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Commission



# Interpretation of definitions of project categories of annex I and II of the EIA Directive

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ISBN 978-92-79-48090-4  
doi: 10.2779/5854181

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# 1 Introduction

The objective of Directive 2011/92/EU<sup>1</sup> on the assessment of the effects of certain public and private projects on the environment (the Environmental Impact Assessment, or EIA, Directive) is to ensure that projects that are likely to have a significant effect on the environment are adequately assessed before they are approved. Before any decision is taken to allow such a project to proceed, the possible impacts it may have on the environment (either from its construction or operation) are to be identified and assessed. The Directive also ensures the participation of environmental authorities and the public in environmental decision-making procedures. In particular, members of the public concerned must be given the opportunity to comment on any proposal while all options are still open, i.e. before a final decision is taken by the competent authority on a request for development consent. When approving a project, the competent authority is required to take into consideration the results of consultations and to inform the public, notably on the measures envisaged to avoid, reduce or compensate for environmental impacts. The public must be informed of the development decision and can challenge it before the courts.

In 2014, the EIA Directive was amended.<sup>2</sup> While the amendment did not change the project categories in Annex I and II to the Directive, it introduced changes that aim at better protection for the environment while at the same time reducing administrative burdens stemming from EU law, in line with the European Commission's drive for smarter regulation. The amendments relevant for this document are mentioned herein. To this end, this document can be of help to Member States in transposing the amending Directive, due by 16 May 2017.

Annex I and II to the Directive list the projects that fall under its scope. Projects listed in Annex I are those that have significant effects on the environment and which, as a rule, should be subject to a systematic assessment (Article 4(1) of the EIA Directive). Projects listed in Annex II do not necessarily have significant effects on the environment in every case; they should be assessed where Member States consider that they are likely to have significant effects on the environment (Article 4(2) of the EIA Directive). Pursuant to Article 4(2) of the EIA Directive, the determination of the likely significant environmental effect may be carried out through a case-by-case

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<sup>1</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, pp.1-21.

<sup>2</sup> Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, OJ L 124, 25.4.2014, pp. 1-18.

examination, by setting thresholds or criteria, or by a combination of these methods, taking account of the relevant selection criteria in Annex III to the Directive. Member States have a measure of discretion in specifying certain types of projects that are to be subject to an assessment or in establishing the applicable criteria and/or thresholds. However, Article 2(1) of the EIA Directive limits that discretion by requiring that projects are to be subject to an impact assessment if they are likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment.<sup>3</sup>

The EIA Directive defines the term '*project*' in Article 1. With very few exceptions, the EIA Directive does not provide definitions or other descriptions of the project categories listed in Annex I and II.<sup>4</sup> Certain definitions, provided in other EU Directives or in international agreements, are explicitly referred to in the Annexes to the EIA Directive, and they are dealt with in section 3 of this guidance document, under the relevant project categories. Experience gathered in the application of the EIA Directive shows that, in practice, it can be problematic to decide if individual projects fall within its scope. This issue was addressed in the Commission reports of 2003<sup>5</sup> and 2009<sup>6</sup> on the application and effectiveness of the EIA Directive.

The objective of the present document is to reduce the uncertainty regarding the interpretation and scope of certain project categories listed in the EIA Directive. It seeks to do this by providing references to useful sources of information, in particular rulings of the Court of Justice of the European Union (the Court), thresholds and criteria applied by Member States, definitions given in other directives, and relevant guidance documents. This document refers to all the project categories listed in Annex I and II to the EIA Directive. However, guidance is only provided for those categories that have been subject to the Court's deliberations or where there is relevant information available. When determining the scope of individual project categories, without prejudice to the interpretation provided in this document, readers should have regard to the wide scope and broad purpose of the Directive and its overall objective, which is to ensure protection of the environment and the quality of life.

The document does not examine or discuss in detail the process for determining whether an environmental impact assessment is required (screening) for any of the projects listed in Annex II to the EIA Directive. This document does aim to assist the

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<sup>3</sup> Case 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).

<sup>4</sup> Exceptions include airports (Annex I (7) (a)) and express roads (Annex I (7) (b)).

<sup>5</sup> Report from the Commission to the European Parliament and the Council on the application and effectiveness of the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC) — How successful are the Member States in implementing the EIA Directive, COM (2003) 334 final, 23.06.2003 [<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1422441617501&uri=CELEX:52003DC0334>].

<sup>6</sup> Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC and 2003/35/EC), COM /2009/0378 final, 23.7.2009, [<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009DC0378>].

competent national authorities and stakeholders to determine whether a specific project falls within the scope of the EIA Directive but not to prejudge whether Annex II projects have to undergo an environmental impact assessment.<sup>7</sup>

This document was prepared by the Environment Directorate-General of the European Commission, in collaboration with Member State experts in environmental impact assessment and strategic environmental assessment. This document represents the views of the Commission services and is not binding in nature. It is not meant to be definitive. The document may be revised in the future on the basis of further experience in the implementation of the EIA Directive and to reflect any future case law. It must be emphasised that it ultimately rests with the Court to interpret the Directive.

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<sup>7</sup> Commission guidance on screening is available on the Commission's environmental assessment homepage [<http://ec.europa.eu/environment/eia/eia-support.htm>].

## 2 Approach to the interpretation of Annex I and II project categories of the EIA Directive

### 2.1 Available sources of information

Rulings of the Court are the only source of definitive interpretation of European Union law. The EIA Directive has often been the subject of cases brought before the Court, and a number of cases have addressed the question of the definition, description or scope of individual project categories listed in Annex I and II. The Commission has published an overview of the most important Court rulings related to the provisions of the consolidated EIA Directive in *Environmental Impact Assessment of Projects — Rulings of the Court of Justice*.<sup>8</sup>

The Court rulings contain some key general principles that can usefully guide the interpretation of project categories listed in the EIA Directive, as well as the concept of ‘*project*’ itself. These principles are reviewed in section 2.3. For individual project categories, additional information derived from Court case law is given in section 3.

The EIA Directive explicitly refers to other directives and international agreements. When this is the case, these are binding sources of definitions to be used when interpreting project categories in Annex I and II.

In addition, given the wide range of sectors covered by the EIA Directive, many other directives and guidance documents at EU level deal with activities covered by, or contain definitions of terms included in, Annex I and II. Definitions taken from these sources are not necessarily fully applicable for the purposes of the EIA Directive. The purpose and context of the various directives must be carefully considered because different acts of legislation may have different objectives that could in turn influence the scope and meaning of project classifications and definitions that they contain. Thus, a certain project classification in one directive may not necessarily precisely prescribe how the same project type is to be interpreted in the context of another directive.<sup>9</sup> As stated by the Court (see for example Case C-227/01, *Commission v Spain*), EU law is to be interpreted by reference to the purpose and general scheme of the rules of which it forms part.

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<sup>8</sup> Environmental Impact Assessment of Projects — Rulings of the Court of Justice (2013), [[http://ec.europa.eu/environment/eia/pdf/eia\\_case\\_law.pdf](http://ec.europa.eu/environment/eia/pdf/eia_case_law.pdf)].

<sup>9</sup> See case C-486/04, *Commission v Italy*, paragraphs 43 and 44.



In practice, however, sectoral legislation and other guidance documents can often provide useful reference information, especially, but not only, where more technical terms are concerned.<sup>10</sup>

## 2.2 The concept of *'project'*

Article 1(2) of the EIA Directive defines *'project'* as:

*'project'*

*'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.'*

The jurisprudence of the Court provides a broad interpretation of the concept of *'project'*.<sup>11</sup> However, in relation to the concept of *'project'* and in particular of what constitutes an *'intervention in the natural surroundings and landscape'*, the Court has held that the renewal of an existing permit (to operate an airport) cannot, in the absence of any works or interventions involving alterations to the physical aspect of the site, be classified as a *'project'*.<sup>12</sup>

The term *'installation'* is not defined in the EIA Directive. A definition of this term is provided in the Industrial Emissions Directive<sup>13</sup> (IED), but this definition is not considered to suit the purposes of the EIA Directive. *'Installation'* in the sense of the IED means *'means a stationary technical unit within which one or more activities listed in Annex I or in Part 1 of Annex VII [of Directive 2010/75/EU] are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those Annexes and which could have an effect on emissions and pollution'* (Article 3(3) of the IED). In comparison, the EIA Directive provides for a broader scope. Mobile installations — even though not mentioned explicitly in the EIA Directive — are considered to be covered by its provisions, as are temporary installations<sup>14</sup>. When mobile or temporary installations have the characteristics (and associated impacts) of project categories included in Annex I and II to the EIA Directive, they must be subject to its requirements.<sup>15</sup> Furthermore, when

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<sup>10</sup> The Court, in case C-127/02, *the Waddenzee case*, used the definition of *'project'* contained in the EIA Directive in a case related to the Habitats Directive. The approach taken in this paper is consistent with that taken by the Court in this case.

<sup>11</sup> Case C-72/95, *Kraaijeveld and others*.

<sup>12</sup> Case C-275/09, *Brussels Hoofdstedelijk Gewest and others*, paragraph 24; C-121/11, *Pro-Braine and Others*, paragraph 31.

<sup>13</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast), OJ L 334, 17.12.2010, p. 17–119.

<sup>14</sup> Moreover, Annex II(13), second indent, explicitly includes Annex I projects undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.

<sup>15</sup> Mobile installations should be considered for the purposes of the EIA Directive, among other things, with regard to their location.

a mobile installation is moved elsewhere, the need for a new environmental impact assessment has to be considered.

Moreover, there are types of activity that display the characteristics of more than one project category listed in the EIA Directive. These activities can be seen from different angles, depending on their technical characteristics, design or output, for example, biogas or biofuel projects.<sup>16</sup> Practice shows that various project categories can be relevant, depending on the biogas project's scope, in particular:

- Annex I, point 9 or 10, or Annex II point 11(b) (both cases where biogas results from waste treatment);
- Annex II, point 3(a), where biogas is used for electricity production;
- Annex II, point 10(a), where a biogas plant can be part of an industrial estate development project.

The definition of 'project' has been complemented by the Court, which concluded that *'demolition works come within the scope of Directive 85/337 and, in that respect, may constitute a 'project' within the meaning of Article 1(2) thereof'* (C-50/09, paragraphs 86-107). The Court concluded that demolition works cannot be excluded from the scope of national legislation enacting the EIA Directive. Based on case law, and in order to ensure a high level of protection of the environment, the amended EIA Directive provides that the screening procedures and environmental impact assessments should take account of the impact of the whole project in question and, where relevant, demolition phases (Annex II A, point 1 (a), and Annex IV, point 1 (b) and 5(a)).

## **2.3 Key principles derived from the case law<sup>17</sup> of the Court**

### **The purpose of the EIA Directive**

In rulings related to the EIA Directive, the Court has consistently emphasised the fundamental purpose of the Directive as expressed in Article 2(1), i.e. that those 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'*.

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<sup>16</sup> From a production perspective, biogas can either be the main output of an activity, or its by-product. In addition, from a construction and maintenance perspective, biogas production relies on infrastructure, for instance pipelines, storage facilities, etc. Therefore, to determine whether a biogas-related project falls under the scope of the EIA Directive, it has to be thoroughly examined with due account taken of all relevant perspectives.

<sup>17</sup> It should be noted that some of the rulings referred to in this document relate to Directive 85/337/EEC before amendments, while others relate to Directive 85/337/EEC as amended by Directive 97/11/EC. However, it is considered that the principles underlying these rulings and their conclusions are still applicable and useful for interpreting the Directive as amended.

In Case C-420/11, *Leth*, paragraph 28, the Court stated that it follows from Article 1(1) and from the first, third, fifth and sixth recitals in the preamble to the EIA Directive that the purpose of that Directive is an assessment of the effects of public and private projects on the environment in order to attain one of the Union's objectives in the sphere of the protection of the environment and the quality of life. The information which must be supplied by the developer in accordance with Article 5(1) of and Annex IV to the EIA Directive, and the criteria that enable Member States to determine whether small-scale projects — meeting the characteristics laid down in Annex III to that Directive, require an environmental assessment — also relate to that purpose.

### **Wide scope and broad purpose**

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

This has been consistently held by the Court. In Case C-72/95, *Kraaijeveld and others*, paragraph 31, the Court stated that *'The wording of the Directive indicates that it has a wide scope and a broad purpose. That observation alone should suffice to interpret point 10(e) of Annex II to the Directive as encompassing all works for retaining water and preventing floods — and therefore dyke works — even if not all the linguistic versions are so precise.'* The Court emphasised again the wide scope and broad purpose of the Directive in Case C-227/01, *Commission v Spain*, paragraph 46.

### **Uniform interpretation, different language versions**

In Case C-72/95, *Kraaijeveld and others*, referring to previous case law, the Court held that the interpretation of a provision of Union law (at that time Community law) involves a comparison of the language versions. Where these versions diverge, the need for a uniform interpretation requires that the provision in question be interpreted by reference to the purpose and general scheme of the rules of which it forms part (paragraph 28).<sup>18</sup> In this case, the Court concluded that the expression *'canalisation and flood-relief works'* in point 10(e) of Annex II to Directive 85/337/EEC (before amendment by Directive 97/11/EC) must be interpreted as including works for retaining water and preventing floods, and consequently dyke work along navigable waterways (paragraph 35).

