

JANEZ POTOČNIK  
Member of the European Commission

Brussels, 20. 07. 2011  
Ref. Ares (2011) 797230

Mr Rainer Wieland  
Member of the European Parliament  
European Parliament  
Rue Wiertz, 60  
1047 Bruxelles

<b>DIRECTION GÉNÉRALE DES POLITIQUES INTERNES DE L'UNION</b>
Reçu le: 8-9-2011 — Jon —
<b>SECRETARIAT PETITIONS</b>

Gele  
+ elek

Dear Mr Wieland,

In his reply to the Oral Question 84/11 on 9 June 2011 in Strasbourg regarding the implementation of the Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (EIA Directive) in Austria, Commissioner Öttinger announced a written reply on the question which areas should be counted in the calculation of the exclusion thresholds in the meaning of Article 4 (2) EIA Directive for projects in skiing areas.

It has to be recalled that the EIA Directive aims at projects which are likely to have a significant effect on the environment. The scope of the Directive covers in principle all projects in the meaning of Article 1 EIA Directive and listed in the project categories of Annexes I and II. Taking into account that not all projects from the outset are likely to have a significant effect on the environment, Annex II of the Directive lists those types of projects which should be screened to verify whether the expected impacts are significant or not, and on that basis determine whether an EIA is required. This screening should be carried out either based on a case-by case examination, and/or by establishing thresholds in the meaning of Article 4 (2)-(3) EIA Directive.

The ECJ has ruled at several occasions that the discretion of Member States in the determination of projects requiring an EIA according to Article 4 (2) of the Directive by way of case-by-case examination or legislative establishment of thresholds and/or criteria, is limited by the obligation set in Article 2 (1) that projects which are likely to have significant effects on the environment by virtue of their nature, size or location, are made subject to an environmental impact assessment (e.g. Case C-72/95, Kraaijeveld, para.50, C-435/97, World Wildlife Fund (WWF) et al., §. 36). In addition, when establishing thresholds, on the basis of Article 4 (2) of the EIA Directive, Member States must take into account not only the size of projects, but all relevant criteria listed in Annex III, i.e. nature and location of projects, (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).

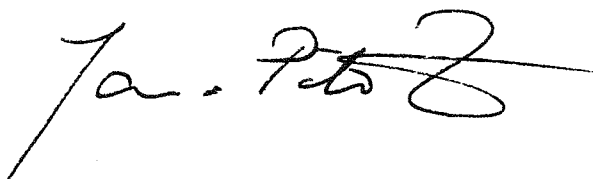
It derives from the objective of the EIA Directive and the ECJ case law that for the calculation of the exclusion thresholds in the meaning of Article 4 (2), not only direct effects to the area where construction works are carried out are to be taken into account, but also indirect effects to the surface which is not subject to modifications. Reducing the relevant area to the surface that is subject to actual construction works may potentially jeopardise the fundamental objective of the EIA directive, depending on the nature of the project.

Therefore, all areas which are linked in a causal and functional way to a project in the meaning of Article 1 of the EIA Directive and its location have to be taken into account. This includes not only the area below a cable car or ski lift as well as the actual ski-runs, but also associated works and ancillary activities which are inextricably linked to the project. The 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. Therefore, the top and valley stations, avalanche protection measures, drainage and slope areas, facilities for the production of artificial snow and cable trenches should be considered when calculating the relevant area for skiing projects. This also includes areas which are needed to cope with an increased tourism due to the modifications, such as new parking places.

On the other hand, areas which are used by hikers or used for illegal activities such as skiing besides the official runs usually do not have to be considered when calculating the area for the threshold. However, these activities may have to be considered when carrying out the actual environmental impact assessment.

Finally, in exceptional cases a screening can be necessary although the calculated project area is below the established exclusion threshold. This assumption derives again from the objective of the EIA Directive and from the ECJ rulings that Member States are not empowered to exclude generally and definitively from possible assessment one or more classes mentioned in Annex II (Case C-301/95, Commission/Germany, § 38) as well as that even a small-scale project can have significant effects on the environment in special circumstances (Case C-392/96 Commission/Ireland § 66). A requirement for a screening may particularly arise, when despite the size of the project but due to its nature and location a significant effect on the environment is obvious.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Leinen', with a long horizontal stroke extending to the right.

Cc: Jo LEINEN (Environment Committee Chairman)