ensure the effective and uniform application of EU legislation and to prevent divergent interpretations, the national courts may, and sometimes must, refer to the Court of Justice and ask it to clarify a point concerning the interpretation of EU law, so that they may ascertain, for example, whether their national legislation complies with that law. A reference for a preliminary ruling may also seek the review of the validity of an act of EU law. The Court of Justice's reply is not merely an opinion, but takes the form of a judgment or reasoned order. The national court to which it is addressed is, in deciding the dispute before it, bound by the interpretation given. The Court's judgment likewise binds other national courts before which the same problem is raised. It is thus through references for preliminary rulings that any European citizen can seek clarification of the EU rules which affect him. Although such a reference can be made only by a national court, all the parties to the proceedings before that court, the Member States and the institutions of the EU may take part in the proceedings before the Court of Justice. In that way, several important principles of EU law have been laid down by preliminary rulings, sometimes in reply to questions referred by national courts of first instance.

⁶ The General Court has jurisdiction to hear: direct actions brought by natural/legal persons against acts of the institutions, bodies, offices or agencies of the EU (which are addressed to them or are of direct and individual concern to them) and against regulatory acts (which concern them directly and which do not entail implementing measures) or against a failure to act on the part of those institutions, bodies, offices or agencies; actions brought by the Member States against the Commission; actions brought by the Member States against the Council relating to acts adopted in the field of State aid, 'dumping' and acts by which it exercises implementing powers; actions seeking compensation for damage caused by the institutions of the EU or their staff; actions based on contracts made by the EU which expressly give jurisdiction to the General Court; actions relating to Community trade marks; appeals, limited to points of law, against the decisions of the EU Civil Service Tribunal; actions brought against decisions of the Community Plant Variety Office or of the European Chemicals Agency.

⁷ The Civil Service Tribunal resolves disputes between the European institutions and their officials and servants.

⁸ The various types of proceedings of the Court of Justice include: references for preliminary rulings; actions for failure of Member States to fulfil obligations under EU law; actions for annulment; actions for failure to act; appeals; reviews.

About the booklet

The Court of Justice plays an important role in implementation, application and interpretation of the EIA Directive, therefore knowledge of its judgements is necessary for proper understanding of substance and aims of the EIA Directive. The purpose of this booklet is to have a collection of the most important rulings of the European Court of Justice related to crucial articles of the EIA Directive. The Commission's services will update this booklet regularly to take into account recent rulings of the Court of Justice.

Following the entry into force of the Treaty of Lisbon on 1 December 2009, the EU now has legal personality and has acquired the competences previously conferred on the European Community. Community law has therefore become EU law, which also includes all the provisions previously adopted under the Treaty on EU as applicable before the Treaty of Lisbon. In the booklet, the term 'Community law' will nevertheless be used where reference is being made to the case-law of the Court of Justice before the entry into force of the Treaty of Lisbon.

The **first part** of this booklet summarises statements of the Court of Justice which can be considered as general principles of the EIA Directive or of the EU law as a whole.

The **second part** contains statements of the Court, as they were pronounced in each particular case, concerning appropriate articles of the EIA Directive.

The **Annex** contains the main Judgments of the Court of Justice mentioned in the booklet sorted by the date of publication. In addition, references for a preliminary ruling are **sometimes** accompanied by information related to the national judgment which has provided grounds for a reference to the Court, as well as by a summary of the final judgment of the national courts following the Court ruling.

PART I

General Principles

EU directives lay down certain end results that must be achieved in every Member State. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so. Each directive specifies the date by which the national laws must be adapted - giving national authorities the room for manoeuvre within the deadlines necessary to take account of differing national situations. Directives are used to bring different national laws into line with each other, and are particularly common in matters that affect the operation of the single market (e.g. product safety standards) or the protection of the environment.

According to the case-law of the Court:

Transposition of a directive

The transposition of a directive into domestic law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific, express provision of national law and a general legal context may be sufficient if it actually ensures the full application of the directive in a **sufficiently clear and precise manner**.

The provisions of a directive must be implemented with unquestionable **binding force** and with the specificity, precision and clarity required in order to satisfy the need for legal certainty, which requires that, in the case of a directive intended to confer rights on individuals, the persons concerned must be enabled to ascertain the full extent of their rights.

(C-332/04, Commission v. Spain, paragraph 38; C-427/07, Commission v. Ireland, paragraphs 54-55)

Burden of proof

While, in proceedings under Article 226 EC [Article 258 TFEU] for failure to fulfil obligations, it is **incumbent upon the Commission to prove the allegation** and to place before the Court the information needed to enable the Court to establish that an obligation has not been fulfilled, in doing which the Commission may not rely on any presumption, it is also for the Member States, under Article 10 EC [Article 4(3) TEU], to facilitate the achievement of the Commission's tasks, which consist in particular, pursuant to Article 211 EC [Article 17(1) TEU], in ensuring that the provisions of the EC Treaty and the measures taken by the institutions pursuant thereto are applied. It is indeed for those purposes that a certain number of directives impose upon the Member States an obligation to provide information. (C-427/07, Commission v. Ireland, paragraphs 105-106)

Information on transposition to be supplied by the Member States

The information which the Member States are thus obliged to supply to the Commission must be clear and precise. It must indicate unequivocally the laws, regulations and administrative provisions by means of which the Member State considers that it has satisfied the various requirements imposed on it by the directive. In the absence of such information, the Commission is not in a position to ascertain whether the Member State has genuinely implemented the directive completely. The failure of a Member State to fulfil that obligation, whether by providing no information at all or by providing insufficiently clear and precise information, may of itself justify recourse to the procedure under Article 226 EC [Article 258 TFEU] in order to establish the failure to fulfil the obligation.

Moreover, although the transposition of a directive may be carried out by means of domestic legal rules already in force, the Member States are not, in that event, absolved from the formal obligation to inform the Commission of the existence of those rules so that it can be in a position to assess whether the rules comply with the directive.

(C-427/07, Commission v. Ireland, paragraphs 107-108)

Transposition by the federated/regional authorities

The fact that a **Member State has conferred on its regions the responsibility for giving effect to directives** cannot have any bearing on the application of Article 226 EC [Article 258 TFEU]. A Member State cannot plead conditions existing within its own legal system in order to justify its failure to comply with obligations and time-limits resulting from Community directives. While each Member State may freely allocate internal legislative powers as it sees fit, the fact remains that it alone is responsible towards the Community under Article 226 EC [Article 258 TFEU] for compliance with obligations arising under Community law.

The fact that **proceedings have been brought before a national court** to challenge the decision of a national authority which is the subject of an action for failure to fulfil obligations and the decision of that court not to suspend implementation of that decision cannot affect the admissibility of the action for failure to fulfil obligations brought by the Commission. The existence of remedies available through the national courts cannot in any way prejudice the bringing of an action under Article 226 EC [Article 258 TFEU], since the two procedures have different objectives and effects.

(C-87/02, Commission v. Italian Republic, paragraphs 38, 39)

Scope and purpose of the EIA Directive

The wording of the **EIA Directive** indicates that it has a **wide scope** and a **broad purpose**.

(C-72/95, Kraaijeveld and Others, paragraphs 31, 39; C-435/97, WWF and Others, paragraph 40; C-2/07, Abraham and Others – *Liège airport*, paragraph 32)

Uniform interpretation and application of EU law

Interpretation of a provision of Community law **involves a comparison of the language versions**. In the case of divergence between them, the need for a **uniform interpretation** of those versions requires that the provision in question be interpreted by reference to the purpose and general scheme of the rules of which it forms part.

(C-72/95, Kraaijeveld and Others, paragraph 28; C-332/04, Commission v. Spain, paragraphs 47-52)

The need for **uniform application** of Community law and the principle of equality require that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an **autonomous and uniform interpretation** throughout the Community; that interpretation must take into account the context of the provision and the purpose of the legislation in question.

(C-287/98, Linster, paragraph 43)

Right of individuals to rely on the EIA directive and invoke it before national courts

As regards the **right of individuals to rely on a directive** and of the **national court** to take it into consideration, it would be incompatible with the binding effect conferred on directives by that provision to exclude, as a matter of principle, any possibility for those concerned to rely on the obligation which directives impose. Particularly where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the effectiveness of such an act would be diminished if individuals were prevented from relying on it in legal proceedings and if national courts were prevented from taking it into consideration as a matter of Community law in determining whether the national legislature, in exercising its choice as to the form and methods for implementing the directive, had kept within the limits of its discretion set by the directive.

(C-72/95, Kraaijeveld and Others, paragraph 56; C-435/97, WWF and Others, paragraph 69; C-287/98, Linster, paragraph 32, C-201/02, Wells, paragraph 57)

The provisions of the EIA Directive **may be taken into account by national courts** in order to review whether the national legislature has kept within the limits of the discretion set by it.

(C-287/98, Linster, paragraph 38)

The obligation to remedy the failure to carry out an EIA

Under Article 10 EC [Article 4(3) TEU] the competent authorities are obliged to take, within the sphere of their competence, all general or particular measures for remedying the failure to carry out an assessment of the environmental effects of a project as provided for in Article 2(1) of the EIA Directive.

The detailed procedural rules applicable in that context are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order (principle of effectiveness).

In that regard, it is for the national court to determine whether it is possible under domestic law for a consent already granted to be **revoked or suspended** in order to subject the project to an assessment of its environmental effects, in accordance with the requirements of the EIA Directive, or alternatively, if the individual so agrees, whether it is possible for the latter to claim **compensation** for the harm suffered.

(C-201/02, Wells, paragraph 70, operative part 3)

While Community law cannot preclude the applicable national rules from allowing, in certain cases, the **regularisation of operations or measures which are unlawful in the light of Community law**, such a possibility should be subject to the condition that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.

Under the principle of cooperation in good faith laid down in Article 10 EC [Article 4(3) TEU], Member States are required to nullify the unlawful consequences of a breach of Community law. The competent authorities are therefore obliged to take the measures necessary to remedy failure to carry out an environmental impact assessment, for example the revocation or suspension of a consent already granted in order to carry out such an assessment, subject to the limits resulting from the procedural autonomy of the Member States.