This issue is again referred to in the Court's ruling in Case C-227/01 *Commission v. Spain*. The Court stated that it was not necessary in the context of those proceedings to give a ruling on whether all the language versions of point 7 of Annex I to Directive 85/337 (regarding 'lines' for long-distance railway traffic) used a term equivalent to the term tracks (*'vias'* in the Spanish-language version). Neither was it considered

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<sup>18</sup> It should be noted that this principle is general to Court practice and not specific to the EIA Directive.

necessary to give a ruling on the compatibility with the Directive of Spanish legislation adopted to implement that provision inasmuch as it used the term lines (*'líneas'*). However, it was clear from the Court's case law that where different language versions of a provision diverged, the need for a uniform interpretation of Union law required that the provision be interpreted by reference to the purpose and general scheme of the rules of which it forms part (paragraph 45).

The Court has also held that the need for uniform application and the principle of equality require that the terms of a provision of Union law, when it makes no express reference to the law of the Member State for the purpose of determining its meaning and scope, must take into account the context of that provision and the purpose pursued (Case C-287/98, *Linster and Others*, paragraph 43; Case C-260/11, *Edwards and Pallikaropoulos*, paragraph 29; Case C-531/13, *Kornhuber and Others*, paragraph 21).

## 2.4 Screening

Projects listed in Annex II to the Directive are not automatically subjected to an environmental impact assessment. Member States can decide to subject them to an assessment on a case-by-case basis or according to thresholds and/or criteria (for example size), location (sensitive ecological areas in particular) and potential impact (surface affected, duration). The process of determining whether an assessment is required for a project listed in Annex II is called screening<sup>19</sup>.

In determining thresholds or assessing the effects of projects, the relevant selection criteria set out in Annex III to the Directive should be taken into account. In particular, the screening process should not be based on one criterion only (e.g. size), but it should take into consideration all the relevant selection criteria listed in Annex III (e.g. not only size but also the location of the project).

Consequently, as provided in Recital 10 of the EIA Directive, 'Member States may set thresholds or criteria for the purpose of determining which of such projects should be subject to assessment on the basis of the significance of their environmental effects. Member States should not be required to examine projects below those thresholds or outside those criteria on a case-by-case basis.'

Thresholds and criteria, set out in Member State legislation, should establish clear legal requirement on the need for an environmental impact assessment. For example, some countries set exclusive thresholds below which an assessment is not required. Others set indicative thresholds and criteria that do not establish a legal requirement but can be used to help case-by-case decisions on whether an assessment is required. Whatever method a Member State adopts to determine whether or not a specific project needs to be assessed — be it by legislative

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<sup>19</sup> For further information on the screening process see Guidance on EIA — Screening, 2001 [<http://ec.europa.eu/environment/archives/eia/eia-guidelines/g-screening-full-text.pdf>].

designation or following an individual examination of the project — the objective of the Directive must not be undermined.

As to the parameters used in thresholds, it can be concluded that the majority of Member States use,<sup>20</sup> for example:

- for power stations: capacity in MW;
- for landfills for non-hazardous waste: total volume (m<sup>3</sup>) or volume/day, tonnes/day or total capacity in tonnes;
- for shopping centres: area in hectares or m<sup>2</sup> (area of development, gross floor space); and
- for roads: length of road (in km).

The 2014 amendment of the EIA Directive introduced changes related to the screening but the approach on determining thresholds and assessing the effects of projects has been maintained. Firstly, the amendment provides that screening decisions (both 'positive' and 'negative') must be justified and state the main reasons for requiring or not requiring an assessment. This stems from the cases C-87/02, *Commission v. Italy*, and C-75/08, *Mellor*. Secondly, Annex III on the selection criteria, referred to in Article 4(3) of the EIA Directive, was updated. Thirdly, a new Annex II.A listing the information to be provided by the developer to the competent authority for the screening procedure was added.

#### **Level of thresholds — type of criteria to be taken into consideration**

The EIA Directive confers a measure of discretion on Member States to establish thresholds and/or criteria pursuant to Article 4(2)(b) therein. However, this discretion is limited by the obligation set in Article 2(1) to make projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location subject to an impact assessment (C-244/12, *Salzburger Flughafen*, paragraphs 29-30), C-531/13, *Kornhuber and Others*, paragraphs 40-41). The criteria and thresholds are designed to facilitate examination of the actual characteristics of any given project in order to determine whether it is subject to the requirement to carry out an environmental impact assessment.

A Member State that 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 discretion available to it. This is so unless all projects of that type could, when viewed as a whole, be regarded

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<sup>20</sup> IMPEL report *The implementation of the Environmental Impact Assessment on the basis of precise examples* of 12.11.2012 compares EIA screening procedures in Member States of the European Union for four different types of projects: thermal power plants, landfills, shopping centres and road construction projects [<http://impel.eu/wp-content/uploads/2013/01/IMPEL-EIA-Report-final.pdf>].

as not likely to have significant effects on the environment<sup>21</sup>. A Member State exceeds the limits of its discretion under Article 2(1) and 4(2) of the EIA Directive also in circumstances where it does not take into account all relevant selection criteria listed in Annex III<sup>22</sup>.

For instance, in Case C-332/04, *Commission v. Spain*, by limiting the environmental impact assessment for urban development projects exclusively to projects located on non-urban land, the Spanish government had confined itself to applying only the criterion of location. This is just one of three criteria set out in Article 2(1) of the EIA Directive, and Spain had failed to take account of the other two criteria, namely the nature and size of a project.

Moreover, insofar as Spanish law provided for environmental impact assessments only in respect of urban development projects outside urban areas, it had failed to apply the complete criterion of location. Indeed, densely populated areas and landscapes of historical, cultural or archaeological significance in points 2(g) and (h) of Annex III to the EIA Directive are among the selection criteria referred to in Article 4(3) of the Directive. These criteria are to be taken into account by Member States in the event of a case-by-case examination or when 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 than not to urban areas.<sup>23</sup>

In Case C-244/12, *Salzburger Flughafen*, paragraph 48, the Court considered the actions of a Member State, pursuant to Article 4(2)(b) of Directive 85/337, as amended by Directive 97/11, with regard to projects falling within the scope of Annex II thereto. The Court stated that when a Member State establishes a threshold that is incompatible with the obligations laid down in Articles 2(1) and 4(3) of that Directive, the provisions of Articles 2(1) and 4(2)(a) and (3) of the EIA Directive have direct effect. This requires that the competent national authorities must ensure that it is first examined whether the projects concerned are likely to have significant effects on the environment and, if so, that an assessment of those effects is then undertaken.

In conclusion, it should be stressed that, pursuant to Article 4(3) of the EIA Directive, Member States are required, when establishing criteria or thresholds in question, to take into account the relevant selection criteria listed in Annex III to the EIA Directive<sup>24</sup>.

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<sup>21</sup> Case C-392/96, *Commission v. Ireland*, paragraph 53; C-72/95, *Kraaijeveld and Others*, paragraph 53; Case C-435/97, *WWF and Others*, paragraph 38; Case C-392/96, *Commission v. Ireland*, paragraph 75; Case C-66/06, *Commission v. Ireland*, paragraph 65; Case C-427/07, *Commission v. Ireland*, paragraph 42.

<sup>22</sup> 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; C-435/09, *Commission v. Belgium*, paragraphs 52, 55.

<sup>23</sup> C-332/04, *Commission v. Spain*, paragraphs 75-79.

<sup>24</sup> Case C-66/06, *Commission v. Ireland*, paragraph 62; Case C-255/08, *Commission v. Netherlands*, paragraph 33; Case C-435/09, *Commission v. Belgium*, paragraph 53; Case C-531/13, *Kornhuber and Others*, paragraph 42.

### **Multistage consent procedure**

The Court has highlighted the difficulties raised by projects that are subject to multistage consent procedures<sup>25</sup> and has reiterated the need to assess such projects as a whole. Where a consent procedure comprises more than one stage — one involving a principal decision and another involving an implementing decision that cannot extend beyond the parameters set by the principal decision — the competent authority is, in some circumstances, obliged to carry out an environmental impact assessment in respect of a project even after the grant of outline planning permission, when the reserved matters are subsequently approved.<sup>26</sup> This assessment must be of a comprehensive nature, so as to relate to all those aspects of the project that have not yet been assessed or which require a fresh assessment.

### **Exclusion of project splitting and ‘salami slicing’<sup>27</sup>**

In the case law with regard to the EIA Directive, the Court has systematically stressed that the purpose of the Directive cannot be circumvented by the splitting of projects. Where several projects, taken together, may have significant effects on the environment within the meaning of Article 2(1) of the EIA Directive, their environmental impact should be assessed as a whole. It is necessary to consider projects jointly, in particular where they are connected, follow on from one another, or their environmental effects overlap (see, to that effect, Case C-147/07, *Ecologistas en Acción-CODA*, paragraph 44; Case C-205/08, *Alpe Adria*, paragraph 53). Furthermore, in order to avoid misuse of EU rules by splitting projects that, when taken together, are likely to have significant effects on the environment, it is necessary to take into account the cumulative effect of such projects where they have an objective and chronological link between them (Case C-244/12, *Salzburger Flughafen*, paragraph 21).

In its case law, the Court advocated a broad interpretation of the EIA Directive and rejected efforts to limit its scope. In Case C-227/01, *Commission v Spain*, the Court stated that a long-distance project cannot be split up into successive shorter sections in order to exclude both the project as a whole and the sections resulting from that division from the requirements of the Directive (paragraph 53). If that were possible, the effectiveness of the Directive could be seriously compromised, since the authorities concerned would need only to split up a long-distance project into

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<sup>25</sup> Case C-201/02, *Wells*; Case C-508/03, *Commission v United Kingdom*; Case C-290/03, *Barker*.

<sup>26</sup> Case C-508/03, *Commission v United Kingdom*, paragraphs 103 to 106.

<sup>27</sup> Salami slicing refers to the practice of splitting an initial project into a number of separate projects, which individually do not exceed the threshold set or do not have significant effects on a case-by-case examination and therefore do not require an impact assessment but may, taken together, have significant environmental effects (See COM/2003/0334 final [<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52003DC0334>]).

successive shorter sections in order to exclude it from the requirements of the Directive (paragraph 53).

A similar situation arises where an environmental impact assessment has not been carried out on a project that, in principle, is not subject to an assessment but it involves a modification or an extension that is indeed covered by the annexes to the Directive. This situation arose in Case C-2/07, *Abraham and Others*. In this case, the Court held 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'* (paragraph 36). In this case, the Court came to its decision based on an overall assessment criterion and with a view to ensuring the effectiveness of the EIA Directive.

## 2.5 Relationship between the EIA and SEA Directives

In its 2009 Report on the application and effectiveness of the EIA Directive,<sup>28</sup> the Commission noted that, in theory, overlap should not be expected with regard to Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (the Strategic Environmental Assessment, or SEA, Directive). However, various areas of potential overlaps<sup>29</sup> in the application of the two directives have been identified. In particular, the boundaries between the definition of a plan, a programme or a project are not always clear, and therefore there may be some doubt as to whether the subject of the assessment meets the criteria for requiring the application of either one or both of the EIA and SEA Directives. In this regard, the definitions of some project categories, which often relate to land use, are not clear and this might create confusion with the SEA Directive.

Different approaches have been chosen by Member States to address any potential ineffectiveness resulting from overlapping procedures. However, many Member States often consider that they do not have sufficient experience to identify and assess any overlapping issues properly. This is why very few Member States

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<sup>28</sup> Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application and effectiveness of the EIA Directive (Directive 85/337/EEC, as amended by Directives 97/11/EC and 2003/35/EC) (COM /2009/0378 final, 23.7.2009) [<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009DC0378>].

<sup>29</sup> For instance, where large projects are made up of sub-projects; projects that require changes to land-use plans; plans and programmes that set binding criteria for the subsequent development consent of projects; and hierarchical linking between strategic environmental assessment and environmental impact assessment ('*tiering*').



recommended consolidating the two directives. Many Member States underlined that each process should be preserved and distinguished, as these are complementary procedures addressing different stages and processes. Member States have also asked for guidance documents to be produced.

In 2005, DG Environment commissioned a study on the relationship between the SEA and EIA Directives<sup>30</sup>. This study provides examples of possible ways for bridging the two assessments, and performing joint procedures specially devised to meet the requirements of both directives simultaneously.

Last but not the least, it should be noted that Article 11 of the SEA Directive underlines that assessment under the SEA Directive is without prejudice to any requirements under the EIA Directive and any other Union law requirements. Therefore, in order to comply with the law, Member States must ensure they meet the requirements of both directives when they both apply.

## 2.6 Relationship between the EIA and IED

The EIA Directive and the Industrial Emissions Directive (IED) sometimes relate to the same type of activities. However, it is important to be aware of the differences that exist between the objective, the scope, classification systems, and thresholds of these two directives.

