

ECJ Cases, part 2

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- By decision of 17 January 2005, the Concejala del Área de Gobierno de Urbanismo, Vivienda e Infraestructuras del Ayuntamiento de Madrid (Councillor for Planning, Housing and Infrastructure of the Municipality of Madrid) approved various projects for refurbishment and improvement of the Madrid urban ring road, identified under number M-30.
- Those projects concern specifically the re-routing underground, first, of the M-30 between Marquès de Monistrol and Puente de Segovia, between Puente de Segovia and Puente de San Isidro, between Puente de San Isidro and Puente de Praga and between Puente de Praga and Nudo Sur and, second, of the Avenida de Portugal as far as the San Vicente roundabout.

- The larger 'Madrid calle 30' project was split into 15 independent sub-projects, treated separately, only one of which concerns alteration or rehabilitation work on any existing road on a section exceeding five kilometres, the threshold at which the regional rules applicable make a project subject to an environmental impact assessment, while the larger project taken as a whole substantially exceeds that threshold.
- It is also clear from the referring court's explanations that according to certain estimates, the execution of the overall scheme will lead to an increase in traffic of nearly 25% and will involve different kinds of works in the urban area surrounding the M-30.

"36..... A project for refurbishment of a road which would be equivalent, by its size and the manner in which it is carried out, to construction may be regarded as a construction project for the purposes of that annex (see, to that effect, Case C-227/01 *Commission v Spain* [2004] ECR I-8253, paragraph 46, and *Abraham and Others*, paragraph 32)...."

"44..... the purpose of the amended directive cannot be circumvented by the splitting of projects and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the amended directive (see, as regards Directive 85/337, Case C-392/96 *Commission v Ireland* [1999] ECR I-5901, paragraph 76, and *Abraham and Others*, paragraph 27)....."

C-142/07: Court Findings

*"45..... It is for the referring court to verify whether they (projects) must be dealt with together by virtue, in particular, of their **geographical proximity, their similarities and their interactions**"*

C-141/14 Commission v Bulgaria (Kaliakra case)

The case concerns a number of wind farm projects in Natura2000 area Kaliakra

Judgment in case against Bulgaria for:

- ❑ failing to classify SPAs (Arts 4(1) and (2) BD);
- ❑ approving implementation of projects in areas that should have been classified as SPAs (Art 4(4) BD);
- ❑ approving implementation of projects without taking appropriate steps to avoid deterioration of habitats and significant disturbance of species (Art 6(2) HD);
- ❑ failure to assess properly cumulative effects of projects (Arts 2(1), 4(2) & (3) and Annex III 1(b) EIA Directive).

C-141/14 Commission v Bulgaria (Kaliakra case)

- ❑ On screening decision – 89 [...] However, in so far as the decision concerning the need to carry out an environmental impact assessment must never the less be adopted in accordance with that directive, in particular with Article 4(2) and (3) thereof and Annex III thereto, infringement of those provisions is possible even if the project never obtained all the necessary consent.

- ❑ On screening criteria (confirmation of existing case-law, e.g. C-531/13)
 - confirmation that the discretion given to MSs when setting screening thresholds / criteria (Art 4(2)(b)) is limited by the obligation of Art 2(1), i.e. to make projects likely, by virtue, inter alia, of their nature, size or location, to have significant effects on the environment subject to an impact assessment

C-141/14 Commission v Bulgaria (Kaliakra case)

- ❑ On assessing cumulative effects & motivation of screening decision
 - 95 [...] characteristics of a project must be assessed, inter alia, in relation to its cumulative effects with other projects. Failure to take account of the cumulative effect of a project with other projects may mean in practice that it escapes the assessment obligation when, taken together with the other projects, it may have significant effects on the environment (judgment in Marktgemeinde Straßwalchen and Others, C-531/13, EU:C:2015:79, paragraph 43 and the case-law cited).

C-141/14 Commission v Bulgaria (Kaliakra case)

- ❑ On assessing cumulative effects & motivation of screening decision
 - 96 [...] in ascertaining whether a project has to be made subject to an environmental impact assessment, must examine its potential impact jointly with other projects (judgment in *Marktgemeinde Straßwalchen and Others*, C-531/13, EU:C:2015:79, paragraph 45). In the present case, it is clear from the file submitted to the Court that the decisions in question merely state that no cumulative effects were to be expected. As the Advocate General observes in point 161 of her Opinion, the mere claim, by the Republic of Bulgaria, that there will be no cumulative effects does not, however, prove that that finding was established on the basis of a detailed assessment, since that Member State has, moreover, adduced no evidence in that regard.