(C-215/06, Commission v. Ireland, paragraphs 57 and 59)

Part II

The EIA Directive

Article 1

1. *This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.*

2. *For the purposes of this Directive:*

‘project’ means:

— *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;*

‘developer’ means:

the applicant for authorization for a private project or the public authority which initiates a project;

‘development consent’ means:

the decision of the competent authority or authorities which entitles the developer to proceed with the project;

‘public’ means:

one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

‘public concerned’ means:

the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

3. *The competent authority or authorities shall be that or those which the Member States designate as responsible for performing the duties arising from this Directive.*

4. *Member States may decide, on a case-by-case basis if so provided under national law, not to apply this Directive to projects serving national defence purposes, if they deem that such application would have an adverse effect on these purposes.*

5. *This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.*

According to the case-law of the Court:

Concept of development consent

While the term **‘development consent’** is modelled on certain elements of national law, it remains a Community concept which falls exclusively within Community law. According to settled case-law, the terms used in a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope are normally to be given throughout the Community **an autonomous and uniform interpretation** which must take into account the context of the provision and the purpose of the legislation in question.

Thus the classification of a decision as a **‘development consent’** within the meaning of **Article 1(2)** of the EIA Directive must be carried out pursuant to national law in a manner consistent with Community law.

(C-290/03, *Barker - Crystal Palace*, paragraphs 40-41)

It should be noted that Article 1(2) of Directive 85/337/EEC as amended defines **only a single type of consent**, namely the decision of the competent authority or authorities which entitles the developer to proceed with the project.

(C-332/04, Commission v. Spain, paragraph 53)

In a **consent procedure comprising several stages**, that assessment must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment.

(C-201/02, Wells, paragraph 52-53, operative part 1)

Articles 2(1) and 4(2) of the EIA Directive are to be interpreted as requiring an environmental impact assessment to be carried out if, in the case of grant of **consent comprising more than one stage**, it becomes apparent, in the course of the **second stage**, that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location.

(C-290/03, Barker - *Crystal Palace*, paragraph 49, operative part 2)

An **agreement signed between the public authority**, a company in charge of the development and promotion of an airport and an air freight company which provides for certain modifications to the infrastructure of that airport in order to enable it to be used 24 hours per day and 365 days per year is **not a project** within the meaning of the EIA Directive. However, 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 the EIA Directive. 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** and whether account is to be taken of the **cumulative effect** of several projects whose impact on the environment must be assessed globally.

(C-2/07, Abraham and Others – *Liège airport*, paragraph 28, operative part 1)

Public concerned

Members of the “**public concerned**” within the meaning of **Article 1(2)** and 10a of the EIA Directive must be able to have **access to a review procedure** to challenge the decision by which a body attached to a court of law of a Member State has given a ruling on a request for development consent, regardless of the role they might have played in the examination of that request by taking part in the procedure before that body and by expressing their views.

Article 10a of the EIA Directive leaves, by its reference to **Article 1(2)** thereof, to national legislatures the task of determining the conditions which may be required in order for a non governmental organisation which promotes environmental protection to have a right of appeal under the conditions set out above, the national rules thus established must, first, ensure ‘**wide access to justice**’ and, second, render **effective** the provisions of the EIA Directive on judicial remedies. Accordingly, those national rules must not be liable to nullify Community provisions which provide that parties who have a sufficient interest to challenge a project and those whose rights it impairs, which include environmental protection associations, are to be entitled to bring actions before the competent courts. From that point of view, a national law may require that such an association, which intends to challenge a project covered by the EIA Directive through legal proceedings, has as its object the protection of nature and the environment. Furthermore, it is conceivable that the condition that an environmental protection association must have a minimum number of members may be relevant in order to ensure that it does in fact exist and that it is active. However, the number of members required cannot be fixed by national law at such a level that it runs counter to the objectives of Directive and in particular the objective of facilitating judicial review of projects which fall within its scope. Therefore Article 10a of the EIA Directive precludes a provision of national law which reserves the right to bring an appeal against a decision on projects which fall within the scope of that directive solely to environmental NGOs which have at least 2.000 members.

(C-263/08, Djurgården, paragraphs 39, 45-47, 52)

Exemption of Article 1(4)

The Directive, as stated in Article 1(4), does not cover '**projects serving national defence purposes**'. That provision thus excludes from the Directive's scope and, therefore, from the assessment procedure for which it provides, projects intended to safeguard national defence. Such an exclusion introduces an exception to the general rule laid down by the Directive that environmental effects are to be assessed in advance and it must accordingly be interpreted restrictively. **Only projects which mainly serve national defence purposes may therefore be excluded** from the assessment obligation.

It follows that the Directive covers projects, such as that at issue in the main proceedings which, as the file shows, has the principal objective of restructuring an airport in order for it to be capable of commercial use, even though it may also be used for military purposes.

Article 1(4) of the Directive is to be interpreted as meaning that an airport which may **simultaneously serve both civil and military purposes, but whose main use is commercial, falls within the scope of the Directive**.

(C-435/97, WWF and Others, paragraphs 65-67)

Exemption of Article 1(5)

Article 1(5) of the EIA Directive is to be interpreted as not applying to a project, which, while provided for by a **legislative provision** setting out a programme, has received development consent under a separate administrative procedure. The requirements which such a provision and the process under which it has been adopted must satisfy in order that the objectives of the Directive, including that of supplying information, can be regarded as achieved consist in the adoption of the project by a specific legislative act which includes all the elements which may be relevant to the assessment of the impact of the project on the environment.

(C-435/97, WWF and Others, paragraphs 57-63, operative part 3)

Article 1(5) of the EIA Directive should be interpreted having regard to the objectives of the Directive and to the fact that, since it is a provision limiting the Directive's field of application, it must be interpreted restrictively. It follows from that provision that, where the objectives of the Directive, including that of supplying information, are achieved through a legislative process, the Directive does not apply to the project in question.

It is only where the legislature has available to it information equivalent to that which would be submitted to the competent authority in an ordinary procedure for authorising a project that the objectives of the Directive may be regarded as having been achieved through the legislative process.

As regards the **degree of precision required of the legislative act**, Article 1(5) of the Directive requires it to be a specific act adopting the details of the project. Its very wording must demonstrate that the objectives of the Directive have been achieved with regard to the project in question.

On a proper construction of Article 1(5) of the EIA Directive, a measure adopted by a parliament after public parliamentary debate constitutes a specific act of national legislation within the meaning of that provision where the legislative process has enabled the objectives pursued by the EIA Directive, including that of supplying information, to be achieved, and the information available to the parliament at the time when the details of the project were adopted was equivalent to that which would have been submitted to the competent authority in an ordinary procedure for granting consent for a project.

(C-287/98, Linster, paragraphs 49-59)

Article 2

1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.

2a. Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Directive 2008/1/EC of the European Parliament and of the Council on integrated pollution prevention and control¹.

3. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.

In this event, the Member States shall:

(a) consider whether another form of assessment would be appropriate;

(b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the exemption decision and the reasons for granting it;

(c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.

The Commission shall immediately forward the documents received to the other Member States.

The Commission shall report annually to the Council on the application of this paragraph.

According to the case-law of the Court:

The fundamental objective of the EIA

Member States must implement Directive 85/337 in a manner which fully corresponds to its requirements, having regard to its **fundamental objective** which, as is clear from Article 2(1), is that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location should be made subject to a requirement for development consent and an assessment with regard to their effects.

(C-287/98, Linster, paragraph 52; C-486/04 Commission v. Italy, paragraph 36; C-215/06, Commission v. Ireland, paragraphs 49)

Although the Member States have thus been allowed a measure of discretion in specifying certain types of projects which will be subject to an assessment or to establish the criteria and/or thresholds applicable, **the limits of that discretion are to be found in the obligation set out in Article 2(1)** of the EIA Directive 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.

(C-72/95, Kraaijeveld and Others, paragraph 50; C-2/07, Abraham and Others, paragraph 37; C-75/08 Mellor, paragraph 50; C-427/07, Commission v. Ireland, paragraph 41)

Link between Articles 2(1) and 3

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 of the EIA Directive, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration.

(C-392/96, Commission v. Ireland, paragraph 66)

¹ OJ L 24, 29.1.2008, p. 8.

Use of an alternative procedure for an EIA

In the case of a project requiring **assessment** under the EIA Directive, Article 2(1) and (2) thereof are to be interpreted as allowing a Member State to use an assessment procedure other than the procedure introduced by the Directive where that alternative procedure is incorporated in a national procedure which exists or is to be established within the meaning of **Article 2(2)** of the EIA Directive. However, an alternative procedure of that kind must satisfy the requirements of Article 3 and Articles 5 to 10 of the EIA Directive, including public participation as provided for in Article 6.

(C-435/97, WWF and Others, paragraphs 50-54)

The obligation to remedy the failure to carry out an EIA

Under Article 10 EC [Article 4(3) TEU] the competent authorities are obliged to take, within the sphere of their competence, all general or particular measures for remedying the failure to carry out an assessment of the environmental effects of a project as provided for in **Article 2(1)** of the EIA Directive.

The detailed procedural rules applicable in that context are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order (principle of effectiveness).

In that regard, it is for the national court to determine whether it is possible under domestic law for a consent already granted to be **revoked or suspended** in order to subject the project to an assessment of its environmental effects, in accordance with the requirements of the EIA Directive, or alternatively, if the individual so agrees, whether it is possible for the latter to claim **compensation** for the harm suffered.

(C-201/02, Wells, paragraph 70, operative part 3)

Consent procedure comprising several stages and EIA

Articles 2(1) and 4(2) of the EIA Directive are to be interpreted as requiring an environmental impact assessment to be carried out if, in the case of grant of **consent comprising more than one stage**, it becomes apparent, in the course of the second stage, that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location.

(C-290/03, Barker - Crystal Palace, paragraph 49, operative part 2)

Beginning of works and EIA

Article 2(1) of the EIA Directive must necessarily be understood as meaning that, unless the applicant has applied for and obtained the required development consent and has first carried out the environmental impact assessment when it is required, he cannot commence the works relating to the project in question, if the requirements of the directive are not to be disregarded. That analysis is valid for all projects within the scope of the EIA Directive, whether they fall under Annex I and must therefore systematically be subject to an assessment pursuant to Articles 2(1) and 4(1), or whether they fall under Annex II and, as such, and in accordance with Article 4(2), are subject to an impact assessment only if, in the light of thresholds or criteria set by the Member State and/or on the basis of a case-by-case examination, they are likely to have significant effects on the environment.

A literal analysis of that kind of **Article 2(1)** is moreover consonant with the objective pursued by the EIA Directive, set out in particular in recital 5 of the preamble to the EIA Directive, according to

which 'projects for which an assessment is required should be subject to a requirement for development consent [and] the assessment should be carried out before such consent is granted'.