The IED lays down rules on integrated prevention and control of pollution arising from industrial activities. It also lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment taken as a whole (Article 1 of the IED). For its part, the objective of the EIA Directive is to identify, describe, and assess in an appropriate manner, in the light of each individual case, the direct and indirect effects of a project on human beings, fauna and flora; soil, water, air, climate and the landscape; material assets and the cultural heritage; and the interaction between all these factors (Article 3 of the EIA Directive).

Where project categories in the EIA Directive overlap with the activity categories in Annex I to the IED, these have to be interpreted by reference to the purpose and general scheme of the rules of the EIA Directive. Member States have discretion to use the thresholds set by Annex I to the IED in the context of the EIA Directive, as long as they act within the limit of discretion set out in Article 2(1) of the EIA Directive. This requires that projects are to be subject to an impact assessment if they are likely, by virtue *inter alia* of their nature, size or location, to have significant effects on the environment.

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<sup>30</sup> Imperial College London Consultants (August 2005) 'The relationship between the EIA and SEA Directives', [[http://ec.europa.eu/environment/archives/eia/pdf/final\\_report\\_0508.pdf](http://ec.europa.eu/environment/archives/eia/pdf/final_report_0508.pdf)].

## 3 INDIVIDUAL PROJECT CATEGORIES

### 3.1 Introduction

The projects referred in Annex I and II must be interpreted in the light of the concept of ‘*project*’ (Article 1(2) and the general objective of the EIA Directive (Article 2(1)). The interpretations provided for project categories are based on the purpose of the Directive, the experience gathered in its application, and Court interpretations.

The information in this section is intended to help provide a better understanding of project categories. As indicated above, most of this information derives from case law before the Court, EU directives, international conventions and guidance documents produced by the European Commission. It is clearly noted under each project category whenever these definitions are explicitly referred to in the text of the EIA Directive.<sup>31</sup> In the case of other definitions, the reader is advised to consider carefully whether they can be applied as such to the scope of the EIA Directive. The objectives of the different pieces of legislation should be borne in mind, in light of the considerations set out in section 2 of this document.

It should also be noted that the definitions provided in this section are not intended to constitute a comprehensive glossary of all terms contained in the EIA Directive, and long technical descriptions of industrial processes are deliberately avoided. The reader is referred to the potentially useful sources of definitions available outside the field of environmental impact assessment, as indicated in the text.

This section follows the order of the Annexes to the EIA Directive, but it does not give details on all project categories, nor does it provide an exhaustive interpretation. Nonetheless, the information given may also be useful to gain a better understanding of project categories that are not further explained.

### 3.2 Annex I projects referred to in Article 4(1) of the EIA Directive

Pursuant to Articles 2(1) and 4(1) of the EIA Directive, and notwithstanding the exceptional cases referred to in Article 2(4), the environmental effects of projects falling under Annex I to the Directive must, as such and prior to authorisation, be evaluated systematically<sup>32</sup>. It follows that the Member States have no room for discretion in this respect.

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<sup>31</sup> For example, Annex I(7)(a) of the EIA Directive refers to the definition of ‘airport’ contained in the 1944 Chicago Convention setting up the International Civil Aviation Organisation.

<sup>32</sup> See, to that effect, Case C-465/04 *Commission v. Ireland*, paragraph 45, and Case C-255/05 *Commission v Italy*, paragraph 52.

Furthermore, if thresholds are assigned for Annex I project categories for which such thresholds are not envisaged, this would limit the scope of application of the EIA Directive<sup>33</sup>.

#### **Annex I (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**

#### **Annex I (2)**

**(a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more**

The Court's ruling in Case C-431/92, *Commission v Germany*, must be borne in mind when interpreting this project category.

Annex I, point 2 of the Directive, under which projects for thermal power stations with a heat output of 300 megawatts or more must undergo an assessment, must be interpreted as requiring such projects to be assessed irrespective of whether they are separate constructions, are added to a pre-existing construction, or have close functional links with a pre-existing construction. Even where such a project has links with an existing construction, it cannot therefore come under 'modifications to development projects included in Annex I', mentioned in point 13 of Annex II (point 12 prior to amendments by Directive 97/11/EC<sup>34</sup>). The principle expressed in this ruling was incorporated in the text of the EIA Directive by the amendments introduced by Directive 2003/35/EC<sup>35</sup>, which made an environmental impact assessment mandatory for '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' (Annex I(24)).

It may be useful to refer to the IED, which defines 'combustion plants' as 'any technical apparatus in which fuels are oxidised in order to use the heat thus generated'.

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<sup>33</sup> See C-435/09, *Commission v Belgium*, paragraphs 86 and 88.

<sup>34</sup> Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, OJ L 73, 14.03.97.

<sup>35</sup> Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, OJ L 156, 25.6.2003, p. 17–25.

(b) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors<sup>(36)</sup> (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed one kilowatt continuous thermal load).

**Annex I (3)**

(a) Installations for the reprocessing of irradiated nuclear fuel;

(b) Installations designed:

(i) for the production or enrichment of nuclear fuel;

(ii) for the processing of irradiated nuclear fuel or high-level radioactive waste;

(iii) for the final disposal of irradiated nuclear fuel;

(iv) solely for the final disposal of radioactive waste;

(v) 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.

**Annex I (3)**

**Annex I (4)**

(a) Integrated works for the initial smelting of cast iron and steel

Integrated works are large industrial complexes and they are characterised by networks of interdependent material and energy flows between the various production units (including sinter plants, pelletisation plants, coke oven plants, blast furnaces and basic oxygen steel-making plants with subsequent casting).

(b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes

**Annex I (4)**

Non-ferrous metals are produced from a variety of primary and secondary raw materials. Primary raw materials are derived from ores that are mined and then further treated before they are processed to produce crude metal. The treatment of ores is normally carried out close to the mines.

Secondary raw materials used for non-ferrous crude metals include scrap metal, skimmings, flue or filter dusts, drosses and residues.

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<sup>36</sup> 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.

## Annex I (5)

### Annex I (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, utilisation of more than 200 tonnes per year.

Asbestos has been banned throughout the European Union since 1 January 2005<sup>37</sup>.

### Annex I (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:

- (a) for the production of basic organic chemicals;
- (b) for the production of basic inorganic chemicals;
- (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
- (d) for the production of basic plant health products and of biocides;
- (e) for the production of basic pharmaceutical products using a chemical or biological process;
- (f) for the production of explosives.

The project category '*integrated chemical installations*' is divided into six sub-categories, which are nearly the same as those listed in point 4 of Annex I to the IED.<sup>38</sup> The list of organic and inorganic chemicals in the IED's Annex I could be used as a non-exhaustive list for the purposes of the EIA Directive as well:

Organic chemicals include: (a) simple hydrocarbons (linear or cyclic, saturated or unsaturated, aliphatic or aromatic); (b) oxygen-containing hydrocarbons such as alcohols, aldehydes, ketones, carboxylic acids, esters, acetates, ethers, peroxides,

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<sup>37</sup> Commission Directive 1999/77/EC of 26 July 1999 adapting to technical progress for the sixth time Annex I to Council Directive 76/769/EEC on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations (asbestos).

<sup>38</sup> It should be noted that the EIA Directive only covers integrated installations, which is a sub-set of that covered by IED. In addition, there are some differences in the descriptions. Firstly, while the EIA Directive refers to *basic* organic and inorganic chemicals, the IED omits the term *basic* although this was merely for clarification. Secondly, point 6(d) of Annex I to the EIA Directive refers to *production of plant health products and of biocides*, while the IED refers to *Production of plant protection product or of biocides* (point 4.4, Annex I).

## Annex I (6)

epoxy resins; (c) sulphurous hydrocarbons; (d) nitrogenous hydrocarbons such as amines, amides, nitrous compounds, nitro compounds or nitrate compounds, nitriles, cyanates, isocyanates; (e) phosphorus-containing hydrocarbons; (f) halogenic hydrocarbons; (g) organometallic compounds; (h) plastic materials (polymers, synthetic fibres and cellulose-based fibres); (i) synthetic rubbers; (j) dyes and pigments; (k) surface-active agents and surfactants.

Inorganic chemicals include: (a) gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, carbonyl chloride; (b) acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids; (c) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide; (d) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate; (e) non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon carbide.

### 'Integrated', 'juxtaposed' and 'functionally linked'

The first guidance on 'integrated', 'juxtaposed' and 'functionally linked' was provided by case law (see Case C-133/94, *Commission v Belgium*). The Court ruled that '*whether a chemical installation is integrated does not depend upon its processing capacity or on the type of chemical substance processed in it but on the existence of interlinked production units constituting in terms of their operation a single production unit*'. It should be noted that this definition applied before Annex I(6) was amended by Directive 97/11/EC.<sup>39</sup>

Therefore, the basis for interpretation of 'integration' would be that various units are present and a linkage between various parts of a chemical plant exists. The functional linkage will be primarily via a process pathway, i.e. the various units of the installation serve a common purpose by producing intermediates or input material (precursors, auxiliary agents etc.) for other units. The various elements of the plant will therefore contribute to producing a finished product (or products), although it is possible that part of the intermediates or input materials produced in the plant will also be placed on the market. Additionally, there may be infrastructural linkage (for example, for energy purposes), but this alone does not constitute a functional linkage.

The term 'juxtaposed' commonly means 'placed side by side' or 'placed next to one another'. However, given the broad purpose of the Directive, there does not appear to be a requirement for any particular unit to be placed *immediately* next to another, since precursors may be produced on a different part of the site, and transferred by

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<sup>39</sup> Annex I(6) to Directive 85/337/EEC prior to amendments referred to '*Integrated chemical installations*'.

## Annex I (6)

pipeline, conveyor or other forms of transfer to a finishing or process area. Such obviously directly associated activities have a functional connection with the other activities carried out on that site and could have environmental effects.

### 'Manufacture on an industrial scale'

Annex I(6) contains no quantitative capacity thresholds but only a reference to 'manufacture on an industrial scale'.

Annex I to the IED provides that the Commission is to establish guidance on the interpretation of the term 'industrial scale' regarding the description of chemical industry activities described in the Annex.

### 'Chemical conversion processes'

Annex I(6) makes reference to manufacture on an industrial scale using 'chemical conversion processes'. 'Chemical conversion processes' imply that transformation by one or several chemical reactions takes place during the production process. This also holds for a biotechnological or biological process that is mostly associated with a chemical conversion (e.g. fermentation). An activity involving only physical processing (for instance, simple blending or mixing of substances that do not chemically react, dewatering, dilution, repackaging of acids/bases) would not be covered.

In comparison, in Annex I to the IED, point 4 defines 'production' within the chemical industry as *the production on an industrial scale by chemical or biological processing of substances or groups of substances* listed under that point.

### Use of the term 'basic'

The term 'basic'<sup>40</sup> does not mean only those chemicals requiring further processing but also certain final (but still basic) chemical products (for instance, synthetic rubbers, dyes and pigments, polymers and synthetic fibres) that can undergo further (non-chemical) processing. The production of a mixture of chemicals could also be considered as the production of 'basic' chemicals. For instance, biodiesel composed largely of a mixture of esters would fall under the term 'basic organic chemicals' since this relates to the production of esters.

The term would however not cover final products that cannot be considered to be 'chemical products'. For instance, the production of tyres from rubber with other ingredients involves some form of chemical processing without producing a 'basic chemical product'.

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<sup>40</sup> It should be noted that the term 'basic' is no longer used in the activity descriptions under point 4 of Annex I to Directive 2010/75/EU on industrial emissions.

## Annex I (7)

### (a) Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2 100 m or more;

The Court ruling in Case C-227/01, *Commission v Spain*, must be considered when interpreting the scope of this project category with respect to 'lines for long-distance railway traffic'.

In this case, the Court concluded that a project concerning the laying of a supplementary railway track of 13.2 km, of which 7.64 km covered a new route, and which was part of a 251 km railway line, falls under Annex I(7). Annex I(7) must therefore be understood to include the doubling of an existing track, which is not to be considered as a mere modification of an existing project.

The project formed part of a larger project known as the '*Mediterranean Corridor*', a 251 km railway line along the Spanish coast from Tarragona to Valencia. The Spanish Government argued that only the section concerned was subject to an assessment and that its length could not be classified as a 'line for long-distance railway traffic', in accordance with Annex I(7) to Directive 85/337. The Court rejected that argument outright on the grounds that the effectiveness of the Directive would be seriously compromised, since '*the national authorities concerned would need only to split up a long-distance project into successive shorter sections in order to exclude from the requirements of the Directive both the project as a whole and the sections resulting from that division*'.

## Annex I (7) (a)

Hence, in its judgment the Court decided that the fact that the project is only related to a short section of a long-distance route was not relevant. As the new track would obviously create significant new nuisances, there is no need to prove the existence of concrete negative effects — their likelihood is sufficient to decide that the project falls under Annex I.<sup>41</sup>

As regards 'airports', the EIA Directive provides a clear definition. Its footnote (1) indicates that, for the purposes of the Directive, airport '*means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14)*'. According to that Convention, the term aerodrome (airport) is '*a defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft*'.

