

Note

Subject: Interpretation line suggested by the Commission as regards the application of Directive 85/337/EEC to associated/ancillary works

1. Factual background to the coating plant complaint

The Commission received a complaint concerning a cement coating plant in Kotka which serves the Baltic Sea gas pipeline project (the so-called Nordstream project). The complaint was claiming that the EIA Directive had been breached.

The cement coating plant located in Kotka is operated by a company called EUPEC and its current function is to coat metallic pipes with cement before they are placed on the bottom of the Baltic Sea as part of the Nordstream project.

The competent Finnish authorities granted the construction permit for the plant in May 2008 and the environmental permit in January 2009. In September 2008 the authorities decided that the coating plant itself did not require an EIA, because the plant was not included in Finnish legislation as a project requiring an EIA. The authorities also considered (in a separate decision) that the coating plant did not form part of the Nordstream project in such a manner that the plant would need to be included in the EIA for the gas pipeline project. The plant started operating in August 2009.

The EIA procedure for the gas pipeline project was finalised and the EIA report published in March 2009. It follows from the EIA report prepared for the Nordstream project that, although the coating plant is mentioned, its environmental impacts are not considered or assessed in the report.

The Commission services have also examined the question whether the coating plant and the gas pipeline project are linked in such a way that the plant should have been included in the EIA report for the pipeline and that the permits for the plant should not have been granted before the development consent(s) for the gas pipeline itself was(were) granted *or* whether the plant is not linked to the gas pipeline, in which case it was not necessary to consider it in the EIA for the pipeline.

2. Interpretation line suggested by the Commission

Two main questions arise from the abovementioned background.

1. Under which circumstances are associated works considered as an integral part of the main infrastructure works for the purposes of the EIA Directive?

Associated works should not necessarily be automatically considered as part of the main project. The Commission services instead suggest that, first it should be checked whether those associated works are subject individually to the requirements of the EIA Directive (namely by verifying whether they are mentioned in any of the project categories listed in Annexes I or II of the EIA Directive).

If associated works are listed in one of the project categories of the Annexes, the works fall within the scope of the Directive and thus the effects from their construction and operation should be assessed in the framework of an EIA procedure (Annex I projects) or a screening procedure (Annex II projects). In these cases a separate EIA/screening should thus be carried out for the associated works. It should be stressed that the cumulative effects from the various associated works themselves and the main project should be assessed.

Regardless whether the works are listed in the Annexes of the EIA Directive or not, it should then be verified whether such associated works can be considered as an integral part of the main infrastructure works. This verification should be based on objective factors, such as the purpose, the nature, the characteristics, the location of the associated works and the links between the associated and the main project intervention.

It can not be excluded that, under certain circumstances, associated works are inextricably linked to the main project intervention (for instance, when associated works predetermine the location of the main project intervention, or represent a location-specific part of the construction phase of the main project intervention, or are exclusively and entirely intended to serve the main project intervention). The Commission services consider that this verification/assessment should have the character of a "**centre of gravity**" test. This "centre of gravity" test should check whether the associated works are central or peripheral to the main works and, to what extent they are likely to predetermine the result of the EIA process for the main works.

If it appears that the associated works are inextricably linked to the main works, their approval and initiation should be considered as an initiation of the project. Thus, where the main project requires an EIA, the approval and/or physical execution of the associated works prior to the undertaking of an EIA would constitute a breach of the EIA Directive. These works could only start once the EIA for the whole project (main and associated) was carried out.

If it appears that the associated works are independent from the main project intervention, they should be subject individually to the requirements of the EIA Directive and could start after the finalisation of their own EIA, if required, or screening procedure.

2. How should the effects of associated works be assessed under the EIA of the project?

According to Article 5(1) of the EIA Directive, the developer must supply in an appropriate form the information specified in Annex IV. Point 1 of Annex IV refers to the description of the project (e.g. a description of the physical characteristics of the whole project and the land-use requirements); point 4 of Annex IV specifies that the information to be supplied by the developer includes "*a description (1) of the likely significant effects of the proposed project on the environment resulting from:*

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

and the description by the developer of the forecasting methods used to assess the effects on the environment". Footnote (1) clarifies that "*this description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project*".

On the basis of the above, the **environmental impact study for the main project** should include a description of its likely significant effects, e.g. effects resulting from the use of natural resources or cumulative effects. Thus, an assessment of the environmental effects of associated works (such as use of natural resources) should be included in the environmental impact study for the main project. Such an assessment should be included in the EIA for the main project also in cases where the associated works themselves have not been subjected to an EIA or to a screening procedure.

The distinction between this point and the previous one concerns the question of whether the development consent for the associated works needs to be preceded by an EIA:

- Where, on a centre of gravity test, the associated works are deemed to be an integral part of the main project, the associated works should only be approved following the EIA process for the project as a whole.
- Where, on a centre of gravity test, the associated works are *not* deemed to be integral part of the main project, they can be approved independently of the project. However, the EIA for the main project will still need to include information about the associated works, including cumulative effects, where the associated works contribute to the sum of the project's impacts (for example use of natural resources).

In the light of the above, the Commission services consider that the scoping procedure (Article 5(2) of the EIA Directive) will be of assistance in clarifying what needs to be identified and assessed in terms of impacts arising from the associated.