(C-215/06, Commission v. Ireland, paragraphs 51-53)

The obligation to remedy the failure to carry out an EIA

Member States are required to nullify the unlawful consequences of a breach of Community law under the principle of cooperation in good faith laid down in Article 10 EC [Article 4(3) TEU]. The competent authorities are therefore obliged to take the measures necessary to remedy failure to carry out an environmental impact assessment, for example the revocation or suspension of a consent already granted in order to carry out such an assessment, subject to the limits resulting from the procedural autonomy of the Member States. This cannot be taken to mean that a **remedial environmental impact assessment**, undertaken to remedy the failure to carry out an assessment as provided for and arranged by the EIA Directive, since the project has already been carried out, is equivalent to an environmental impact assessment preceding issue of the development consent, as required by and governed by that directive.

A Member State fails to fulfil its obligations under the EIA Directive, which **after the event** gives to **retention permission**, which can be issued even where **no exceptional circumstances** are proved, the same effects as those attached to a planning permission preceding the carrying out of works and development, when, pursuant to **Articles 2(1)** and 4(1) and (2) of that directive, projects for which an environmental impact assessment is required must be identified and then – before the grant of development consent and, therefore, necessarily before they are carried out – must be subject to an application for development consent and to such an assessment.

(C-215/06, Commission v. Ireland, paragraphs 59-61)

Article 3

The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora;*
- soil, water, air, climate and the landscape;*
- material assets and the cultural heritage;*
- the interaction between the factors mentioned in the first, second and third indents.*

According to the case-law of the Court:

Content of the EIA

It should be noted that Article 3 of Directive 85/337/EEC as amended refers to the contents of the environmental impact assessment, which includes a description of direct and indirect effects of a project on factors listed in the first three indents of this Article and the interaction between them. The task of carrying out such an assessment falls to the competent environmental authority.

As far as Spanish law is concerned, it should be noted, firstly, that Article 2(1) of Legislative Royal Decree No 1302/1986 as amended does not mention the interaction between the factors listed in the first to third indents of Article 3 of the EIA Directive.

Furthermore, Article 7 of Royal Decree No 1131/1988 establishes the list of documents that should be included in the environmental impact study entrusted to the developer, which includes an environmental inventory not specified in the relevant information to be made available under Article 5(3) of Directive 85/337/EEC as amended. This document, whose content is specified in Article 9 of the Royal Decree, must indeed describe the key environmental and ecological interactions.

However, although the environmental inventory is intended to describe the condition of the site on which the project is to be built as well as its environmental characteristics, including key ecological interactions, it nonetheless does not evaluate the effects of the project on the different environmental factors specifically mentioned in Article 3 of Directive 85/337/EEC as amended or the interaction between them. It appears that even if the administrative practice is to assess this interaction, this would not mean that Article 3 of Directive 85/337/EEC as amended was properly transposed. According to established case-law, the transposition of a directive into domestic law must be completed by provisions capable of creating a situation which is sufficiently precise, clear and transparent to enable individuals to ascertain their rights and obligations (cf., in particular, judgments of 30 May 1991 in case C-361/88 *Commission v Germany* [ECR I-2567, paragraph 24], of 7 November 1996 in case C-221/94 *Commission v Luxembourg* [ECR I-5669, paragraph 22] and of 13 September 2001 in case C-417/99 *Commission v Spain* [ECR I-6015, paragraph 38].

(C-332/04, *Commission v. Spain*, paragraphs 33-36, 38)

Overall environmental assessment

The EIA Directive adopts an **overall assessment of the effects** of projects or the alteration thereof on the environment. It would be simplistic and contrary to that approach to take account, when assessing the environmental impact of a project or of its modification, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable to result from the use and exploitation of the end product of those works.

(C-2/07, *Abraham and Others – Liège airport*, paragraphs 42-43; C-142/07, *Ecologistas en Acción-CODA*, paragraph 39)

The EIA Directive adopts an **overall assessment of the effects** of projects on the environment, irrespective of whether the project might be **transboundary** in nature.

(C-205/08, Umweltanwalt von Kärnten, paragraph 51)

The list laid down in **Article 3** of the EIA Directive of the factors to be taken into account, such as the effect of the project on human beings, fauna and flora, soil, water, air or the cultural heritage, shows, in itself, that the environmental impact whose assessment the EIA Directive is designed to enable is **not only the impact of the works** envisaged but also, and above all, the **impact of the project to be carried out**.

(C-2/07, Abraham and Others – Liège airport, paragraph 44)

Article 4

1. Subject to Article 2 (3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2 (3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

(b) thresholds or criteria set by the Member State

2. whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.

According to the case-law of the Court:

Transboundary projects

Projects listed in **Annex I** to the EIA Directive which **extend to the territory of a number of Member States** cannot be exempted from the application of the Directive solely on the ground that it does not contain any express provision in regard to them. Such an exemption would seriously interfere with the objective of the EIA Directive. Its effectiveness would be seriously compromised if the competent authorities of a Member State could, when deciding whether a project must be the subject of an environmental impact assessment, leave out of consideration that part of the project which is located in another Member State. That finding is strengthened by the terms of Article 7 of the EIA Directive, which provide for inter-State cooperation when a project is likely to have significant effects on the environment in another Member State.

(C-205/08, Umweltanwalt von Kärnten, paragraphs 54-56)

Criteria/thresholds

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 of the EIA Directive, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration.

(C-392/96, Commission v. Ireland, paragraph 66)

As regards the **cumulative effect** of projects, it is to be remembered that **the criteria and/or thresholds** mentioned in **Article 4(2)** are designed to facilitate the examination of the actual characteristics exhibited by a given project in order to determine whether it is subject to the requirement to carry out an assessment, and not 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 (C-133/94, Commission v Belgium, paragraph 42; C-72/95 Kraaijeveld and Others, paragraph 51; and Case C-301/95 Commission v Germany, paragraph 45).

(C-392/96, Commission v. Ireland, paragraph 73)

Limits of discretion

Article 4(2) of the EIA Directive mentions, by way of indication, methods to which the Member States may have recourse when determining which of the projects falling within Annex II are to be subject to an assessment within the meaning of the EIA Directive. Consequently, the EIA Directive confers a **measure of discretion** on the Member States and does not therefore prevent them from

using **other methods** to specify the projects requiring an environmental impact assessment under the Directive. So the EIA Directive excludes in no way the method consisting in the designation, on the basis of an individual examination of each project concerned or pursuant to national legislation, of a particular project falling within Annex II to the EIA Directive as not being subject to the procedure for assessing its environmental effects.

However, whatever the method adopted by a Member State to determine whether or not a specific project needs to be assessed, be it by legislative designation or following an individual examination of the project, the method adopted **must not undermine the objective of the Directive**, which is that no project likely to have significant effects on the environment, within the meaning of the Directive, should be exempt from assessment, unless the specific project excluded could, on the basis of a comprehensive screening, be regarded as not being likely to have such effects.

(C-435/97, WWF and Others, paragraphs 42, 43, 45 and C-87/02, Commission v. Italian Republic, paragraphs 41, 42, 44)

Level of thresholds – type of criteria to be taken into consideration

A Member State which has established thresholds and/or criteria at a level such that, in practice, all **projects of a certain type** would be exempted in advance from the requirement of an impact assessment exceeds the limits of that discretion, unless all the projects excluded could, when viewed as a whole, be regarded as not likely to have significant effects on the environment

(C-392/96, Commission v. Ireland, paragraph 53; C-72/95, Kraaijeveld and Others, paragraph 53; C-435/97, WWF and Others, paragraph 38; C-392/96 Commission v. Ireland, paragraph 75; C-66/06, Commission v. Ireland, paragraph 65; C-427/07, Commission v. Ireland, paragraph 42)

A Member State which, on the basis of **Article 4(2)** of the EIA Directive, has established thresholds and/or criteria taking account **only the size of projects**, without taking into consideration **all the criteria listed in Annex III** [i.e. nature and location of projects], exceeds the **limits of its discretion** under Articles 2(1) and **4(2)** of the EIA Directive.

(C-392/96, Commission v. Ireland, paragraphs 65, 72; C-66/06, Commission v. Ireland, paragraph 64; C-255/08, Commission v. Netherlands, paragraphs 32-39)

By limiting the environmental impact assessment for urban development projects exclusively to projects located on non-urban land, the Spanish Government is **confining itself to applying the criterion of location**, which is only one of three criteria set out in Article 2(1) of the EIA Directive, and is **failing to take account of the other two criteria, namely the nature and size of a project**.

Moreover, insofar as Spanish law provides for environmental impact assessment only in respect of urban development projects outside urban areas, it fails to apply completely the criterion of location. 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.

(C-332/04, Commission v. Spain, paragraphs 75-79)

Infringement of national general rules for screening

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.

(C-83/03, Commission v. Italy – Fossacesia, paragraph 20)

Splitting of projects – cumulative effects

The purpose of the EIA 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 EIA Directive.

(C-392/96, Commission v. Ireland, paragraphs, 76, 82; C-142/07, Ecologistas en Acción-CODA, paragraph 44 ; C-205/08, Umweltanwalt von Kärnten, paragraph 53)

Content of the screening decisions

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.

(C-87/02, Commission v. Italian Republic, paragraph 49)

Article 4 of the EIA Directive must be interpreted as **not requiring** that a determination, that it is unnecessary to subject a project falling within Annex II to that directive to an environmental impact assessment, should **itself contain the reasons** for the competent authority's decision that the latter was unnecessary. However, if an interested party so requests, the competent administrative authority is obliged to communicate to him the reasons for the determination or the relevant information and documents. If a negative screening decision of a Member State states the reasons on which it is based, that **determination is sufficiently reasoned** where the reasons which it contains (added to factors which have already been brought to the attention of interested parties, and supplemented by any necessary additional information that the competent national administration is required to provide to those interested parties at their request) can enable the interested parties to decide whether to appeal against that decision.

(C-75/08, Mellor, paragraphs 61, 66, operative part 1-2)

Article 5

1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard *inter alia* to current knowledge and methods of assessment.

2. Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6 (1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.

Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

- a description of the project comprising information on the site, design and size of the project,
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
- the data required to identify and assess the main effects which the project is likely to have on the environment,
- an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects,
- a non-technical summary of the information mentioned in the previous indents.

4. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, shall make this information available to the developer.

According to the case-law of the Court:

Overall environmental assessment – information to be provided by the developer

The EIA Directive adopts an **overall assessment** of the effects of projects or the alteration thereof on the environment. It would be simplistic and contrary to that approach to take account, when assessing the environmental impact of a project or of its modification, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable to result from the use and exploitation of the end product of those works.