In Case C-2/07, *Abraham and Others*, the Court considered a question whether works relating to infrastructure of an existing airport whose runway is already more than 2 100 metres in length fall within the scope of Annex II(12), read in conjunction with

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<sup>41</sup> Case C-227/01, *Commission v Spain*, paragraph 59: '*Moreover, it is indisputable that a project of this type is such as to create significant new nuisances, even if only as the result of the adaptation of the railway line with a view to traffic which can attain a speed of 220 km/h*'.



**Annex I (7)(a)**

Annex I(7), to the EIA Directive (in its original version). Annex I(7) to the Directive referred to the *'construction [...] of airports with a basic runway length of 2 100 m or more'*. However, the Directive does not lay down any provisions concerning the extension of an airport, particularly where such an extension does not alter the size of the runway. In that connection, the proposed project was for the modification of the airport's infrastructure, the construction of a control tower, new runway exits and aprons, and work to restructure and widen the runways without altering their length. Taking into account that such a project would have serious effects on the environment and that the requirement to carry out an EIA would be circumvented on the pretext that there was no alteration of the length of the runway, the Court, with an overall assessment criterion and with a view to ensuring the effectiveness of Directive 85/337/EEC, held 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'* (paragraph 36). The Court concluded that the competent authorities had to take account of the projected increase in the activity of an airport when examining the environmental effect of modification made to its infrastructure with a view to accommodating that increase in activity. This approach has been confirmed in subsequent judgments, noting that the relevant provisions of Annex II to the EIA Directive, read in conjunction with those of Annex I thereto, also encompass works to change the infrastructure of an existing airport (Case C-275/09, *Brussels Hoofdstedelijk Gewest and Others*, and Case C-244/12, *Salzburger Flughafen*).

The case law shows the interpretation given by the Court to the provision of point 7(a) of Annex I with regard to *'construction'*. The Court has construed the expression *'construction of airports'* broadly, taking into account works and physical interventions. The Court has stated that, in addition to works relating to airport runways, that concept encompasses *'all works relating to the buildings, installations or equipment of an airport'* (Case C-2/07, *Abraham and Others*, paragraph 36).

However, the renewal of an existing permit to operate an airport cannot, in the absence of any works or interventions involving alterations to the physical aspects of the site, be classified as a *'project'* or *'construction'*, respectively, within the meaning of those provisions (Case C-275/09, *Brussels Hoofdstedelijk Gewest and Others*).

**(b) Construction of motorways and express roads;**

**Annex I (7)(b)**

A clear definition is provided in the EIA Directive for *'express roads'*. Footnote (2) indicates that for the purposes of that Directive, *'express road'* means a road that complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975. According to that agreement, *'an express road is a road reserved for motor traffic accessible only from interchanges or controlled*

*junctions and on which, in particular, stopping and parking are prohibited on the running carriageway(s)*'.<sup>42</sup> It does not follow from that definition that roads sited in urban areas would *a priori* be excluded. The above agreement also defines the concept of 'motorway' as *inter alia* a road specially designed and built for motor traffic, which does not serve properties bordering on it, does not cross at level with any road, railway or tramway track, or footpath, and is specially signposted as a motorway.

In Case C-142/07, *Ecologistas en Acción-CODA*, the Court noted that since not all the Member States are parties to that agreement, this reference concerns the version of the agreement in force when Directive 85/337/EEC was adopted, that is the agreement of 15 November 1975 (paragraph 30).

Following the case law and the objective of the EIA Directive, 'urban' road projects must be regarded as falling within the scope of the EIA Directive (Case C-142/07 *Ecologistas en Acción-CODA*, paragraph 31 to 37).

Furthermore, in its judgment the Court has given a broad interpretation of the concept 'construction', accepting that works for the refurbishment of an existing road may be equivalent, due to their size and in the manner in which they are carried out, to the construction of a new road (Case C-142/07, *Ecologistas en Acción-CODA* paragraph 36).

**(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 continuous length.**

#### **Annex I (8)**

**(a) Inland waterways and ports for inland waterway traffic which permit the passage of vessels of over 1350 tonnes**

**(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1350 tonnes.**

#### **Annex I (8)**

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<sup>42</sup> According to this agreement, 'motorway' means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:

(i) is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other by a dividing strip not intended for traffic or, exceptionally, by other means;

(ii) does not cross at level with any road, railway or tramway track, or footpath; and

(iii) is specially signposted as a motorway.

Practice shows that Member States tend to include both inland and maritime ports under this project category.

With regard to the capacity parameter (vessels of over 1350 tonnes) used in this definition, this could be taken as deadweight tonnage.

This is the maximum weight a ship can carry, including goods, passengers, fuel, etc. shown by a line on the ship's side that the water must not go past when it is floating in the water.

### **Annex I (9)**

#### **Annex I (9)**

**Waste disposal installations for the incineration, chemical treatment (as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste<sup>43</sup> under heading D9), or landfill of hazardous waste, as defined in point 2 of Article 3 of that Directive.**

The Waste Framework Directive (Directive 2008/98/EC, WFD) aims *'to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use'* (Article 1).

Directive 2008/98/EC repeals the previous Directive 2006/12 on waste and Directives 75/439/EEC and 91/689/EEC regarding waste oils and hazardous waste, respectively. The WFD applies from 12 December 2010 and introduces new provisions in order to boost waste prevention, re-use and recycling in line with the waste hierarchy (Article 4) and clarifies key concepts namely, the definitions of waste (Article 3(1)), recovery and disposal. It also lays down the appropriate procedures applicable to by-products (Article 5) and to waste that ceases to be waste (Article 6). A guidance document<sup>44</sup> on key requirements of the WFD is available.

The WFD defines 'waste' as *'any substance or object which the holder discards or intends or is required to discard'* (Article 3(1)).

The WFD broadens the terms 'recovery' and 'disposal' so that they no longer rely simply on operations listed in an annex. 'Recovery' is defined in Article 3(15) as *'any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy'*. Annex II to the WFD sets out a non-exhaustive list of recovery operations. This concept of recovery has been described as an 'umbrella concept' encompassing preparation for re-use, recycling and other recovery, e.g. energy recovery.

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<sup>43</sup> OJ L 312, 22.11.2008, p. 3.

<sup>44</sup> [http://ec.europa.eu/environment/waste/framework/pdf/guidance\\_doc.pdf](http://ec.europa.eu/environment/waste/framework/pdf/guidance_doc.pdf).

## Annex I (9)

'Disposal' is defined in Article 3(19) of the WFD as *'any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy'*. Annex I to the WFD sets out a non-exhaustive list of disposal operations.

The concept of 'treatment' is also defined in Article 3(14) of the WFD as *'recovery or disposal operations, including preparation prior to recovery or disposal'*.

One of the key aims of the WFD is to promote the better use of resources by encouraging the use of waste for beneficial purposes. To this end, in line with the waste hierarchy, recovery operations that result in waste being used in place of primary resources are to be encouraged over disposal operations that are intended to simply get rid of the waste safely.

When deciding whether individual projects fall within this project category, reference can be made to definitions laid down in EU waste legislation provided that they are also explicitly referred to in the text of the EIA Directive (such as in the case of the terms 'chemical treatment' and 'hazardous waste'). The general objective of the EIA Directive, i.e. that projects likely to have significant effects on the environment are made subject to an assessment of their effects, should be taken as a guiding principle to this effect.

It must be noted that for the purposes of the EIA Directive, the term 'disposal' is interpreted to include 'recovery'. This was confirmed by the Court in Case C-486/04, *Commission v Italy*, where the Court ruled that *'it must be held that the concept of waste disposal for the purpose of Directive 85/337 is an independent concept which must be given a meaning which fully satisfies the objective pursued by that measure [...]. 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'* (paragraph 44). As a consequence, (a) installations for the incineration, and (b) installations for chemical treatment, as defined in D9 of Annex I to the WFD, are included in this project category even when they result in waste recovery.

The WFD uses the term 'incineration' but does not define it. Article 3(40) of the IED defines 'waste incineration plant' as *'any stationary or mobile technical unit and equipment dedicated to the thermal treatment of waste, with or without recovery of the combustion heat generated, through the incineration by oxidation of waste as well as other thermal treatment processes such as pyrolysis, gasification or plasma processes, if the substances resulting from the treatment are subsequently incinerated'*.

Co-incineration is a type of incineration taking part in particular installations and thus it could be considered covered by the scope of the EIA Directive.

#### Annex I (9)

As regards 'chemical treatment', the EIA Directive explicitly refers to the definition in Annex I to Directive 2008/98/EC on waste, under heading D9, i.e.: '*Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 to D12 (e.g. evaporation, drying, calcination, etc.)*'.

The Waste Framework Directive uses the term 'landfill' but does not define it. However, landfill is defined in Article 2(g) of Directive 1999/31/EC as '*a waste disposal site for the deposit of waste onto or into land (i.e. underground), including:*

- *internal waste disposal sites (i.e. landfill where a producer of waste is carrying out its own waste disposal at the place of production), and*

- *a permanent site (i.e. more than one year) which is used for temporary storage of waste,*

*but excluding:*

- *facilities where waste is unloaded in order to permit its preparation for further transport for recovery, treatment or disposal elsewhere, and*

- *storage of waste prior to recovery or treatment for a period less than three years as a general rule, or*

- *storage of waste prior to disposal for a period less than one year*'.

In defining hazardous waste, the EIA Directive refers to Article 3, point 2 of the Waste Framework Directive, providing that 'hazardous waste' means '*waste which displays one or more of the hazardous properties listed in Annex III*' to the Waste Framework Directive.

#### Annex I (10)

#### Annex I (10)

**Waste disposal installations for the incineration or chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.**

For definitions of disposal, waste, chemical treatment and incineration, see the above section for Annex I (9).

#### Annex I (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.**

## Annex I (11)

When dealing with this project category, it may be useful to refer to the Water Framework Directive,<sup>45</sup> which contains in its Article 2(2) a definition of 'groundwater' as meaning *'all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil'*.

## Annex I (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 multiannual 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.**

## Annex I (12)

Article 2(13) of the Water Framework Directive defines the term 'river basin' as *'the area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta'*.

For the purposes of interpreting the term 'river basin', a strict reference to the definition provided in the Water Framework Directive would limit the scope and purpose of the EIA Directive in the light of relevant projects (Annex I, point 12, and Annex II, point 10 (m)). For instance, transfer of water resources other than *river basins*, e.g. sub-basins, could have significant effects on environment and thus be made subject to an assessment with regard to its effects.

## Annex I (13)

## Annex I (13)

**Wastewater treatment plants with a capacity exceeding 150 000 population equivalent as defined in Article 2, point (6) of Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment**

Annex I (13) to the EIA Directive explicitly refers to the Urban Wastewater Treatment Directive<sup>46</sup> as regards the definition of the threshold set by 'population equivalents' for wastewater treatment plants. According to Article 2(6) of the latter Directive, 'population equivalent' means *'the organic biodegradable load having a five-day biochemical oxygen demand (BOD5) of 60 g of oxygen per day'*.

<sup>45</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1.

<sup>46</sup> Council Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment, OJ L 135, 30.5.1991, p. 40.

#### **Annex I (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 cubic metres/day in the case of gas.**

#### **Annex I (14)**

Annex I, point 14 applies both to conventional and unconventional gas,<sup>47</sup> *inter alia* shale gas activities, which exceed the relevant threshold. An EIA would be mandatory for projects falling within Annex I, point 14 that exceed the threshold. Projects that are below this threshold are listed in the EIA Directive under Annex II, point 2 (d) and (e).

In Case C-531/13, *Kornhuber and Others* (paragraph 23-25) the Court concluded that it follows from the context and objective of Annex I, point 14, that the scope of that provision does not extend to exploratory drillings. In fact, that provision links the obligation to conduct an environmental impact assessment to the quantities of petroleum and natural gas earmarked for extraction. To that end, it provides for thresholds which must be exceeded on a daily basis, which indicates that it aims at projects of certain duration and which enable relatively large-scale quantities of hydrocarbons to be extracted.

In addition, the Convention on the Environmental Impact Assessment in a Transboundary Context<sup>48</sup> (Espoo Convention) lists, in its Appendix I, point 15, offshore hydrocarbon production. The Espoo Convention does not envisage any threshold for this project category. Hence, if the offshore hydrocarbon production is likely to cause significant adverse transboundary impact, a transboundary environmental impact assessment shall be carried out.

#### **Annex I (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.**

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<sup>47</sup> The term '*unconventional*' refers primarily to the characteristics of the geological reservoirs or rock formations containing the hydrocarbons, which differ from conventional reservoirs. These unconventional formations often stretch over very large areas, are characterised by low energy content per rock volume and by low or very low permeability. The main types of unconventional fossil fuels are: tight gas, shale gas, coal bed methane, methane hydrates, tight oil, shale oil, oil shale and oil sands. [Source: Commission Staff Working Document Impact Assessment (SWD/2014/021 final) [http://ec.europa.eu/environment/integration/energy/pdf/swd\\_2014\\_22\\_en.pdf](http://ec.europa.eu/environment/integration/energy/pdf/swd_2014_22_en.pdf)].

