

From: Pat Swords
To: Aarhus Compliance
Date: 24/02/2017 00:27
Subject: Re: Decision V/9g (European Union) - Compliance Committee's second progress review

Dear Fiona

Thank you and the Compliance Committee very much for this comprehensive and informative Progress Review.

A point of interest within the Party's own legal framework, which I wasn't aware of until this week: Is that if there was no Strategic Environmental Assessment and associated public participation of the overarching plan / programme, then how can downstream decisions on wind farms and high voltage lines subject to the Environmental Impact Assessment Directive be remotely legal, if that downstream decision is not a 'joint procedure' inclusive of a Strategic Assessment and public participation on the overarching programme? Food for thought!

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=109923&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=424410>

The third, fourth and fifth questions

55 By those questions, which it is appropriate to examine together, the referring court seeks essentially to ascertain whether Article 11(1) and (2) of Directive 2001/42 must be interpreted as meaning that an environmental assessment carried out under Directive 85/337 permits exemption from the obligation to carry out such an assessment under Directive 2001/42.

56 For the purpose of answering that question, it should be pointed out that it is apparent from the order for reference that when the detailed plans in question were being prepared, no assessment under Directive 2001/42 was carried out.

57 According to the very wording of Article 11(1) of Directive 2001/42, an environmental assessment carried out under that directive is without prejudice to any requirements under Directive 85/337.

58 It follows that an environmental assessment carried out under Directive 85/337, when required by its provisions, is in addition to an assessment carried out under Directive 2001/42.

59 Similarly, an assessment of the effects on the environment carried out under Directive 85/337 is without prejudice to the specific requirements of Directive 2001/42 and cannot dispense with the obligation to carry out an environmental assessment pursuant to Directive 2001/42 in order to comply with the environmental aspects specific to that directive.

60 As assessments carried out pursuant to Directive 2001/42 and Directive 85/337 differ for a number of reasons, it is necessary to comply with the requirements of both of those directives concurrently.

61 In that regard, it should be pointed out that, on the assumption that a coordinated or joint procedure was provided for by the Member State concerned, it is clear from Article 11(2) of Directive 2001/42 that, in the context of such a procedure, it is mandatory to verify that an environmental assessment has been carried out in accordance with the dispositions of the different directives in question.

62 Under those circumstances, it is for the referring court to assess whether the assessment which, in the main proceedings, was carried out pursuant to Directive 85/337 may be considered to be the result of a coordinated or joint procedure and whether it already complies with all the requirements of Directive 2001/42. If that were to be the case, there would then no longer be an obligation to carry out a new assessment pursuant to Directive 2001/42.

63 In light of those considerations, the answer to the third, fourth and fifth questions is that Article 11(1) and (2) of Directive 2001/42 must be interpreted as meaning that an environmental assessment carried out under Directive 85/337 does not dispense with the obligation to carry out such an assessment under Directive 2001/42. However, it is for the referring court to assess whether an assessment which has been carried out pursuant to Directive 85/337 may be considered to be the result of a coordinated or joint procedure and whether it already complies with all the requirements of Directive 2001/42. If that were to be the case, there would then no longer be an obligation to carry out a new assessment pursuant to Directive 2001/42.

Regards

Pat