(C-2/07, Abraham and Others – *Liège airport*, paragraphs 42-43; C-142/07, *Ecologistas en Acción-CODA*, paragraph 39)

The EIA Directive adopts an **overall assessment of the effects** of projects on the environment, irrespective of whether the project might be **transboundary** in nature.

(C-205/08, *Umweltanwalt von Kärnten*, paragraph 51)

Article 6

1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.

2. The public shall be informed, whether by public notices or other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

(a) the request for development consent;

(b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;

(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

(d) the nature of possible decisions or, where there is one, the draft decision;

(e) an indication of the availability of the information gathered pursuant to Article 5;

(f) an indication of the times and places where and means by which the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

(a) any information gathered pursuant to Article 5;

(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;

(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ⁽¹⁾, information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and for consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States.

6. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.

According to the case-law of the Court:

Timing of the consultations – status of the opinions

While Article 6(1) and (2) of the EIA Directive require Member States to hold a consultation procedure, in which the authorities likely to be concerned by the project and the public are invited, respectively, to give their opinion, the fact remains that such a procedure is carried out, necessarily, before consent is granted. Such **opinions** – and further opinions which Member States may stipulate – **form part of the consent process** and are aimed at assisting the competent body's decision on granting or refusing development consent. They are therefore **preparatory in nature and not, generally, subject to appeal**. (C-332/04, Commission v. Spain, paragraph 54)

¹ OJ L 41, 14.2.2003, p. 26.

Participation in the decision-making procedure and access to justice

Article 6(4) of Directive 85/337 guarantees the public concerned effective participation in environmental decision-making procedures as regards projects likely to have significant effects on the environment. Participation in the decision-making procedure has no effect on the conditions for access to the review procedure. Participation in an environmental decision-making procedure under the conditions laid down in Articles 2(2) and 6(4) of Directive 85/337 is separate and has a different purpose from a legal review, since the latter may, where appropriate, be directed at a decision adopted at the end of that procedure.

(C-263/08, Djurgården, paragraphs 36 and 38)

Setting conditions on public participation²

The levying of an **administrative fee** is not in itself incompatible with the purpose of the EIA Directive. It is apparent from the sixth recital in the preamble to the EIA Directive, as it is from **Article 6(2)** of that directive, that one of the directive's objectives is to afford the members of the public concerned the opportunity to express their opinion in the course of development consent procedures for projects likely to have significant effects on the environment. In that regard, **Article 6(3)** allows Member States to place certain conditions on participation by members of the public concerned by the project. Thus, under that provision, the Member States may determine the detailed arrangements for public information and consultation and, in particular, determine the public concerned and specify how that public may be informed and consulted.

A fee cannot, however, be fixed at a level which would be such as to prevent the directive from being fully effective, in accordance with the objective pursued by it. This would be the case if, due to its amount, a fee were liable to constitute an **obstacle to the exercise of the rights of participation conferred by Article 6** of the EIA Directive. The amount of the fees at issue here, namely 20€ in procedures before local authorities and 45€ at the Board level, cannot be regarded as constituting such an obstacle.

(C-216/05, Commission v. Ireland, paragraphs 37-38, 42-45)

² This ruling is based on Directive 85/337/EEC, as amended by directive 97/11/EC and has not taken into account the modifications of directive 2003/35/EC. Furthermore, the ruling could not take into account the accession of the EU to the Aarhus Convention.

Article 7

1. Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:

- (a) a description of the project, together with any available information on its possible transboundary impact;*
- (b) information on the nature of the decision which may be taken,*

1. and shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.

2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information required to be given pursuant to Article 6(2) and made available pursuant to Article 6(3)(a) and (b).

3. The Member States concerned, each insofar as it is concerned, shall also:

(a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6 (1) and the public concerned in the territory of the Member State likely to be significantly affected; and

(b) ensure that those authorities and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.

4. The Member States concerned shall enter into consultations regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame for the duration of the consultation period.

5. The detailed arrangements for implementing this Article may be determined by the Member States concerned and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.

According to the case-law of the Court:

Overall environmental assessment for projects which extend to the territory of a number of Member States

The EIA Directive adopts an **overall assessment of the effects** of projects on the environment, irrespective of whether the project might be **transboundary** in nature.

(C-205/08, Umweltanwalt von Kärnten, paragraph 51)

Projects listed in Annex I to the EIA Directive which **extend to the territory of a number of Member States** cannot be exempted from the application of the Directive solely on the ground that it does not contain any express provision in regard to them. Such an exemption would seriously interfere with the objective of the EIA Directive. Its effectiveness would be seriously compromised if the competent authorities of a Member State could, when deciding whether a project must be the subject of an environmental impact assessment, leave out of consideration that part of the project which is located in another Member State. That finding is strengthened by the terms of **Article 7** of the EIA Directive, which provide for inter-State cooperation when a project is likely to have significant effects on the environment in another Member State.

(C-205/08, Umweltanwalt von Kärnten, paragraphs 54-55)

Article 8

The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.

Article 9

1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

— the content of the decision and any conditions attached thereto,

— having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process,

— a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article.

The consulted Member States shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory.

According to the case-law of the Court:

Publication of the decision to grant or refuse development consent

Under Article 9 of the EIA Directive the public is to be informed once the decision to grant or refuse development consent has been taken. The purpose of issuing this information is not merely to inform the public but also to enable persons who consider themselves harmed by the project to exercise their right of appeal within the appointed deadlines.

It follows from the foregoing that the publication by a Member State of an environmental impact statement issued by a competent administrative authority in environmental matters, an action not required under Community law, is no substitute for the obligation, under Article 9 of Directive 85/337/EEC as amended, to inform the public of the granting or refusal of consent to proceed with a project under Article 1(2) of the Directive.

This interpretation is supported by the purpose of Directive 85/337/EEC, in its original version, which is, according to the first recital, to prevent the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects. This purpose was confirmed by Directive 97/11/EC, which recalls, in its second recital, that, pursuant to Article 130r(2) of the EC Treaty (Article 174(2) in the amended Treaty), Community policy on the environment is based on the precautionary principle and the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

By imposing, in Article 9, the obligation on Member States to inform the public when a decision granting or refusing development consent is adopted, the amended Directive 85/337/EEC is intended to involve the public concerned in supervising the implementation of these principles. Informing the public only of the content of the opinion which is to be taken into account by the competent authority before adopting its decision is a less effective way of involving the public in supervision than informing the public of the final decision which concludes the consent procedure.

Inasmuch as national law does not require the publication of the decision to grant or refuse consent for the project, Article 9(1) of Directive 85/337/EEC as amended has not been correctly implemented.

(C-332/04, Commission v. Spain, paragraphs 55-59)

Article 10

The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.

Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.

Article 10a

Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively,

(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

Member States shall determine at what stage the decisions, acts or omissions may be challenged.

What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

In order to further the effectiveness of the provisions of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

According to the case-law of the Court:

Participation in an environmental decision-making procedure as a condition to have access to a review procedure

Article 10a of the EIA, taking account of the amendments introduced by Directive 2003/35 which is intended to implement the **Aarhus Convention**, provides for members of the public concerned who fulfil certain conditions to have access to a review procedure before a court of law or another independent body in order to challenge the substantive or procedural legality of decisions, acts or omissions which fall within its scope. Thus, according to the wording of that provision, persons who are members of the public concerned and either have sufficient interest, or if national law so requires, maintain that one of the projects covered by Directive 85/337 impairs their rights, are to have access to a review procedure. It is also apparent therefrom that any non-governmental organisations which promote environmental protection and meet the conditions which may be required by national law satisfy the criteria, with respect to the public concerned who may bring an appeal, laid down in Article 1(2) of Directive 85/337 read in conjunction with Article 10a.

The right of access to a review procedure within the meaning of Article 10a of Directive 85/337 does not depend on whether the authority which adopted the decision or act at issue is an administrative body or a court of law. Second, **participation in an environmental decision-making procedure** under the conditions laid down in Articles 2(2) and 6(4) of Directive 85/337 **is separate and has a different purpose from a legal review**, since the latter may, where appropriate, be directed at a decision adopted at the end of that procedure. Therefore, participation in the decision-making procedure has no effect on the conditions for access to the review procedure.

Members of the “**public concerned**” within the meaning of Article 1(2) and **10a** of the EIA Directive must be able to have **access to a review procedure** to challenge the decision by which a body attached to a court of law of a Member State has given a ruling on a request for development consent, regardless of the role they might have played in the examination of that request by taking part in the procedure before that body and by expressing their views.

(C-263/08, Djurgården, paragraphs 32-39)

Access to justice for non-governmental organisations (NGOs) which promote environmental protection – minimum number of members

It is clear from Directive 85/337 that it distinguishes between the public concerned by one of the projects falling within its scope in a general manner and, on the other hand, a sub-group of natural or legal persons within the public concerned who, in view of their particular position vis-à-vis the project at issue, are, in accordance with **Article 10a, to be entitled to challenge the decision** which authorises it. The directive leaves it to national law to determine the conditions for the admissibility of the action. Those conditions may be having ‘sufficient interest’ or ‘impairment of a right’, and national laws generally use one or other of those two concepts.

As regards non-governmental organisations which promote environmental protection, Article 1(2) of Directive 85/337, read in conjunction with Article 10a thereof, requires that those organisations ‘meeting any requirements under national law’ are to be regarded either as having ‘sufficient interest’ or as having a right which is capable of being impaired by projects falling within the scope of that directive.

While it is true that Article 10a of the EIA Directive, by its reference to Article 1(2) thereof, leaves to national legislatures the task of determining the conditions which may be required in order for a non-governmental organisation which promotes environmental protection to have a right of appeal under the conditions set out above, the national rules thus established must, first, ensure ‘**wide access to justice**’ and, second, **render effective the provisions of the EIA Directive on judicial remedies**. Accordingly, those national rules must not be liable to nullify Community provisions which provide that parties who have a sufficient interest to challenge a project and those whose rights it impairs, which include environmental protection associations, are to be entitled to bring actions before the competent courts.

From that point of view, a national law may require that such an association, which intends to challenge a project covered by the EIA Directive through legal proceedings, has as its object the protection of nature and the environment.

Furthermore, it is conceivable that the condition that an environmental protection association must have a minimum number of members may be relevant in order to ensure that it does in fact exist and that it is active. However, **the number of members required cannot be fixed by national law at such a level that it runs counter to the objectives of the EIA Directive and in particular the objective of facilitating judicial review of projects which fall within its scope**.