<sup>48</sup> Council Decision of 27 June 1997 on the conclusion, on behalf of the Community, of the Convention on environmental impact assessment in a transboundary context (ESPOO Convention) (proposal OJ C 104, 24.4.1992, p. 5; decision not published).

#### **Annex I (16)**

**Pipelines with a diameter of more than 800 mm and a length of more than 40 km:**

#### **Annex I (16)**

- (a) for the transport of gas, oil, chemicals;**
- (b) for the transport of carbon dioxide (CO<sub>2</sub>) streams for the purposes of geological storage, including associated booster stations.**

There are two thresholds set in this project category, i.e. diameter and length. The application of Annex I and consequently compulsory environmental impact assessment would be required when both are cumulatively met. Otherwise, Annex II (10) (i) would apply.

#### **Annex I (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.**

The EIA Directive does not define the terms used in Annex I (17). According to settled case law,<sup>49</sup> the meaning and scope of terms for which European Union law provides no definition must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (see Case C-585/10, *Møller*, paragraph 25). Meanwhile, some of these terms have been defined in other EU Directives (e.g. IED<sup>50</sup>), and interpreted in several Court rulings referring to them.

#### **Annex I (17)**

In Case C-585/10, *Møller*, the Court was asked whether the expression ‘places for sows’, within the context of Council Directive 96/61/EC of 24 September 1996 concerning Integrated Pollution Prevention and Control (the IPPC Directive, repealed by the IED), includes places for ‘gilts’ (female pigs which have already been serviced, but have not yet farrowed). The IPPC Directive contained no definition of sows; instead, these definitions were provided by another Directive<sup>51</sup>, which provided separate definitions for sows and gilts. The Court noted that, with regard to the usual

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<sup>49</sup> Case C-72/95 *Kraaijeveld and Others*, paragraph 38; Case C-549/07 *Wallentin-Hermann*, paragraph 17; and Case C-473/07 *Association nationale pour la protection des eaux et rivières and OABA*, paragraphs 23 and 24; Case C-585/10 *Møller*, paragraph 25.

<sup>50</sup> Article 3(24) of the IED defines ‘poultry’ by referring to Article 2(1) of Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs, OJ L 303, 31.10.1990, p. 6.

<sup>51</sup> Council Directive 91/630/EEC of 19 November 1991 laying down minimum standards for the protection of pigs (OJ 1991 L 340, p. 33).



meaning of the term 'sow', it must be pointed out that this generally designates a female pig. To this end and regardless that some terms are defined in different directives, this cannot be regarded as allowing the usual meaning of that term to be undermined. Therefore the Court concluded that the expression 'places for sows', for the purpose of the IPPC Directive, and taking into account its broad purpose, must be interpreted as meaning that it includes places for gilts. The same reasoning could apply, *mutatis mutandis*, when interpreting the expression 'places for sows' in Annex I(17)(c) of the EIA Directive.

In Case C-473/07, the Court ruled on the notion of 'places', under subheading 6.6(a) of Annex I to the IPPC Directive 96/61/EC.<sup>52</sup> The Court acknowledged that the term 'place' is not defined by Directive 96/61/EC under subheading 2 of the introduction to Annex I to that Directive (same applies now under the IED, and subheading 1 of the introduction to Annex I of the IED). The Court states in its judgment that '*[t]he threshold values given below generally refer to production capacities or outputs*' (paragraph 39). Indeed, the establishment of the authorisation threshold in accordance with a system of 'animal equivalents' is acceptable only if it is consistent with the objective of the IPPC Directive, i.e. prevention/reduction of pollution from certain installations.

#### **Annex I (18)**

##### **Industrial plants for the production of:**

- (a) pulp from timber or similar fibrous materials;**
- (b) paper and board with a production capacity exceeding 200 tonnes per day.**

#### **Annex I (19)**

**Quarries and opencast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.**

#### **Annex I (20)**

**Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km**

This project category refers to projects which thresholds' criteria have to be cumulatively met (i.e. 220 kV or more and a length of more than 15 km). Practice shows that certain project categories can fulfil only one of the two criteria, but not the other. In such circumstances, those projects would be considered under Annex II (3) (b) of the EIA Directive.

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<sup>52</sup> Now heading 6.6 Annex I of the IED.

The provisions of point 20 of Annex I and section 3(b) of Annex II to the EIA Directive were interpreted in Case C-300/13<sup>53</sup> *Iberdrola Distribución Eléctrica*. The Court held that a project that relates only to the extension of an electrical voltage transformer substation is not, as such, among the projects covered by those provisions, unless that extension is part of the construction of overhead electrical power lines, which it is for the national Court to ascertain.

#### Annex I (20)

In Case C-205/08, *Alpe Adria* the Court was asked to interpret Annex I (20) in the context of a transboundary project for construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km, where less than 15 km of it is located in the territory of the Member State referring to the Court.

In practice, the project concerned the construction of a 220 kV electrical power line with a nominal power rating of 300 MVA and a length of 48.4 km. Thus, it is covered by point 20 of Annex I to the EIA Directive, and therefore subject to an assessment pursuant to Articles 2(1) and 4(1) of the EIA Directive.

The Court has held that the purpose of the EIA Directive cannot be circumvented by the splitting of projects. The failure to take account of the cumulative effect of several projects must not mean in practice that they all cease to be covered by 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. In addition, Member States must implement the EIA Directive in a manner that fully corresponds to its requirements, having regard to its fundamental objective which — as is clear from Article 2(1) — 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 the subject of an assessment with regard to their effects (see, to that effect, *Ecologistas en Acción-CODA*, paragraph 33).

#### Annex I (20)

The Court concluded in its judgment that 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. Therefore, it follows that projects listed in Annex I to Directive 85/337 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 with regard to them. Such an exemption would seriously interfere with the objective of Directive 85/337. 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 that is located in another Member State (see, by analogy, Case C-227/01, *Commission v. Spain* paragraph 53, and Case C -205/08, *Alpe Adria*, paragraph 54-55).

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<sup>53</sup> Case C-300/13, *Iberdrola Distribución Eléctrica*.

#### **Annex I (21)**

**Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.**

#### **Annex I (22)**

**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.<sup>54</sup>**

#### **Annex I (23)**

**Installations for the capture of CO<sub>2</sub> 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 CO<sub>2</sub> is 1.5 megatonnes or more.**

#### **Annex I (24)**

**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.**

#### **Annex I (24)**

This project category was introduced by Directive 2003/35/EC. Initially, Directive 85/337/EEC did not explicitly cover modifications of existing projects, with the exception of the reference in Annex II (12) to *‘Modifications to development projects included in Annex I and projects in Annex II undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than one year’* (Annex II (12)). Directive 97/11/EC amended Directive 85/337/EEC so as to include modifications of existing Annex I and Annex II projects in Annex II (13): *‘any change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed, which may have adverse effects on the environment’*.

Directive 2003/35/EC, which amended Directive 85/337/EEC, introduced a new Annex I (22) category, *‘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’*. To this end, changes or extensions to projects listed in Annex I which exceed the threshold should undergo an environmental impact assessment. Changes or extensions of existing projects which are below the thresholds or where there is no threshold fall under Annex II<sup>55</sup>.

The evolution over time of the wording of the EIA Directive concerning project modifications reflects Court case law on this subject. On a number of occasions, the Court has dealt with the issue of whether a project should be interpreted as a new

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<sup>54</sup> OJ L 140, 5.6.2009, p. 114.

<sup>55</sup> In contrast, this project category cannot serve Annex I projects for which the Directive does not fix thresholds (Annex I — 2b; 3; 4, 6; 7 (a, railways) and (b); 9; 18 (a); and 22).

## Annex I (24)

project or a modification of an existing one, and how the project then relates to the requirements of Articles 4(1) and 4(2) of the Directive.

In Case C-431/92, *Commission v Germany* (the *Großkrotzenburg* case), the Court concluded that the project in question — the construction of a *thermal power station* with a heat output of 500 megawatts which had links with an existing construction — could not fall under the category of modifications to development projects included in Annex I, mentioned in paragraph 12 of Annex II (before amendments by Directive 97/11/EC), for which optional assessment is provided. The Court held that Annex I (2), under which projects for thermal power stations with a heat output of 300 megawatts or more must undergo an assessment, must be interpreted as requiring such projects to be assessed irrespective of whether they are separate constructions, are added to a pre-existing construction, or even have close functional links with a pre-existing construction, paragraphs 34-36).

In Case C-227/01, *Commission v Spain*, the Court concluded that point 7 of Annex I to the Directive (regarding *lines for long-distance railway traffic*) must be understood to include the doubling of an already existing railway track (paragraph 48). The Court referred to the Directive's wide scope and broad purpose and to the Directive's fundamental objective that, before consent is granted, 'projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location shall be made subject to a mandatory assessment with regard to their effects' (paragraph 47). It further stated, in paragraph 49 of the ruling: '*A project of that kind can have a significant effect on the environment within the meaning of that Directive, since it is likely to have lasting effects on, for example, flora and fauna and the composition of soil or even on the landscape and produce significant noise effects, inter alia, so that it must be included in the scope of the Directive. The objective of Directive 85/337 would be seriously undermined if that type of project for the construction of new railway track, even parallel to existing track, could be excluded from the obligation to carry out an assessment of its effects on the environment. Accordingly, a project of that sort cannot be considered a mere modification to an earlier project within the meaning of point 12 of Annex II to the Directive.*'

The box below gives an example of an Annex I project category for which a threshold is set and the project is the subject of extension. The aim of the example is to describe the circumstances in which projects fall under either Annex I (24) or Annex II (13) of the EIA Directive.

### Box 1 Example

1. An existing airport >2100 m is modified; a new runway >2100 m is added => Annex I.24 => EIA.
2. An existing airport >2100 m is modified; a new runway <2100 m is added and/or the existing runway is enlarged to 2400 m => Annex II.13 => screening.
3. An existing airport <2100 m is modified; a new runway >2100 m is added => Annex I.24 => EIA.
4. An existing airport <2100 m is modified; the existing runway < 2100 m (1000 m) is now enlarged and becomes 3100 m (so there is a 2100 m change) => Annex I.24 => EIA.
5. An existing airport <2100 m is modified; the existing runway < 2100 m (1800 m) is now enlarged and becomes 2400 m (so there is a 600 m change) => Annex II.13 => screening

### 3.3 Annex II projects referred to in Article 4(2) of the EIA Directive

#### Box 2. Titles of project categories

Titles of categories into which projects of Annex II are grouped do not represent a separate project category and therefore do not contribute to their definition. Therefore they are observed as declaratory titles, with the purpose of logically grouping closely linked projects. The Court recognised this in its ruling in the case C-66/06 (*Commission v Ireland*) where it stated that ‘... it is worth mentioning that in practice projects falling within point 1(a) to (c) of Annex II of the EIA Directive are closely linked; the drainage of wetland thus often results in the use of semi-natural areas for intensive agricultural purposes (para. 72)’.

Therefore, the fact that projects for ‘reclamation of land from the sea’ are listed under the title ‘Agriculture, silviculture and aquaculture’, must not be interpreted in a way to exclude projects for reclamation of land from the sea in other sectors, e.g. urban development projects.

#### Annex II (1) Agriculture, silviculture and aquaculture

##### (a) Projects for the restructuring of rural land holdings

Descriptions of projects falling under this project category differ from one Member State to another. For the sake of clarification, some Member States include examples of projects falling under this category in their guidance documents. For example, certain Member States qualify these restructuring projects as ‘*Projects that physically restructure rural land holdings including the addition or removal of field boundaries or recontouring the land through addition, removal or redistribution of earth or other material*’.

Some Member States established thresholds or criteria for screening of the projects. For example, making restructuring projects subject to an environmental impact assessment if they involve changes to four kilometres or more of field boundaries; movements of 10000 m<sup>3</sup> or more of earth or other material; or otherwise restructure an area of 100 hectares or more. However, where a restructuring project is within a sensitive area, it is subject to stricter thresholds of 2 km or more of field boundaries; 5000 m<sup>3</sup> or more of earth or other material, or otherwise restructuring an area of 50 hectares or more.

Another example is a case-by-case screening if the restructuring project covers more than 200 hectares. If the restructuring project is in a protected area, an environmental impact assessment is mandatory if it covers more than 100 hectares.

