



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT

The Director General

15 NOV. 2010



Brussels, 11 NOV. 2010
DG ENV Ares(2010) 804609

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Dear Ambassador,

Subject: Environmental impact assessment of the EUPEC cement coating plant in Kotka which serves the Baltic Sea gas pipeline project (EU Pilot 149/08/ENVI)

My attention has been drawn to a complaint submitted to the Commission by WWF concerning a cement coating plant in Kotka which serves the Baltic Sea gas pipeline project (the so-called Nordstream project). While the complaint seems to have revealed a violation of EU environmental law, I think that as explained below, an agreement by the Finnish authorities to follow our interpretation of the EIA Directive in future similar cases would be the best way to reach our common goal, i.e. a correct implementation of EU environmental law.

1. Factual background

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.

It appears that the competent Finnish authorities have given the construction permit for the plant in May 2008 and the environmental permit in January 2009. By decisions in September 2008 the authorities held that the coating plant itself did not require an Environmental Impact Assessment (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.

H.E. Mr Jan Store
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The EIA procedure for the gas pipeline project was finalised and the EIA report published in March 2009. It follows from the report 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. Legal assessment

The result of the Commission services' examination is that it first needs to be verified whether associated works are listed in one of the project categories of the Annexes to the EIA Directive (85/337/EEC). If that is the case, 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 (which should also consider cumulative effects with the project).

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. The Commission services consider that this verification 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. 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.

Following this line of interpretation it becomes apparent that the procedure and sequence of events for granting the construction and environmental permits for the coating plant in Kotka have not unfolded in full accordance with the requirements of the EIA Directive.


3. Conclusion

The logical consequence of the above analysis would therefore be that the Commission initiates an infringement case against Finland.

However, given the specific circumstances of the case, in particular the novelty of the issue from a legal point of view due to the transboundary nature of the overall project, and the fact that the plant has been built and is operating, it would seem to me more effective for the correct implementation of EU law if Finland were to formally commit itself to taking the necessary measures to ensure that similar future projects would be considered and assessed in accordance with the interpretation line set out above. Were Finland to give such a commitment, the Commission could then consider it appropriate and

proportionate to close the case. In this context it should be underlined that the Commission services intend to notify all Member States of the interpretation outlined above with a view to promoting a consistent and coherent approach to this issue in the future in the whole of the European Union.

I am looking forward to receiving the Finnish Government's views on the above within one month of receipt this letter.



Karl Falkenberg