In that connection, it must be stated that, although the EIA Directive provides that members of the public concerned who have a sufficient interest in challenging projects or have rights which may be impaired by projects are to have the right to challenge the decision which authorises it, that directive in no way permits access to review procedures to be limited on the ground that the persons concerned have already been able to express their views in the participatory phase of the decision-making

procedure established by Article 6(4) thereof. Thus, the fact that the national rules offer extensive opportunities to participate at an early stage in the procedure in drawing up the decision relating to a project is no justification for the fact that judicial remedies against the decision adopted at the end of that procedure are available only under very restrictive conditions.

Furthermore, the EIA Directive does not exclusively concern projects on a regional or national scale, but also projects more limited in size which locally based associations are better placed to deal with. As the Advocate General notes, in point 78 of her Opinion, the rule of the Swedish legislation at issue is such as to deprive local associations of any judicial remedy. The Swedish Government, which acknowledges that at present only two associations have at least 2 000 members and thereby satisfy the condition laid down in relevant national law, has in fact submitted that local associations could contact one of those two associations and ask them to bring an appeal. However, that possibility in itself is not capable of satisfying the requirements of Directive 85/337 as, first, the associations entitled to bring an appeal might not have the same interest in projects of limited size and, second, they would be likely to receive numerous requests of that kind which would have to be dealt with selectively on the basis of criteria which would not be subject to review. Finally, **such a system would give rise, by its very nature, to a filtering of appeals directly contrary to the spirit of the directive which is intended to implement the Aarhus Convention.**

Consequently, **Article 10a** of the EIA Directive precludes a provision of national law which reserves the right to bring an appeal against a decision on projects which fall within the scope of that directive solely to environmental NGOs which have at least 2.000 members.

(C-263/08, Djurgården, paragraphs 42-52)

Cost of the review procedure

It is clear from **Article 10a** of the EIA Directive that the procedures **must not be prohibitively expensive**. That covers only the costs arising from participation in such procedures. Such a condition does not prevent the courts from making an order for costs provided that the amount of those costs complies with that requirement. A national practice under which the courts may decline to order an unsuccessful party to pay the costs and can, in addition, order expenditure incurred by the unsuccessful party to be borne by the other party is merely a discretionary practice on the part of the courts. Such a practice on the part of the court which cannot, by definition, be certain, cannot be regarded as valid implementation of the obligations arising from those articles.

(C-427/07, Commission v. Ireland, paragraphs 92-95)

Article 11

1. The Member States and the Commission shall exchange information on the experience gained in applying this Directive.

2. In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4 (2).

3. Five years after notification of this Directive, the Commission shall send the European Parliament and the Council a report on its application and effectiveness. The report shall be based on the aforementioned exchange of information.

4. On the basis of this exchange of information, the Commission shall submit to the Council additional proposals, should this be necessary, with a view to this Directive's being applied in a sufficiently coordinated manner.

For further information on the published Commission Reports, see the webpage <http://ec.europa.eu/environment/eia/eia-support.htm>.

Article 12

1. Member States shall take the measures necessary to comply with this Directive within three years of its notification ⁽¹⁾.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

According to the case-law of the Court:

Time-limit for transposition

Article 12(1) of the EIA Directive requires the Member States to take the measures necessary to comply with the directive within three years of its notification. Since the directive was notified to the Member States on 3 July 1985, that period expired on 3 July 1988.

(C-81/96, Gedeputeerde Staten van Noord-Holland, paragraph 10)

Criterion for the temporal application of the EIA Directive – transitional rules

The EIA Directive and in particular **Article 12(1)**, must be interpreted as precluding a Member State which has transposed it into its national legal order after 3 July 1988, the time-limit for transposition, from waiving the obligations imposed by the directive in respect of a project consent procedure initiated after that time-limit. The sole criterion which may be used, since it accords with **the principle of legal certainty** and is designed to safeguard the effectiveness of the directive, to determine the date on which the procedure was initiated is the **date when the application for consent was formally lodged**, disregarding informal contacts and meetings between the competent authority and the developer.

(C-431/92, Commission v. Federal Republic of Germany, 28-33; C-81/96, Gedeputeerde Staten van Noord-Holland, paragraphs 23 to 28; C-301/95 Commission v. Germany, paragraph 29; C-150/97, Commission v. Portuguese Republic, paragraphs 18)

It is settled case-law that there is nothing in the EIA directive which could be construed as authorising the Member States to exempt projects in respect of which the consent procedures were initiated after the deadline of 3 July 1988 from the obligation to carry out an environmental impact assessment (Case C-396/92 Bund Naturschutz in Bayern and Others [1994] ECR I-3717, paragraph 18). Accordingly, in the case of such projects the principle stated in Article 2(1) of the EIA directive applies, according to which projects likely to have significant effects on the environment are subject to an environmental assessment.

However, since the EIA directive does not make provision for transitional rules covering projects in respect of which the consent procedure was initiated before 3 July 1988 and which were still in progress on that date, the Court has held that that principle does not apply where the application for consent for a project was formally lodged before 3 July 1988. It has stated that that formal criterion is the only one which accords with the principle of legal certainty and enables the effectiveness of the directive to be safeguarded (Case C-431/92 Commission v Germany [1995] ECR I-2189, paragraph 32).

The reason for that is that the directive is primarily designed to cover large-scale projects which will most often require a long time to complete. It would therefore not be appropriate for the relevant procedures, which are already complex at national level and which were formally initiated prior to the

¹ This Directive was notified to the Member States on 3 July 1985.

date of the expiry of the period for transposing the directive, to be made more cumbersome and time-consuming by the specific requirements imposed by the directive, and for situations already established to be affected by it.

(C-81/96, Gedeputeerde Staten van Noord-Holland, paragraphs 22-24)

Fresh consent procedure

However, the circumstances of this case do not concern a consent procedure for a project which is subject to an assessment, which was formally initiated before 3 July 1988, and which was still in progress on that date. On the contrary, it concerns an application made after 3 July 1988 seeking **fresh consent** for a project listed in Annex I of the directive and incorporating the development provided for in a project for which consent was obtained years or even decades previously, without any environmental assessment being made in accordance with the requirements of the directive. Despite that, scarcely any progress was made in implementing the project, the developer for which is a public authority.

In such a case, the considerations which led the Court to hold that the requirement of an environmental assessment need not apply in case C-431/92 cannot apply in this case, particularly as national legal remedies are available in respect of the **new consent procedure**.

Accordingly, where for reasons inherent in the applicable national rules, a fresh procedure is formally initiated after 3 July 1988, that procedure is subject to the obligations regarding environmental assessments imposed by the directive. Any other solution would run counter to the principle that an environmental assessment must be made of certain major projects, set out in Article 2 of the directive, and would compromise its effectiveness.

The EIA directive is to be interpreted as not permitting Member States to waive the obligations regarding environmental assessments in the case of projects listed in Annex I of the directive where:

- the projects have already been the subject of a consent granted prior to 3 July 1988, the date by which the directive was to have been transposed into national law,
- the consent was not preceded by an environmental assessment in accordance with the requirements of the directive and no use was made of it, and
- a fresh consent procedure was formally initiated after 3 July 1988.

(C-81/96, Gedeputeerde Staten van Noord-Holland, paragraphs 25-28)

ANNEX I

PROJECTS SUBJECT TO ARTICLE 4 (1)

1. *Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.*
2. — *Thermal power stations and other combustion installations with a heat output of 300 megawatts or more, and*
 - *nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (*) (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).*
3. (a) *Installations for the reprocessing of irradiated nuclear fuel.*
(b) *Installations designed:*
 - *for the production or enrichment of nuclear fuel,*
 - *for the processing of irradiated nuclear fuel or high-level radioactive waste,*
 - *for the final disposal of irradiated nuclear fuel,*
 - *solely for the final disposal of radioactive waste,*
 - *solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.*
4. — *Integrated works for the initial smelting of cast-iron and steel;*
 - *Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.*
5. *Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilization of more than 200 tonnes per year.*
6. *Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:*
 - (i) *for the production of basic organic chemicals;*
 - (ii) *for the production of basic inorganic chemicals;*
 - (iii) *for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers);*
 - (iv) *for the production of basic plant health products and of biocides;*
 - (v) *for the production of basic pharmaceutical products using a chemical or biological process;*
 - (vi) *for the production of explosives.*
7. (a) *Construction of lines for long-distance railway traffic and of airports (2) with a basic runway length of 2 100 m or more;*
(b) *Construction of motorways and express roads (3);*
(c) *Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length.*

* Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

² For the purposes of this Directive, 'airport' means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

³ For the purposes of the Directive, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

8. (a) *Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes;*
(b) *Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.*
9. *Waste disposal installations for the incineration, chemical treatment as defined in Annex IIA to Directive 75/442/EEC (⁴) under heading D9, or landfill of hazardous waste (i.e. waste to which Directive 91/689/EEC (⁵) applies).*
10. *Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.*
11. *Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.*
12. (a) *Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;*
(b) *In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 % of this flow.*
In both cases transfers of piped drinking water are excluded.
13. *Waste water treatment plants with a capacity exceeding 150 000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC (⁶).*
14. *Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 m³/day in the case of gas.*
15. *Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.*
16. *Pipelines with a diameter of more than 800 mm and a length of more than 40 km:*
— *for the transport of gas, oil, chemicals, and,*
— *for the transport of carbon dioxide (CO₂) streams for the purposes of geological storage, including associated booster stations.*
17. *Installations for the intensive rearing of poultry or pigs with more than:*
(a) *85 000 places for broilers, 60 000 places for hens;*
(b) *3 000 places for production pigs (over 30 kg); or*
(c) *900 places for sows.*
18. *Industrial plants for the*
(a) *production of pulp from timber or similar fibrous materials;*
(b) *production of paper and board with a production capacity exceeding 200 tonnes per day.*
19. *Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.*
20. *Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.*
21. *Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.*

⁴ OJ L 194, 25.7.1975, p. 39. Directive as last amended by Commission Decision 94/3/EC (OJ No L 5, 7.1.1994, p. 15).

⁵ OJ L 377, 31.12.1991, p. 20. Directive as last amended by Directive 94/31/EC (OJ No L 168, 2.7.1994, p. 28).

⁶ OJ L 135, 30.5.1991, p. 40. Directive as last amended by the 1994 Act of Accession.

22. *Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.*
23. *Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide ⁽⁷⁾.*
24. *Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Annex, or where the total yearly capture of CO₂ is 1,5 megatonnes or more.*

According to the case-law of the Court:

Airport

Works to **modify the infrastructure of an existing airport**, without extension of the runway, may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself and are with regard to this case **subject to a screening**.