In Case C-66/06, *Commission v Ireland*, the Court examined the thresholds determined by Ireland for this category of projects. The Court concluded that the threshold of 100 hectares in relation to projects for the restructuring of rural land holdings and the use of uncultivated land or semi-natural areas for intensive

agricultural purposes and, under paragraph 1(c), the threshold of a catchment area of 1 000 hectares, or 20 hectares of affected wetland, in relation to water management projects for agriculture, are not such as to preclude likely significant effects on the environment by virtue of their nature or location, since they are liable to have a substantial, or even irreversible, impact on environmental factors such as fauna and flora, land or cultural heritage. The average field size in Ireland was at that time approximately 2.4 hectares. The effect of setting, in particular for the restructuring of rural land holdings, a threshold of 100 hectares is that a project relating to the consolidation of around 40 fields, which would entail the destruction of numerous hedgerows and other means of enclosure, could be granted consent without having been subject to an environmental impact assessment, although it is such as to have significant effects on biodiversity (paragraph 67-70).

**(b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes**

The decision as to which specific agricultural practices and which types of areas fall within this project category is bound to vary between Member States, given the variety of land uses and agricultural practices in different parts of Europe. Some countries have included lists of relevant agricultural practices and habitats in national guidance documents in order to clarify how this category should be interpreted.

In relation to the term 'intensive', this project category is considered to include all practices used to significantly improve the quality of land so as to enhance or 'intensify' its agricultural productivity. The term 'uncultivated land' is considered to include all areas that are not agriculturally managed at the time of assessment. However, land areas (fallow land, permanent pastures or meadows) that are temporarily taken out of production are normally counted as '*utilised agricultural areas*'<sup>56</sup>.

The definition of what constitutes 'semi-natural areas' will vary from one Member State to the next, given that it relates to the assessed value of different areas throughout the EU. The term 'semi-natural' indicates that there has been some degree of human intervention (regardless of the moment in time when the human intervention took place) which prevents an area from being 'natural', but retaining many natural features. For example, in one Member State, semi-natural woods composed of locally native trees and shrubs, which derive from natural regeneration or coppicing rather than planting, will fall within this category. In many Member States, the term 'semi-natural' is likely to be applicable to large parts of the country area, although the extent of management will vary.

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<sup>56</sup> These areas are eligible for receiving direct payments in line with Council Regulation No 73/2009, which in its Article 6 defines that Member States need to ensure that these areas are maintained in good agricultural and environmental condition and shall ensure the maintenance of the area under permanent pasture.

## **Annex II (1)(b)**

The definition of which areas are considered 'semi-natural' may, in practice, depend upon a wider evaluation of the role of habitats and areas, or features of high biodiversity interest in the wider countryside (such as ponds, small wetlands, ancient hedgerows, patterns of tree cover), by the competent authority or authorities responsible for nature conservation designations or biodiversity in the Member States. Other potentially relevant environmental factors may have to be considered by other authorities, for example, those responsible for landscape designations or protection of archaeology. There is therefore some margin for discretion, but the main emphasis should be on identifying those areas that reflect natural conditions and have some intrinsic nature conservation or other environmental value that would be lost by agricultural management proposals aiming at the intensification of agricultural practices. One key indicator for potential habitat types that may fall within the concept of 'semi-natural areas' of high conservation value will be the habitat types and the habitats of species that are identified under the Habitats<sup>57</sup> and Birds<sup>58</sup> Directives. Some Member States have set thresholds for this type of project. Thresholds are different depending on whether the projects are within or outside a sensitive area.

For example, uncultivated land projects are subject to screening if the area of uncultivated land or semi-natural area directly affected by the project is two hectares or more. However, the competent national authority may conclude that a project that falls below this threshold still has a significant effect on the environment and should therefore be subject to an environmental impact assessment. Further examples from Member States show that an assessment is mandatory for cases involving more than 10 ha of uncultivated land or semi-natural areas in protected areas under national legislation, while for the same projects outside protected areas screening is applied.

### **(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**

## **Annex II (1)(d)**

'Conversion' refers to any conversion of land use.

Due to their different effects on the environment, thresholds introduced by Member States often vary for this project category. For example, in one Member State, afforestation above 20 ha and deforestation above 5 ha will require mandatory environmental impact assessment. In another Member State, mandatory assessment is conducted in the case of deforestation on an area of 20 ha or more, and screening

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<sup>57</sup> Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Flora and Fauna, OJ L 206, 22.7.1992, p. 7, as amended.

<sup>58</sup> Council Directive 79/200147/EC on the conservation of wild birds, OJ L 20, 26.1.2010, p. 7.

in the case of expansion of already approved deforestation projects of 20 ha or more for an extension of 5 ha or more. Further criteria may be introduced that will trigger screening, such as sensitivity of the area or type of tree species.

The change of land use is not in itself a project in the context of the definition of the EIA Directive, since a project implies some sort of works or intervention.

**(e) Intensive livestock installations (projects not included in Annex I);**

This project category can be considered to include installations for the concentrated rearing of livestock either in purpose-built units or in areas dedicated to this activity, either indoor or outdoor.

When interpreting the term 'intensive', similar reasoning as the one for intensive fish farming can be used (see Annex II (1) (f)).

**Annex II (1)(e)**

As the Annex II (1) (e) project category does not refer to any specific animal species, its scope is not limited purely to those animals listed in Annex I (17), i.e. pigs and poultry. Directive 85/337/EEC prior to amendments included in its Annex II only 'poultry-rearing installations' (Annex II (1)(e)) and 'pig-rearing installations' (Annex II(1)(f)). After the Directive 97/11/EC amendments, however, Annex II(1)(e) no longer refers to specific species, so in view of the wide scope and broad purpose of the Directive<sup>59</sup> the rearing of additional animal species may need to be included in this category.<sup>60</sup> The type of species will vary depending on the actual activities carried out in each Member State.

By way of example, national environmental impact assessment legislation in several Member States explicitly includes the intensive rearing of calves and cattle under this project category. In at least one Member State, this project category is considered to cover amongst other species the rearing of rabbits, ducks, geese and horses. Another Member State includes ostriches and ostrich-like animals.

In the latter case, a full screening will be needed for stables with 1 000 places or more for ostriches and ostrich-like species. In the same Member State, full screening will be needed for stables with 60 000-85 000 places for poultry other than hens. Below these thresholds, a simplified screening will be conducted.

Only activities that constitute a 'project' within the meaning of the EIA Directive will fall within this project category. The ruling of the Court in C-392/96, *Commission v. Ireland*, may be relevant here, although this case related to different project categories, i.e. Annex II(1)(b) and (d) of Directive 85/337/EEC prior to its

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<sup>59</sup> Consistently noted by the Court, for example in C-72/95, *Kraaijeveld and Others*, paragraph 31.

<sup>60</sup> In particular, the general objective of the Directive as expressed in Article 2(1) should be borne in mind, i.e. that 'projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to [...] an assessment with regard to their effects'.



amendments (*'Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes'*; and *'Initial afforestation where this may lead to adverse ecological changes and land reclamation for the purposes of conversion to another type of land use'*). In paragraphs 80 and 81 of the ruling, the Court referred to sheep grazing, considered to be a *'development which may have adverse environmental consequences'*. However, the Court further stated that *'the Commission has not demonstrated that sheep farming as practised in Ireland constitutes a project'*.

#### **(f) Intensive fish farming**

Intensive fish farming would imply using techniques designed to increase the production of the species in question beyond the natural capacity of the environment or culture stage, up to and including harvesting. Typically, this practice will involve the input of an additional compound feed to compensate for the lack of naturally available food at the density at which the animals are farmed. Husbandry techniques, which are also applicable to non-intensive farming, including the use of medicines and aeration of the water to meet the needs of the animals and ensure their health and welfare may also be used. Waste products should also be managed satisfactorily. It should be noted that since the wording of the EIA Directive is not specific in this respect, this category could be taken to include the farming of fish both in fresh and marine waters.

#### **Annex II (1)(f)**

Questions have arisen in practice as to the use of the term *'intensive fish farming'*, its relationship with *'extensive fish farming'* and the term *'aquaculture'*.

*'Aquaculture'* refers to the broader cultivation of any aquatic organism in fresh or marine waters. This includes algae, molluscs, crustaceans, and finfish. The term *'fish farming'* is used interchangeably with *'aquaculture'* though it typically refers to the cultivation of finfish. *'Intensive fish farming'* therefore refers to a subset of aquaculture activities where the biomass produced is beyond that which could be naturally supported without the provision of additional feed. Many of the species farmed intensively can also be farmed extensively where additional feed is not provided, stocking densities are lower and the enclosures cover a more extensive area to allow for the natural provision of their feed requirements. This is often the case for fresh water fish such as carp. Algae and mollusc farming are typically extensive forms of aquaculture<sup>61</sup>.

The European Maritime and Fisheries Fund Regulation<sup>62</sup> defines *'fisheries and aquaculture area'* as *'an area with a sea, river or lake shore, including ponds or a river*

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<sup>61</sup> Guidance to sustainable aquaculture activities in the context of the Natura 2000 Network can be found in the Commissions Guidance on Aquaculture and Natura 2000 [<http://ec.europa.eu/environment/nature/natura2000/management/docs/Aqua-N2000%20guide.pdf>].

<sup>62</sup> Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No

*basin, with a significant level of employment in fisheries or aquaculture, that is functionally coherent in geographical, economic and social terms and is designated as such by a Member State' (Article 3 Definitions).*

Some Member States have applied thresholds based on different aspects for this project category, for example, on the area of the farming site (e.g. site area exceeds 5 ha), total fish production output (e.g. yearly production higher than 100 tonnes), fish production output per hectare (e.g. carp ponds with a fish production output higher than 4 tonnes per hectare of the pond area) or feed consumption (e.g. more than 2,000kg of dry feed consumed per year).

**(g) Reclamation of land from the sea.**

**Annex II (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:**

**(i) geothermal drilling;**

**(ii) drilling for the storage of nuclear waste material;**

**(iii) drilling for water supplies;**

**with the exception of drillings for investigating the stability of the soil;**

Annex II (2) (d) to the EIA Directive contains only an indicative list of deep drillings. The text of the EIA Directive uses the term '*in particular*', which implies that the enumeration of examples is indicative and not exhaustive, and applies both for exploration and exploitation-related drillings. In Case C-531/13, *Kornhuber and Others*, the Court ruled that exploratory drillings are a form of a deep drilling, within the meaning of Annex II (2) (d).

The question of defining 'deep drillings' became particularly relevant in connection with the issue of exploration and exploitation of unconventional hydrocarbon projects, notably shale gas. Special guidance was provided by the European Commission on the application of the EIA Directive to projects related to the exploration and exploitation of unconventional hydrocarbons.<sup>63</sup> Hence,

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861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council.

<sup>63</sup> [http://ec.europa.eu/environment/integration/energy/pdf/guidance\\_note.pdf](http://ec.europa.eu/environment/integration/energy/pdf/guidance_note.pdf).

unconventional hydrocarbon projects that use deep drillings are covered by Annex II (2) (d).

## **Annex II (2)**

Member States have different thresholds defining deep drilling. Some Member States have adopted a general threshold beyond which the drilling is considered deep (e.g. 300 m). Other Member States have taken into account the type of drilling to fix the threshold (e.g. geothermal drillings and drillings for water supply are considered deep if exceeding 500 m, while the threshold for drillings for nuclear waste storage is 100 m).

The depth of the drilling should not be the sole screening criterion in assessing the likely significance of the environmental impact.<sup>64</sup> The screening should take into account all the relevant criteria listed in Annex III to the EIA Directive. The overall characteristics of the project should be taken into account. Even a small-scale project (e.g. exploration or drilling in the range of only several metres) can have significant effects on the environment if it is in a location where the environmental factors, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration.

Furthermore, the effectiveness of the EIA Directive would be seriously compromised if the competent authorities of a Member State could, when deciding whether a project must be subject to an environmental impact assessment, leave out of consideration the part of the project that is located in another Member State. Therefore, the assessment of the impact of other projects cannot be confined to particular borders (e.g. municipal).<sup>65</sup>

Last but not least, taking into account the effectiveness of the EIA Directive and the precautionary principle, as explained by the Court<sup>66</sup>, it could be argued that in case of doubts as to the absence of significant effects, competent authorities of a Member State should subject a project to an environmental impact assessment.

**(e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.**

## **Annex II (3) Energy industry**

**(a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);**

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<sup>64</sup> Case C-531/13, *Kornhuber and Others*, paragraph 41-47.

<sup>65</sup> *Idem*.

<sup>66</sup> Case C-127/02, Case C-127/02, *Waddenvereniging and Vogelbeschermingsvereniging*, paragraph 44.

**(b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);**

In its judgment in the Case C-300/13,<sup>67</sup> the Court held that the extension of a substation transforming the electric voltage does not fall under this project category, unless the extension fits into the framework of the construction of overhead cables for transmission of electrical energy.

In addition, this project category would cover those projects which do not meet the cumulative thresholds set under Annex I (20) of the EIA Directive.

**(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 power for energy production (wind farms).**

Annex II (3)

The terms wind farms and wind parks should be read as synonyms. It is a common understanding that wind farms (wind parks) comprise wind turbines (windmills). At least two wind turbines are necessary to form a wind farm.