Point 12 of Annex II, read in conjunction with **point 7 of Annex I**, to the EIA Directive (in their original version), must be regarded as also encompassing works to **modify an existing airport**. All works relating to the buildings, installations or equipment of an airport must be considered to be works relating to the airport as such. For the application of **point 12 of Annex II**, read in conjunction with **point 7 of Annex I**, to the EIA Directive (in their original version), that means that **works to modify an airport** with a runway length of 2 100 metres or more thus comprise not only works to extend the runway, but all works relating to the buildings, installations or equipment of that airport where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. That is the case in particular for works aimed at **significantly increasing the activity** of the airport and air traffic.

(C-2/07, Abraham and Others – Liège airport, paragraphs 32, 33, 34, 36, 40, operative part 2: That interpretation is not called into question by the fact that the EIA Directive 97/11 has replaced point 12 of Annex II to the EIA Directive 85/337 with a new point 13)

Power line

Articles 2(1) and 4(1) of the EIA Directive are to be interpreted as meaning that the competent authorities of a Member State must make a project referred to in **point 20 of Annex I** to the Directive, such as the construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km, subject to the environmental impact assessment procedure even where the project is **transboundary** in nature and less than 15 km of it is situated on the territory of that Member State.

(C-205/08, Umweltanwalt von Kärnten, paragraph 58)

Railway

Annex I.7 of the EIA Directive must be understood to include the **doubling of an existing railway track**. That conclusion is all the more obvious when the execution of the project at issue involves a new track route, even if that applies only to part of the project. Such a construction project is by its nature likely to have significant effects on the environment within the meaning of the EIA Directive.

(C-227/01, Commission v. Spain, paragraphs 48-50)

⁷ OJ L 140, 5.6.2009, p. 114.

Waste disposal

The concept of waste disposal for the purpose of the EIA Directive is an **independent concept** which must be given a meaning which fully satisfies the objective pursued by that measure, which, as is clear from Article 2(1) of the directive, is that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location should be made subject to an assessment with regard to their effects. Accordingly, that concept, which is not equivalent to that of waste disposal for the purpose of Directive 75/442, must be construed in the **wider sense** as covering all operations leading either to waste disposal, in the strict sense of the term, or to waste recovery.

As a result, an establishment, which generates electricity from the incineration of biomass and combustible materials derived from waste and which has a capacity exceeding 100 tonnes per day, comes into the category of disposal installations for the incineration or chemical treatment of non-hazardous waste **in point 10 of Annex I** to the EIA Directive. As such, before being authorised, it should have undergone the environmental impact assessment procedure, since the projects which fall within Annex I must undergo a systematic assessment under Articles 2(1) and 4(1) of that directive.

(C-486/04, Commission v. Italian Republic, paragraphs 44-45)

For further information please refer to see the Guidance on Interpretation of project categories in the EIA Directive http://ec.europa.eu/environment/eia/pdf/interpretation_eia.pdf

ANNEX II

PROJECTS SUBJECT TO ARTICLE 4 (2)

1. *Agriculture, silviculture and aquaculture*
 - (a) *Projects for the restructuring of rural land holdings;*
 - (b) *Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;*
 - (c) *Water management projects for agriculture, including irrigation and land drainage projects;*
 - (d) *Initial afforestation and deforestation for the purposes of conversion to another type of land use;*
 - (e) *Intensive livestock installations (projects not included in Annex I);*
 - (f) *Intensive fish farming;*
 - (g) *Reclamation of land from the sea.*
2. *Extractive industry*
 - (a) *Quarries, open-cast mining and peat extraction (projects not included in Annex I);*
 - (b) *Underground mining;*
 - (c) *Extraction of minerals by marine or fluvial dredging;*
 - (d) *Deep drillings, in particular:*
 - *geothermal drilling,*
 - *drilling for the storage of nuclear waste material,*
 - *drilling for water supplies,**with the exception of drillings for investigating the stability of the soil;*
 - (e) *Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.*
3. *Energy industry*
 - (a) *Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);*
 - (b) *Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);*
 - (c) *Surface storage of natural gas;*
 - (d) *Underground storage of combustible gases;*
 - (e) *Surface storage of fossil fuels;*
 - (f) *Industrial briquetting of coal and lignite;*
 - (g) *Installations for the processing and storage of radioactive waste (unless included in Annex I);*
 - (h) *Installations for hydroelectric energy production;*
 - (i) *Installations for the harnessing of wind power for energy production (wind farms);*
 - (j) *Installations for the capture of CO₂ streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Annex I to this Directive.*
4. *Production and processing of metals*
 - (a) *Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;*
 - (b) *Installations for the processing of ferrous metals:*
 - (i) *hot-rolling mills;*
 - (ii) *smitheries with hammers;*
 - (iii) *application of protective fused metal coats;*
 - (c) *Ferrous metal foundries;*
 - (d) *Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);*
 - (e) *Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;*
 - (f) *Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;*
 - (g) *Shipyards;*
 - (h) *Installations for the construction and repair of aircraft;*
 - (i) *Manufacture of railway equipment;*
 - (j) *Swaging by explosives;*
 - (k) *Installations for the roasting and sintering of metallic ores.*

5. *Mineral industry*
 - (a) *Coke ovens (dry coal distillation);*
 - (b) *Installations for the manufacture of cement;*
 - (c) *Installations for the production of asbestos and the manufacture of asbestos-products (projects not included in Annex I);*
 - (d) *Installations for the manufacture of glass including glass fibre;*
 - (e) *Installations for smelting mineral substances including the production of mineral fibres;*
 - (f) *Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.*
6. *Chemical industry (Projects not included in Annex I)*
 - (a) *Treatment of intermediate products and production of chemicals;*
 - (b) *Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;*
 - (c) *Storage facilities for petroleum, petrochemical and chemical products.*
7. *Food industry*
 - (a) *Manufacture of vegetable and animal oils and fats;*
 - (b) *Packing and canning of animal and vegetable products;*
 - (c) *Manufacture of dairy products;*
 - (d) *Brewing and malting;*
 - (e) *Confectionery and syrup manufacture;*
 - (f) *Installations for the slaughter of animals;*
 - (g) *Industrial starch manufacturing installations;*
 - (h) *Fish-meal and fish-oil factories;*
 - (i) *Sugar factories.*
8. *Textile, leather, wood and paper industries*
 - (a) *Industrial plants for the production of paper and board (projects not included in Annex I);*
 - (b) *Plants for the pretreatment (operations such as washing, bleaching, mercerization) or dyeing of fibres or textiles;*
 - (c) *Plants for the tanning of hides and skins;*
 - (d) *Cellulose-processing and production installations.*
9. *Rubber industry*
Manufacture and treatment of elastomer-based products.
10. *Infrastructure projects*
 - (a) *Industrial estate development projects;*
 - (b) *Urban development projects, including the construction of shopping centres and car parks;*
 - (c) *Construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I);*
 - (d) *Construction of airfields (projects not included in Annex I);*
 - (e) *Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);*
 - (f) *Inland-waterway construction not included in Annex I, canalization and flood-relief works;*
 - (g) *Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);*
 - (h) *Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;*
 - (i) *Oil and gas pipeline installations and pipelines for the transport of CO₂ streams for the purposes of geological storage (projects not included in Annex I);*
 - (j) *Installations of long-distance aqueducts;*
 - (k) *Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;*
 - (l) *Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;*
 - (m) *Works for the transfer of water resources between river basins not included in Annex I.*
11. *Other projects*
 - (a) *Permanent racing and test tracks for motorized vehicles;*
 - (b) *Installations for the disposal of waste (projects not included in Annex I);*

- (c) *Waste-water treatment plants (projects not included in Annex I);*
- (d) *Sludge-deposition sites;*
- (e) *Storage of scrap iron, including scrap vehicles;*
- (f) *Test benches for engines, turbines or reactors;*
- (g) *Installations for the manufacture of artificial mineral fibres;*
- (h) *Installations for the recovery or destruction of explosive substances;*
- (i) *Knackers' yards.*

12. *Tourism and leisure*

- (a) *Ski-runs, ski-lifts and cable-cars and associated developments;*
- (b) *Marinas;*
- (c) *Holiday villages and hotel complexes outside urban areas and associated developments;*
- (d) *Permanent camp sites and caravan sites;*
- (e) *Theme parks.*

- 13. — *Any change or extension of projects listed in Annex I or Annex II, already authorized, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);***
 — *Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.*

According to the case-law of the Court:

Airport/existing airport

Point 12 of Annex II, read in conjunction with point 7 of Annex I, to the EIA Directive (in their original version), must be regarded as also encompassing works to **modify an existing airport**. All works relating to the buildings, installations or equipment of an airport must be considered to be works relating to the airport as such. For the application of point 12 of Annex II, read in conjunction with point 7 of Annex I, to the EIA Directive (in their original version), that means that **works to modify an airport** with a runway length of 2 100 metres or more thus comprise not only works to extend the runway, but all works relating to the buildings, installations or equipment of that airport where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. That is the case in particular for works aimed at **significantly increasing the activity** of the airport and air traffic.

(C-2/07, Abraham and Others – Liège airport, paragraphs 33, 34, 36, 40, operative part 2: That interpretation is in no way called into question by the fact that the EIA Directive 97/11 has replaced point 12 of Annex II to the EIA Directive 85/337 with a new point 13)

Groundwater abstraction

A project concerning abstraction of water leaking into a tunnel which houses electric cables and its recharging into the ground or rock in order to compensate for any reduction in the amount of groundwater, and the construction and maintenance of facilities for the abstraction and recharging, are covered by **point 10(1) in Annex II** to the EIA Directive, irrespective of the ultimate destination of the groundwater and, in particular, of whether or not it is put to a subsequent use.

(C-263/08, Djurgården, paragraph 31 and operative part 1)

Urban development projects outside urban areas

The argument advanced that, in urban areas, the environmental impact of urban development projects would be virtually non-existent cannot be accepted, given the list of factors that may be affected directly or indirectly by projects covered by the EIA Directive.

Indeed, the factors listed in Article 3 of the EIA Directive can be found both in and outside urban areas and the probability of their being affected by one of the aforementioned projects does not necessarily vary according to the location of these areas. In any event, neither the preamble nor the provisions of Directive 85/337/EEC as amended confirm the interpretation that projects for urban development projects in urban areas are all unlikely to have significant effects on the environment within the meaning of Article 1(1) of the Directive such that they could therefore be exempted from the procedure of applying for authorisation and impact assessment.

(C-332/04, Commission v. Spain, 80-81)

Fur further information please refer to the Guidance on Interpretation of project categories in the EIA Directive http://ec.europa.eu/environment/eia/pdf/interpretation_eia.pdf

ANNEX III
SELECTION CRITERIA REFERRED TO IN ARTICLE 4 (3)

1. Characteristics of projects

The characteristics of projects must be considered having regard, in particular, to:

- the size of the project,*
- the cumulation with other projects,*
- the use of natural resources,*
- the production of waste,*
- pollution and nuisances,*
- the risk of accidents, having regard in particular to substances or technologies used.*

2. Location of projects

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:

- the existing land use,*
- the relative abundance, quality and regenerative capacity of natural resources in the area,*
- the absorption capacity of the natural environment, paying particular attention to the following areas:*
 - (a) wetlands;*
 - (b) coastal zones;*
 - (c) mountain and forest areas;*
 - (d) nature reserves and parks;*
 - (e) areas classified or protected under Member States' legislation; special protection areas designated by Member States pursuant to Directive 79/409/EEC and 92/43/EEC;*
 - (f) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;*
 - (g) densely populated areas;*
 - (h) landscapes of historical, cultural or archaeological significance.*

3. Characteristics of the potential impact

The potential significant effects of projects must be considered in relation to criteria set out under 1 and 2 above, and having regard in particular to:

- the extent of the impact (geographical area and size of the affected population),*
- the transfrontier nature of the impact,*
- the magnitude and complexity of the impact,*
- the probability of the impact,*
- the duration, frequency and reversibility of the impact.*

ANNEX IV
INFORMATION REFERRED TO IN ARTICLE 5 (1)

1. Description of the project, including in particular:

- a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases,*
- a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used,*
- an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.*

2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description ⁽¹⁾ of the likely significant effects of the proposed project on the environment resulting from:

- the existence of the project,*
- the use of natural resources,*
- the emission of pollutants, the creation of nuisances and the elimination of waste,*

and the description by the developer of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

6. A non-technical summary of the information provided under the above headings.

7. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

¹ This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project.

ANNEX

Main judgments of the Court mentioned in the booklet sorted by the date of publication

1995

Judgment of the Court of 11 August 1995, Commission v. Federal Republic of Germany, Case C-431/92

Action for failure to fulfil obligations - National implementing measures adopted out of time waiving the obligation for an assessment in respect of consent procedures initiated after the time-limit for implementation - Date of initiation of the procedure

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61992J0431:EN:HTML>

1996

Judgment of the Court of 24 October 1996, Kraaijeveld and Others, Case C-72/95

Reference for a preliminary ruling - Community law - Multilingual texts - Uniform interpretation - Differences between the various language versions - Purpose and general scheme of the rules in question to be taken as the basis for reference - "Canalization and flood-relief works" within the meaning of point 10(e) of Annex II - Dyke work along navigable waterways - Definition encompassing modification of existing dykes - Assessment of projects in classes included in Annex II - Member States' discretion - Scope and limits - Duty of national courts - Examination of court's own motion whether the national authorities have remained within the limits of their discretion - Need to ensure effectiveness of the directive where limits not observed

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61995J0072:EN:HTML>

By judgment of 8 March 1995, the Nederlandse Raad van State (Netherlands State Council) referred to the Court for a preliminary ruling four questions on the interpretation of Directive 85/337/EEC and on the duty of national courts to ensure that a directive having direct effect is complied with although no individual has invoked it.

The questions were raised in proceedings brought by Aannemersbedrijf P.K. Kraaijeveld BV and Others (hereinafter "Kraaijeveld") for annulment of a decision of 18 May 1993 by which the South Holland Provincial Executive approved a zoning plan entitled "Partial modification of zoning plans in connection with dyke reinforcement" adopted by the Sliedrecht Municipal Council pursuant to the Wet op de ruimtelijke ordening (Regional Development Law).

Kraaijeveld contested the zoning plan adopted on 23 November 1992 by the Sliedrecht Municipal Council, in so far as it concerned the Merwede dyke, before the South Holland Provincial Executive which, by decision of 18 May 1993, nevertheless approved the plan. On 20 July 1993, Kraaijeveld brought an action before the Raad van State seeking annulment of that decision.

According to the new plan, the waterway to which Kraaijeveld has access will no longer be linked to navigable waterways; the removal of access to navigable waterways would be ruinous to Kraaijeveld's business, whose economic activity is related to waterways ("natte waterbouw"). The Nederlandse Raad van State observed that no environment impact assessment was made because the size of the works was less than the minimum laid down by national legislation.

The Nederlandse Raad van State decided to refer to the Court of Justice for a preliminary ruling the following four questions:

"1. Must the expression 'canalization and flood-relief works' in Annex II to Directive 85/337/EEC be interpreted as including certain types of work on a dyke running alongside waterways?"

2. Having regard in particular to the terms 'projects' and 'modifications to development projects' employed in the directive, does it make any difference to the answer to Question 1 whether what is involved is:

(a) the construction of a new dyke; (b) the relocation of an existing dyke; (c) the reinforcement and/or widening of an existing dyke; (d) the replacement in situ of a dyke whether or not the new dyke is stronger and/or wider than the old one; or (e) a combination of two or more of (a) to (d) above?

3. Must Article 2(1) and Article 4(2) of the directive be interpreted as meaning that where a Member State in its national implementing legislation has laid down specifications, criteria or thresholds for a particular project covered by Annex II in accordance with Article 4(2) of the directive, but those specifications, criteria or thresholds are incorrect, Article 2(1) requires that an environmental impact assessment be made if the project is likely to have 'significant effects on the environment by virtue inter alia of [its] nature, size or location' within the meaning of that provision?

4. If Question 3 is answered in the affirmative, does that obligation have direct effect, that is to say, may it be relied upon by an individual before a national court and must it be applied by the national court even if it was not in fact invoked in the matter pending before that court?"

The Court of Justice ruled that:

"1. The expression "canalization and flood-relief works" in point 10(e) of Annex II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment must be interpreted as including certain types of work on a dyke running alongside waterways.

2. The expression "canalization and flood-relief works" in point 10(e) of Annex II to Directive 85/337 is to be interpreted as including not only construction of a new dyke, but also modification of an existing dyke involving its relocation, reinforcement or widening, replacement of a dyke by constructing a new dyke in situ, whether or not the new dyke is stronger or wider than the old one, or a combination of such works.

3. Article 4(2) of Directive 85/337 and point 10(e) of Annex II must be interpreted as meaning that a Member State which establishes the criteria or thresholds necessary to classify projects relating to dykes at a level such that, in practice, all such projects are exempted in advance from the requirement of an impact assessment exceeds the limits of its discretion under Articles 2(1) and 4(2) of the directive unless all projects excluded could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment.

Where under national law a court must or may raise of its own motion pleas in law based on a binding national rule which have not been put forward by the parties, it must, for matters within its jurisdiction, examine of its own motion whether the legislative or administrative authorities of the Member State have remained within the limits of their discretion under Articles 2(1) and 4(2) of the directive, and take account thereof when examining the action for annulment.

Where that discretion has been exceeded and consequently the national provisions must be set aside in that respect, it is for the authorities of the Member State, according to their respective powers, to take all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment."

The Nederlandse Raad van State delivered its ruling on 20 October 1997. The Raad van State observed that the situation described by the European Court of Justice, where thresholds concerning the construction of dykes were established at such a level that in practice all such projects are exempted in advance from the requirement of an impact assessment, does not appear. The Raad van State concluded that the transposition of the EIA directive into national law regarding the thresholds for dykes by the Besluit milieu-effectrapportage 1994 (Environmental Impact Assessment Decision) was therefore not incorrect.

1998

Judgment of the Court of 18 June 1998, *Gedeputeerde Staten van Noord-Holland*, Case C-81/96

Reference for a preliminary ruling - Project for which consent was obtained prior to the deadline for transposing the directive into national law - New consent procedure initiated after that deadline - Project subject to obligations relating to environmental impact assessment

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996J0081:EN:HTML>

The reference for a preliminary ruling arose in the course of an action brought by a number of persons concerned challenging the decision of 18 May 1993 whereby the North Holland provincial authorities approved the "Ruigoord 1992" zoning plan, which was adopted by the Municipal Council of Haarlemmerliede en Spaarnwoude on 21 September 1992 under the Wet op de Ruimtelijke Ordening (Staatsblad 1962, p. 286; Town and Country Planning Law). The action was based on the fact that the plan had been authorised without an environmental assessment having been made as required by the directive.

The projects featured in the plan were already contained in the "Landelijk Gebied 1968" zoning plan and in the regional plans known as "Amsterdam-Noordzeekanaalgebied 1979" and "Amsterdam-Noordzeekanaalgebied 1987", the implementation of which never progressed further than raising a portion of the perimeter by sand in the late 1960s. There was no environmental assessment made in connection with those plans prior to consent, as required by the directive. The "Ruigoord 1984" plan drawn up by the Haarlemmerliede en Spaarnwoude Municipal Council on 25 September 1984 designated most of the area in question as being for recreational purposes. The plan was largely turned down by decision of the North Holland provincial authorities on 5 March 1985. The "Ruigoord 1992" plan was intended to replace the "Landelijk Gebied 1968" plan.

The Nederlandse Raad van State (Netherlands State Council) has found that there was no obligation under the relevant national law to make the environmental impact assessment which should in principle have preceded the plan at issue because the latter had been included in earlier development plans. Since it was in doubt as to the compatibility of those national rules with the EIA directive, the Nederlandse Raad van State stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

"Does Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment permit consent to be granted for a project mentioned in Annex I to the directive where, in the course of the preparation of the consent, no environmental impact assessment within the meaning of the directive was conducted in a case in which the consent relates to a project for which consent had been granted before 3 July 1988, no use was made of that consent and no environmental impact assessment satisfying the requirements of the directive was conducted in the course of the preparation of that consent?"

The ECJ ruled that Directive 85/337/EEC *"is to be interpreted as not permitting Member States to waive the obligations regarding environmental assessments in the case of projects listed in Annex I of the directive where*

- *the projects have already been the subject of a consent granted prior to 3 July 1988, the date by which the directive was to have been transposed into national law,*
- *the consent was not preceded by an environmental assessment in accordance with the requirements of the directive and no use was made of it, and*
- *a fresh consent procedure was formally initiated after 3 July 1988".*

Following this ruling, the Dutch authorities have rectified the *"Besluit milieu-effectrapportage 1994"* (Environmental Impact Assessment Decision) regarding the transitional regime.