Wind farm projects could have significant effect on certain segments of the environment, with magnitude depending on different factors, e.g. the sensitivity of the site. In particular, they could influence birds, and their migration routes, as well as increase the levels of environmental noise. Special attention should be given to the location of wind farms and their proximity to Natura 2000 sites.<sup>68</sup>

Screening thresholds introduced by Member States for this project category are usually based on the following criteria, or a combination of them:

- number of wind turbines;

<sup>67</sup> Case C-300/13, *Ayuntamiento de Benferri v Consejería de Infraestructuras y Transporte de la Generalitat Valenciana and Iberdrola Distribución Eléctrica SAU*.

<sup>68</sup> Useful guidance on how best to ensure that wind farm developments are compatible with the Habitats and Birds Directives, as well as with the Environmental Impact Assessment (EIA), and Strategic Environmental Assessment (SEA) Directives, can be found in a guidance document on Wind energy developments and Natura 2000:

[http://ec.europa.eu/environment/nature/natura2000/management/docs/Wind\\_farms.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/Wind_farms.pdf).

- capacity (per turbine and/or cumulated);
- size of the wind turbines.

For example, one Member State requires a screening for projects of two or more wind turbines; another, of five or more wind turbines; and in a third Member State, screening is required for wind farms with a capacity above 1 MW. Another example is that a full environmental impact assessment is needed for wind farms with more than 50 wind turbines, or a capacity of more than 30 MW, or which are located less than 2 km from another wind farm. In the latter case, the thresholds are lower if the wind farm is located in a protected area (10 wind turbines or 6 MW). In this Member State, all other wind farm projects are subject to screening, with the exception of self-supply installations generating less than 100 kW. In another Member State, most of wind farms are subject to permitting system under the IED. Moreover, a system of thresholds based on the height of wind turbines and their capacity is applied (e.g. in case the turbine's height is equal or more than 50 meters, a full environmental impact assessment is required).

### Annex II (3)

The thresholds can be modulated in case the project is located e.g. in a protected area, or close to other wind parks. On the top of it, when considering whether even a small number of wind turbines can have a likely significant effect on the environment, all relevant Annex III criteria, *inter alia*, distance between projects and their cumulative effect, shall be taken into account, especially to projects located in areas where many small farms already exist (e.g. with three wind turbines) relatively close to each other.

**(j) Installations for the capture of CO<sub>2</sub> streams for the purposes of geological storage, pursuant to Directive 2009/31/EC, from installations not covered by Annex I to this Directive.**

### Annex II (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;**

### Annex II (4)

Surface treatments of plastics and metals falling under this category are mostly water-based and encompass for example, plating, electroplating, immersion coating, autocatalytic plating, anodising, and phosphatising, including various pre- and after-treatment techniques.

**Annex II (4)**

- (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.**

The sintering process is used to increase the size of the raw material or the chemical composition so that it is suitable for further processing.

The main binding mechanism in ore sintering is achieved by bringing the ore up to a temperature where the gangue minerals start to melt, whereby individual particles are fused together in a matrix of molten slag.

**Annex II (5) Mineral industry**

**Annex II (5)**

- (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);**

See under corresponding Annex I project category, Annex I (5) above.

- (d) Installations for the manufacture of glass including glass fibre;**
- (e) Installations for smelting mineral substances including the production of mineral fibres;**

Certain Member States refer to thresholds introduced by the IED for this project category. The IED refers to the same activity in Annex I, point 3.4 (melting mineral substances including the production of mineral fibres with a melting capacity exceeding 20 tonnes per day).

A common question under this project category is whether the production of asphalt falls within its scope. Natural asphalt (*bitumen*) is a mineral substance and its production falls within the scope of this project category. As for asphalt concrete (a mix of asphalt and aggregate), this is not covered by this project category, since in

the mixing process no smelting of mineral substances occurs as the processing temperatures are too low. In addition, asphalt can be produced by the refining of oil and that process is also covered by the EIA Directive.

**(f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.**

#### **Annex II (6) Chemical industry (Projects not included in Annex I)**

**(a) Treatment of intermediate products and production of chemicals;**

#### **Annex II (6)**

According to Regulation (EC) No 1907/2006 concerning Registration, Evaluation, Authorisation and Restriction of Chemicals, 'intermediate' means a substance that is manufactured for and consumed in or used for chemical processing in order to be transformed into another substance (hereinafter referred to as 'synthesis').

Taking into account the broad scope of the EIA Directive, 'treatment' should be understood to cover a wide range of processes.

**(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;**

The wording of Annex II (6) makes it clear that it covers all of the chemical industry not specified in Annex I (6) (i.e. all chemical plants not considered 'integrated'). Besides the production of traded products (such as basic chemicals, pesticides, pharmaceutical products, paints and varnishes), the treatment of intermediates<sup>69</sup> should also be considered for an environmental impact assessment.

Given that projects under Annex II (6) (b) address (final) products not necessarily produced by chemical conversion processes, the EIA Directive scope covers the chemical industry in a wide sense. Therefore, plants that solely formulate chemical products or which produce other final (not chemical) products (i.e. elastomers such as tyres, conveyor belts, rubber gloves) from chemical precursors may also be covered.

**(c) Storage facilities for petroleum, petrochemical and chemical products**

In one Member State, storage facilities (warehouses and storage grounds) for petroleum, petrochemical and chemical products, with a capacity of more than 5 000 tonnes but less than 200 000 tonnes, are subject to a screening.

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<sup>69</sup>Regulation (EC) No 1907/2006 concerning Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

### **Annex II (7) Food industry**

#### **Annex II (7)**

It should be noted that projects listed under this heading in Annex II of the EIA Directive may generally result in products intended for consumption by both humans and animals (e.g. animal feed).

- (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.**

### **Annex II (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 pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;**
- (c) Plants for the tanning of hides and skins;**
- (d) Cellulose-processing and production installations.**

### **Annex II (9) Rubber Industry**

**Manufacture and treatment of elastomer-based products**

### **Annex II (10) Infrastructure projects**

- (a) Industrial estate development projects**

Member States tend to have different interpretations of this project category. However, these interpretations have to be in line with the objective of the EIA Directive, in particular with its wide scope and broad purpose.



## Annex II (10)(a)

The Commission report in 2003<sup>70</sup> notes that Member States have not explicitly identified specific types of projects covered by this project category. Many Member States have preferred to specify the project size (e.g. an area measured in hectares) to be used for industrial estate development projects. Furthermore, information received from Member States shows that there is no real consensus among Member States on the use of the terms 'industrial' and 'estate'. For example, a few Member States use the term 'industrial or business parks' when defining this project category. These 'parks' can be considered to have the following characteristics: they are areas developed by a developer that have the required infrastructure for joint industrial or business utilisation by several companies; are characterised by spatial proximity; and form an operational or functional unit. Therefore, providing a comprehensive list of project types that might be relevant under this particular heading is almost impossible. In general, this category could include any type of project that is intended for high-tech companies, storage, warehousing, trading, and distribution/transport companies.

However, summarising information provided by some Member States<sup>71</sup>, some common characteristics emerge, and these could be used for describing this project category. An industrial estate development project could be understood as specific area (land), which is zoned (developed) for industrial or for joint industrial and business purposes and where the necessary infrastructure is provided. The term 'infrastructure' is widely interpreted and includes, for example, roads, power, and other utility services, provided to facilitate the growth of industries.

It is common practice for industrial estate development projects to be intended for simultaneous use by several companies that are in close proximity. These companies may be provided with infrastructure for joint industrial or business utilisation.

Industrial estate development projects constitute an area where potential overlaps between the EIA and SEA Directives, as referred to in section 1.4, can occur more frequently than in other areas. These projects are included in Annex II(10)(a) of the EIA Directive but plans or programmes for industrial estates will come under the SEA Directive if they have the criteria contained in the latter. For example, in one national legal system, industrial estates would usually be considered as part of the development plan for an area and would be subject to a separate strategic environment assessment.

### **(b) Urban development projects, including the construction of shopping centres and car parks.**

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<sup>70</sup> COM(2003) 334 final, 23.06.2003.

<sup>71</sup> Two Member States provided further clarification of the description of this project category in their national environmental impact assessment systems.

The EIA Directive provides two examples of what could be considered to fall within this category, i.e. shopping centres and car parks, but these do not constitute an exhaustive list of the activities covered.

Information on existing practices in Member States shows that interpretations differ regarding the scope of this project category, although Member States have in most cases interpreted this category in a broad sense<sup>72</sup>.

#### **Annex II (10)(b)**

Housing developments, in particular, are frequently included in the 'urban development projects' category, as are sports stadiums. In some Member States, this category also includes leisure centres and multiplex cinemas. In one Member State, this project category also includes projects for cemeteries, human crematoriums, the extension of theme and amusement parks, and overhead roadways. Another example is that urban development projects can include the construction of bus or trolleybus parks, car parks or garage complexes, sports stadiums or wellness centres (with a construction area exceeding 0.5 ha). Finally, one Member State introduced the following thresholds above which an environmental impact assessment is to be conducted: shopping centres and supermarkets with a surface greater than 2 500 m<sup>2</sup>; independent parking places with a capacity of more than 300 vehicles; football pitches and stadiums with a capacity greater than 2 000 seats; cinema complexes with more than six screens; schools for higher education with a capacity greater than 500 students; university campuses; and churches and other places for religious worship. Urban development projects in sensitive areas have to be carefully assessed for their environmental impact.

In interpreting the scope of Annex II (10)(b), the '*wide scope and broad purpose*' of the EIA Directive<sup>73</sup> should be borne in mind. The ruling of the Court in Case C-332/04, *Commission v Spain*, deals with the selection criteria of Annex III projects based on an example of this project category. The case dealt with a recreational centre (cinema complex) to be constructed in an urban area. The Court concluded that national legislation that excludes all urban development projects in urban areas from this project category amounts to incorrect transposition of Annex II 10 (b) project category. This is because, given the size, nature and location of the recreational centre (cinema complex), it could not have been ruled out from the outset that it is not likely to have a significant impact on the environment. Therefore, in relation to project location, an urban development project should be seen as a project that is urban in nature regardless of its location.<sup>74</sup>

To this end, the interpretation of this project category could take account of, *inter alia*, the following:

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<sup>72</sup> COM(2003) 334 final.

<sup>73</sup> Stated in case C-72/95, *Kraaijeveld and others*, and consistently stressed in subsequent Court rulings.

<sup>74</sup> COM(2003) 334 final.

## Annex II (10)(b)

(i) Projects with similar characteristics to car parks and shopping centres could be considered to fall under Annex II (10)(b). This could be the case, for example, of bus garages or train depots, which are not explicitly mentioned in the EIA Directive, but have similar characteristics to car parks.

(ii) Construction projects such as housing developments, hospitals, universities, sports stadiums, cinemas, theatres, concert halls and other cultural centres could also be assumed to fall within this category. The underlying principle is that all these project categories are of an urban nature and that they may cause similar types of environmental impact.<sup>75</sup>

(iii) Projects to which the terms 'urban' and 'infrastructure' can relate, such as the construction of sewerage and water supply networks, could also be included in this category.

Projects for integrated urban transport schemes (e.g. parallel works at different locations to upgrade bus lanes, tramlines, bus, tram and/or metro stops), could also fall under this project category.

Member States may decide in their national environmental impact assessment systems that some of the above-mentioned projects (for example, sports stadiums or water supply networks,<sup>76</sup> drinking water treatment plants and pipes for carrying treated drinking water<sup>77</sup>) fall within other Annex II project categories. Compliance with the Directive will be ensured, irrespective of which Annex II category is considered applicable, provided that those projects which give rise to significant environmental effects do not escape from the scope of application of the Directive.

**(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)**

This project category could be interpreted as including heliports.

**(e) Construction of roads, harbours, and port installations, including fishing harbours (projects not included in Annex I)**

In Case C-142/07, *Ecologistas en Acción-CODA*, the Court held that an exception for the applicability of the EIA Directive with regard to urban roads 'cannot be accepted'. The concept of 'road' in the EIA Directive does not make any distinction with regard

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<sup>75</sup> Including noise and traffic-related disruption during the construction phase, traffic generation during the operational phase, land-take, impairment of soil function due to sealing and visual impact.

<sup>76</sup> In at least one Member State, sewerage and water supply networks are considered to fall within Annex II(10)(j) 'Installations of long-distance aqueducts'.

<sup>77</sup> They might be qualified as Annex II (10)(b) projects although in some cases it may be that the treatment works should instead be considered as an integral part of another category of project (e.g. reservoirs, or deep drilling for water supplies).

to its applicability as to whether a road is a private or a public one. It would be incompatible with its wide scope to exclude private roads. In any event, the requirements of the EIA Directive must be applied to private roads too (Case C-427/07, *Commission v. Ireland*, paragraph 28).

**(f) Inland waterway construction not included in Annex I, canalisation and flood relief works.**

In Case C-72/95, *Kraaijeveld and others*, the Court interpreted this project category. In its judgment, it stated that '*canalisation and flood relief works*' must be interpreted as including works for retaining water and preventing floods, and consequently dyke work along navigable waterways. The expression '*canalisation and flood relief works*' is also to be interpreted as including not only the construction of a new dyke, but also the modification of an existing dyke, involving its relocation, reinforcement or widening, and 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.