1999

Judgement of the Court of 21 January 1999, Commission v. Portuguese Republic, Case C-150/97

Action for failure to fulfil obligations - National implementing measures, belatedly enacted, waiving the obligation to make an assessment in the case of consent procedures initiated before the entry into force of those measures but after the deadline for transposing the Directive

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61997J0150:EN:HTML>

Judgment of the Court of 16 September 1999, WWF and Others, Case C-435/97

Reference for a preliminary ruling - Projects of the classes listed in Annex II to be subject to assessment - Discretion of the Member States - Scope and limits - Possibility for individuals to rely on the relevant provisions to ensure that such discretion is exercised within the proper limits - Assessment procedure - Open to Member States to use an alternative procedure - Projects adopted in detail by specific domestic legislation - Airport which may serve both civil and military purposes but primarily for commercial use

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61997J0435:EN:HTML>

Judgment of the Court of 21 September 1999, Commission v. Ireland, Case C-392/96

Action for failure to fulfil obligations - Assessment requirement in respect of projects in the classes listed in Annex II - Discretion of Member States - Failure to take into account the nature, location and cumulative effect of projects - Constitutes a failure to fulfil obligations

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996J0392:EN:HTML>

2000

Judgment of the Court of 19 September 2000, Linster, Case C-287/98

Reference for a preliminary ruling - Assessment procedure - Discretion of the Member States - Power of national courts to review whether the limits of the discretion are observed - Community law - Principle of uniform interpretation- Scope - Projects the details of which are adopted by a specific act of national legislation

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61998J0287:EN:HTML>

2004

Judgment of the Court of 7 January 2004, Delena Wells, Case C-201/02

Reference for a preliminary ruling - Obligation on the competent authorities to carry out an assessment before consent is granted – Meaning of consent for the purposes of Article 1(2) – Decision laying down new conditions for a project to resume mining operations – Obligation on the competent authorities to carry out an assessment before consent is granted – Obligation not being directly linked to the performance of another obligation falling, pursuant to the directive, on a third party – Ability of an individual to rely on the directive – Failure to carry out the assessment – Obligation on the authorities to remedy the failure – Scope – Application of the detailed procedural rules under national law

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002J0201:EN:HTML>

Judgement of the Court of 10 June 2004, Commission v. Italian Republic, Case C-87/02

Action for failure to fulfil obligations - Member States – Obligations – Implementation of directives – Failure to implement – Justification based on the fact that failure can be attributed to decentralised authorities – Not permissible - Actions for failure to fulfil obligations – National measures incompatible with Community law – Existence of domestic remedies – No effect on the bringing of an action for failure to fulfil obligations - Projects of the classes listed in Annex II to be made subject to assessment – Member States’ discretion – Scope and limits

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62002J0087:EN:HTML>

Judgement of the Court of 16 September 2004, Commission v. Kingdom of Spain, Case C-227/01

Action for failure to fulfil obligations – Community law – Interpretation – Texts in several languages – Uniform interpretation – Differences between the various language versions – General scheme and purpose of the rules in question as the basis for reference – Scope – Doubling of an already existing railway track involving a new track route

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62001J0227:EN:HTML>

2005

Judgement of the Court of 2 June 2005, Commission v. Italian Republic - *Fossacesia*, Case C-83/03

Action for failure to fulfil obligations – Projects of the classes listed in Annex II subject to an assessment – Member States’ discretion – Limits – National implementing measures

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003J0083:EN:HTML>

2006

Judgment of the Court of 16 March 2006, Commission v. Kingdom of Spain, Case C-332/04

Action for failure to fulfil obligations - Inter-action between factors likely to be directly and indirectly affected - Obligation to publish the impact statement - Assessment limited to urban development projects outside urban areas - Construction project for a leisure complex at Paterna

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>

Judgement of the Court of 4 May 2006, Barker - *Crystal Palace*, Case C-290/03

Reference for a preliminary ruling - Grant of consent comprising more than one stage

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003J0290:EN:HTML>

Judgement of the Court of 9 November 2006, Commission v. Ireland, Case C-216/05

Action for failure to fulfil obligations - National legislation - Participation by the public in certain assessment procedures upon payment of fees

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0216:EN:HTML>

Judgement of the Court of 23 November 2006, Commission v. Italian Republic, Case C-486/04

Action for failure to fulfil obligations - Waste recovery - Installation for the production of electricity by the incineration of combustible materials derived from waste and biomass in Massafra (Taranto)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004J0486:EN:HTML>

2008

Judgment of the Court of 28 February 2008, Abraham and Others, Case C-2/07

Reference for a preliminary ruling - Airport with a runway more than 2 100 metres in length

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0002:EN:HTML>

Judgement of the Court of 3 July 2008, Commission v. Ireland, Case C-215/06

Action for failure to fulfil obligations - No assessment of the environmental effects of projects within the scope of Directive 85/337/EEC - Regularisation after the event – retention permission

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0215:EN:HTML>

Judgement of the Court of 25 July 2008, Ecologistas en Acción-CODA , Case C-142/07

Reference for a preliminary ruling - Refurbishment and improvement works on urban roads

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0142:EN:HTML>

Judgement of the Court of 20 November 2008, Commission v. Ireland, Case C-66/06

Action for failure to fulfil obligations - Consent given without an assessment

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0066:EN:HTML>

2009

Judgment of the Court of 30 April 2009, Mellor, Case C-75/08

Reference for a preliminary ruling - Obligation to make public the reasons for a determination not to make a project subject to an assessment

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0075:EN:HTML>

Judgement of the Court of 16 July 2009, Commission v. Ireland, Case C-427/07

Action for failure to fulfil obligations - Access to justice

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0427:EN:HTML>

Judgment of the Court of 15 October 2009, Commission v Kingdom of the Netherlands, Case C-255/08

Action for failure to fulfil obligations - Determination of thresholds - Size of the project - Incomplete transposition

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en>

Judgment of the Court of 15 October 2009, case C-263/08

Reference for a preliminary ruling – Public participation in environmental decision-making procedures – Right of access to a review procedure to challenge decisions authorising projects likely to have significant effects on the environment

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0263:EN:HTML>

Judgment of the Court of 10 December 2009, Umweltanwalt von Kärnten, Case C-205/08

Reference for a preliminary ruling - Concept of national court or tribunal - Construction of overhead electrical power lines - Length of more than 15 km -Transboundary constructions - Transboundary power line -Total length exceeding the threshold - Line mainly situated in the territory of a neighbouring Member State - Length of national section below the threshold

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0205:EN:HTML>

Alpe Adria, an Italian undertaking, was seeking to construct a 220 kV power line with a power rating of 300 MVA to connect the Italian Rete Elettrica Nazionale SpA network and the Austrian VERBUND-Austrian Power Grid AG network. To that end Alpe Adria requested the Province Government as competent EIA authority at first instance (in the relevant case: the *Kärntner Landesregierung*) to state whether an environmental impact assessment needs to be performed for the construction and operation of that project. On **Austrian territory**, the project comprises an overhead power line approximately **7.4 kilometres long** with a switching substation to be constructed in Weidenburg extending up to the State border through the Kronhofgraben via the Kronhofer Törl. The length of the project on **Italian territory** is approximately **41 kilometres**.

The *Kärntner Landesregierung* decided that no environmental impact assessment was required for the project at issue because the length of the Austrian part of the project did not reach the minimum 15 kilometer threshold defined in the relevant provision of the Austrian Federal Act on Environmental Impact Assessment (EIA Act 2000). It added that, if a project is likely to have significant effects on the environment in another Member State, Article 7 of Directive 85/337 requires the Member States in whose territory the project is intended to be carried out to include that other Member State in the environmental impact assessment procedure. However, that article applied only to projects situated entirely in the territory of one Member State and did not apply to transboundary projects. Consequently, in the absence of any specific provision concerning transboundary projects in Directive 85/337, each Member State was required to assess, on the basis solely of its national law, whether a project was subject to Annex I of the Directive. The *Kärntner Landesregierung* went on to state that the EIA Act 2000 did not contain any provision according to which the entire length of transboundary power line routes and other line-based projects was to be taken into consideration.

The ombudsman for the environment filed an appeal against the decision of the *Kärntner Landesregierung* to the Environmental Senate (*Umweltsenat*) as authority of appeal.

It is against that background that the Environmental Senate decided to stay proceedings and refer the following question to the ECJ for a preliminary ruling: "*Is Council Directive 85/337 ... to be interpreted as meaning that a Member State must provide for an obligation to carry out an assessment in the case of types of projects listed in Annex I to the directive, in particular in point 20 (construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km), where the proposed scheme is to extend over the territory*

of two or more Member States, even if the threshold giving rise to the obligation to carry out an assessment (here, a length of 15 km) is not reached or exceeded by the part of the scheme situated on its national territory but is reached or exceeded by adding the parts of the scheme proposed to be situated in a neighbouring State?"

The ECJ ruled that Articles 2(1) and 4(1) of Directive 85/337/EEC, as amended by Directive 2003/35/EC are to be interpreted as meaning that the competent authorities of a Member State must make a project referred to in point 20 of Annex I to the Directive, such as the construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km, subject to the environmental impact assessment procedure even where the project is transboundary in nature and less than 15 km of it is situated on the territory of that Member State.

By decision of 3 March 2010 (US 8B/2008/2-35 - Kötschach-Mauthen) the Environmental Senate decided in favor of the appeal and determined, that an environmental impact assessment is required for the project at issue. The Senate stated therein by taking into account the judgment of the ECJ, the determination, that an EIA is necessary, is not dependent on whether the national defined threshold value for a project is reached or exceeded by the part of the project situated on its national territory or is reached or exceeded by adding the parts of the project proposed to be situated in a neighbouring State.

As a consequence of this decision, Alpe Adria applied on 28 April 2010 for EIA development consent for the project at issue. On 8 July 2010, the Kärntner Landesregierung, as the EIA authority at first instance, opened the environmental impact statement for public inspection and comments for the period of six weeks (beginning on 14 July 2010 ending on 25 August 2010) at the Kärntner Landesregierung, the municipality of Kötschach-Mauthen and the district administration authority Hermagor. A brief project description and a summary of the Environmental Impact Statement are available together with the announcement of public inspection on the Internet (www.uvp.ktn.gv.at). After public inspection the technical experts commissioned by the EIA authority will prepare the environmental impact expertise.