**Annex II (10)(f)**

The Court's interpretation that modifications to '*canalisation and flood relief works*' also fall under this project category has to be read in the context of the time of the judgment. At that time, the EIA Directive did not contain any specific provision in relation to modifications to projects listed in Annex II that would correspond to today's Annex II 13 (a) project category (See Annex II (13)(a)).

**(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;**

There are questions on how to interpret '*suspended lines or similar lines of a particular type*' and whether trolleybuses fall under this category of projects.

Clearly, Annex II 10 (h) attempts to cover means of transport used exclusively or mainly for passenger transport and which need some kind of infrastructure work to be done in order for them to operate on a fixed line, or, in the case of trolleybuses, an overhead line. Although trolleybuses are not explicitly listed, it is in the spirit of the Directive to consider overhead lines for trolleybuses as '*similar lines of a particular type*' and to include trolleybus infrastructure projects under Annex II 10 (h) project category. A similar approach could be followed for urban cable cars and funiculars.

**Annex II (10)(h)**

**(i) Oil and gas pipeline installations and pipelines for the transport of CO<sub>2</sub> streams for the purposes of geological storage (projects not included in Annex I);**

**(j) Installations of long-distance aqueducts**

Member States have different interpretations of 'long-distance', which may also depend on the type of aqueduct. Some Member States do case-by-case assessment instead of using thresholds.

In other Member States, long-distance is considered in quantitative terms, for instance either more than 2 km, or above 20 km. There might be a case where the length is jointly assessed with the diameter of the pipeline in order to determine the significance of the environmental effect.

**Annex II (10)(j)**

In any case, when setting thresholds or assessing the effects of long-distance aqueduct projects, the relevant criteria set out in Annex III to the Directive should be taken into account. The screening process should be based not only on the length of projects, but it should also take into consideration all the relevant criteria listed in Annex III, e.g. location criteria.

**(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.**

For the interpretation of the term 'groundwater', please refer to the explanation given for project category under Annex I (11) above.

In Case C-263/08, *Djurgården-Lilla Värtans Miljöskyddsförening* and taking note that the scope of the Directive is wide and its purpose very broad, the Court considered the above project category. It held that it must be interpreted as meaning that the provisions of point 10 (l) of Annex II cover all groundwater abstraction and artificial groundwater recharge schemes not included in Annex I to that Directive, irrespective of their purpose. This means that they also cover schemes which do not involve the subsequent use of that groundwater (paragraph 30). The Court concluded that '*a project] such as that at issue in the main proceedings, 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 recharge, are covered by point 10(l) in Annex II to Directive 85/337, irrespective of the ultimate destination of the groundwater and, in particular, of whether or not it is put to a subsequent use'* (paragraph 31).

**Annex II (10)(l)**

**(m) Works for the transfer of water resources between river basins not included in Annex I.**

**Annex II (10)(m)** For the interpretation of the term ‘river basin’, please refer to project category Annex I (12) of this document.

Activities related to production of artificial snow or ice involving the extraction and transfer of water could be subject to screening, before determining whether they fall under Annex II 10(l) or (m). This is without prejudice to Annex II(12) (a) which covers ski run projects.

**Annex II (11) Other projects**

**(a) Permanent racing and test tracks for motorised vehicles;**

**Annex II (11)(a)**

Assessment of projects under this category can depend on the length of a racing track or its location. Accordingly, in one Member State, an environmental impact assessment is mandatory for permanent racing and test tracks for motorised vehicles if the tracks have a length of 2 km or more, while screening will be conducted in the case of permanent racing and test tracks for motorised vehicles when located within protected areas, such as Natura 2000, national parks or UNESCO heritage sites.

**(b) Installations for the disposal of waste (projects not included in Annex I)**

For the definition of ‘waste’, please refer to the explanation given for the project category under Annex I (9) above.

For ‘disposal of waste’, please refer to the explanation given for project category under Annex I (10) above.

Landfill sites are included in this project category, as the Court held in its judgment in Case C-121/11 *Pro Braine and Others*.

**Annex II (11)(b)**

The closure or rehabilitation of landfills is likely to have significant effects on the environment (for example, through the construction of physical installations, and the treatment of leachates and/or landfill gases e.g. methane). These impacts should normally be included in the environmental impact assessment report prepared as part of the original authorisation of the landfill. If that was not the case, then either a screening or a full assessment procedure should be carried out before the closure or rehabilitation takes place. These procedures could be part of, or combined with, the on-site inspection and reporting required under Article 13 of Directive 1999/31/EC on the landfill of waste.

**(c) Wastewater treatment plants (projects not included in Annex I);**

**(d) Sludge-deposition sites;**

The treatment and disposal of sludge could be interpreted as being covered by this project category.

- (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.**

**Annex II (12) Tourism and leisure**

- (a) **Ski runs, ski lifts and cable cars and associated developments;**

The thresholds for this project category are mainly based on the size of the project (e.g. project surface, length of ski runs or the hourly capacity of ski lifts and cable cars).

**Annex II (12)(a)**

For instance, in one Member State, an environmental impact assessment is carried out for ski runs longer than 1.5 km, or which cover an area greater than 5 acres (approximately 2 hectares). The assessment is carried out for mechanical lifts, excluding ski lifts and monocables of permanent connection with a slant height of no more than 500 m, with a maximum hourly capacity greater than 1800 passengers. In another Member State, ski runs and snowmaking installations are subject to an environmental impact assessment if the project covers a greenfield area of 2 hectares or more. Outside greenfield area, these are subject to an assessment if the project area is 4 hectares or more. Below these thresholds, ski runs and snowmaking installation projects are subject to case-by-case examination. Ski lifts are subject to an assessment if they can transport more than 1500 passengers per hour. Below this threshold, a case-by-case examination is carried out.

Thresholds are lower in another Member State where ski runs, ski lifts, cable cars and associated equipment, are subject to an environmental impact assessment if they cover an area of more than 1 hectare in the built-up vicinity, or over 0.5 hectares outside the built-up zones. For projects in protected areas, the assessment is compulsory, notwithstanding the thresholds.

In addition, another Member State introduced height as an alternative criterion. Consequently, the assessment is carried out where the area of the works exceeds 1 hectare or the height of any building or other structure exceeds 15 metres.

- (b) **Marinas;**
- (c) **Holiday villages and hotel complexes outside urban areas and associated developments;**
- (d) **Permanent campsites and caravan sites;**

**(e) Theme parks.**

The project category 'theme parks' is among those for which information is difficult to find. Most Member States have transposed this project category as defined in the EIA Directive without specifying the project further (e.g. project size and purpose).

As noted already, the wording of the EIA Directive indicates that its scope is wide and its purpose very broad.<sup>78</sup> Consequently, parks differing in purpose, size, location, extent of soil sealing and expected number of visitors could be considered to fall within this project category.

When deciding on whether a particular project falls under Annex II (12)(e), it is recommended to consider the following:

(i) The theme or objective of the park is not defined by the EIA Directive. Parks falling within this project category could be developed, for example, for recreational, educational or informative purposes. However, it should be noted that the project category 'theme park' is listed in Annex II (12) under the heading 'Tourism and leisure'. For instance, a park that has a specific theme or attraction or several attractions, like an amusement park, should be considered a theme park. Areas planned for a leisure attraction based on or related to a particular subject should also be covered by this project category. For example, water parks and zoos<sup>79</sup> should be considered to fall under this project category.

(ii) Sports stadiums would in principle be covered by Annex II(10)(b) 'urban development projects'. However, certain Member States can decide in their national environmental impact assessment systems that sports stadiums fall within the 'theme parks' category. Compliance with the Directive will be ensured, irrespective of which Annex II category is considered applicable, provided that such projects do not escape from the scope of application of the Directive.

(iii) Annex II (12)(e) could be considered to include golf courses.

In some Member States, the environmental impact assessment is always required for golf course projects, while in others an assessment is required above specific thresholds based on area covered by the project or the number of holes (e.g. 10 ha, 45 ha in another Member State, or 18 holes). Another example is a requirement for screening for golf courses with 9 holes or more.

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<sup>78</sup> Stated in case C-72/95, *Kraaijeveld and others*, and in case C-227/01, *Commission v Spain*.

<sup>79</sup> Article 2 of the Zoos Directive (Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos, OJ L 94, 9.4.1999, p. 24) defines 'zoos' as 'all permanent establishments where animals of wild species are kept for exhibition to the public for 7 or more days a year, with the exception of circuses, pet shops and establishments which Member States exempt from the requirements of this Directive on the grounds that they do not exhibit a significant number of animals or species to the public and that the exemption will not jeopardise the objectives of this Directive'.



## Annex II (13)

- (a) **Any change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment.**

Directive 85/337/EEC did not explicitly cover modifications of existing projects, with the exception of *'Modifications to development projects included in Annex I and projects in Annex I undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than one year'* (Annex II(12)).

Directive 97/11/EC amended Directive 85/337/EEC so as to include modifications of existing Annex I and Annex II projects in Annex II(13): *'any change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed, which may have adverse effects on the environment'*.

## Annex II (13)

Directive 2003/35/EC, which amended Directive 85/337/EEC, among others, and came into effect on 25 June 2005, introduced a new Annex I(22)<sup>80</sup> category including changes or extensions of projects listed in Annex I where such a change or extension in itself meets the thresholds, if any, set out in Annex I. These project modifications therefore need to undergo an environmental impact assessment according to Article 4(1) of the Directive. Changes or extensions of existing projects not included in Annex I(22) fall within Annex II(13) (See Box 1).

The evolution over time of the wording of the EIA Directive concerning project modifications reflects the case law of the Court on this subject. On a number of occasions, the Court has dealt with the issue of whether a project should be interpreted as a new project or a modification of an existing one, and how the project is then covered by the requirements of Articles 4(1) and 4(2) of the Directive.

'Already authorised' in the sense of Annex II (13) means projects for which development consent has been given.

In Case C-2/07, *Abraham and Others*, the Court concluded that point 12 of Annex II, read in conjunction with point 7 of Annex I, to the EIA Directive (in their original version),<sup>81</sup> must be regarded as also including works to modify an existing airport. Therefore, works to modify an airport with a runway length of 2100 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

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<sup>80</sup> Annex I(22) became Annex I(24) after the amendment of the EIA Directive by Directive 2009/31/EC.

<sup>81</sup> Point 12 of Annex II in Directive 85/337/EEC read:  
*'Modifications to development projects included in Annex I and projects in Annex I undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than one year.'*

This text partially corresponds to Annex II (13) of the current EIA Directive.

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.<sup>82</sup>

In Case C-72/95, *Kraaijeveld and others*, the Court found that the expression *canalisation and flood-relief works* referred to in point 10(e) of Annex II to Directive 85/337/EEC (before amendments by Directive 97/11/EC) should be interpreted as including not only construction of a new dyke, but also modification of an existing dyke involving its relocation, reinforcement or widening, and 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 (paragraph 42). It should be noted that, at the time when the Court delivered its judgment, Annex II (13) was not in the EIA Directive. Therefore, the Court interpreted this modification in the context of the main project category, i.e. Annex II (10) (e).<sup>83</sup>

In the context of Annex II (13), a question may arise on how to interpret rehabilitation works and whether such rehabilitation schemes would fall under this category of projects. Rehabilitation schemes could fall into two categories.

#### **Annex II (13)**

The first category comprises those cases in which rehabilitation is no more than renewal of worn or decayed parts. It might be thought of as large-scale maintenance. When the project has been rehabilitated, it is as good as if it was newly built but it is not different from or more extensive than the original project. Subject to two caveats, this type of rehabilitation is not considered to come within the Directive's scope.

(i) The first caveat is that rehabilitation may include the use of new materials to replace the original ones even though the capacity of the network remains unchanged. For example, cement or plastic pipes might be used instead of iron, copper or clay ones. Strictly speaking, this should be considered as a change to the original project.

(ii) The second caveat arises if the works needed to carry out the rehabilitation project will themselves be unusually disruptive (in terms of the screening criteria in Annex III). For example, it might be necessary to destroy a protected habitat in order to gain access to buried installations such as pipework. Where the Habitats Directive is concerned, it would be possible to rely on the Article 6 assessment. Habitats protected under national law might be in a weaker position and here, too, the EIA Directive could be invoked if there is indeed a change to the original project (e.g. different types of pipes).

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<sup>82</sup>Case C-2/07, *Abraham and Others*, 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.

<sup>83</sup>Annex II (12) (e) is now Annex II (12) (f).

The second category of rehabilitation may include some repair or maintenance (as above) but its main characteristic is that it changes or extends the project in some way. For example, a sewerage system might be made more extensive, or have pumping stations added, or its capacity might be increased. This would amount to a change or extension and so the project would fall within the Directive's scope and screening would be necessary. That does not mean that a full environmental impact assessment would necessarily be required. This would depend on the individual case and would need to be considered in the light of the Annex III screening criteria.

**(b) 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.**

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Publications Office

ISBN : 978-92-79-48090-4  
doi. 10.2779/5854181