

## COMMISSION NOTICE

**Guidance document regarding application of exemptions under the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU) – Articles 1(3), 2(4) and 2(5)**

(2019/C 386/05)

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## 1. Introduction

- 1.1. This document provides up-to-date information concerning the application of Articles 1(3), 2(4) and 2(5) of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU (the Environmental Impact Assessment Directive). These Articles provide for exemptions from the Environmental Impact Assessment Directive. This guidance document incorporates the previous Commission document, ‘Clarification of the application of Article 2(3) of the Environmental Impact Assessment Directive’, and updates it where necessary.
- 1.2. Article 1(3) of the Environmental Impact Assessment Directive provides for possibilities to exempt from its scope projects, or parts of projects, if their sole purpose is defence or response to civil emergencies. If the conditions of that provision are met, Member States do not need to apply the Directive.

- 1.3. Under Article 2(4) of the Environmental Impact Assessment Directive, Member States may, in exceptional cases, and provided that the Directive's objectives are met, exempt specific projects from the Directive's provisions, if applying those provisions would run counter to the purpose of the project. The Environmental Impact Assessment Directive specifies the procedures that Member States and the Commission must follow when an exemption from an environmental impact assessment is invoked under Article 2(4). However, the Directive provides no indication of how the term 'exceptional cases' should be interpreted, and experience shows that doubts may arise as to when the provisions of this Article can be legitimately invoked. Other conditions have to be met when applying this exemption (without prejudice to Article 7 and with the necessity of meeting the Directive's objectives).
- 1.4. Article 2(5) of the Environmental Impact Assessment Directive allows for the possibility of exempting a project from the provisions on public consultation, where a project is adopted by a specific act of national legislation. As with exemptions under Article 2(4), other conditions must be met when applying this exemption (without prejudice to Article 7 and with the necessity of meeting the Directive's objectives).
- 1.5. This notice is intended to help national authorities apply the Environmental Impact Assessment Directive. Only the Court of Justice of the European Union (CJEU) is competent to authoritatively interpret EU law.
- 1.6. To be able to rely on these exemptions, Member States must fully transpose the relevant provisions of the Directive into national law.

## 2. Defence and response to civil emergencies — Article 1(3) of the Environmental Impact Assessment Directive

Article 1(3) of Directive 2011/92/EU as amended by Directive 2014/52/EU

Article 1(3) – Member States may decide, on a case-by-case basis and if so provided under national law, not to apply this Directive to projects, or parts of projects, having defence as their sole purpose, or to projects having the response to civil emergencies as their sole purpose, if they deem that such application would have an adverse effect on those purposes.

\* *The underlined text indicates the amendments introduced by Directive 2014/52/EU*

- 2.1. Article 1(3) of the Directive allows Member States to exclude projects, or parts of projects, from the scope of the Directive and therefore from the environmental impact assessment procedure. This exclusion applies only to projects or parts of projects whose sole purpose is defence or response to civil emergencies. The Member State applying this exclusion must demonstrate that applying the Environmental Impact Assessment Directive would be counter-productive in terms of achieving the purpose in question.
- 2.2. Previous versions of the Environmental Impact Assessment Directive (Directive 85/337/EC as codified by Directive 2011/92/EU) already allowed for an exemption to be made in cases of safeguarding defence. Directive 2014/52/EU clarifies that a Member State can apply the exemption only if defence is the sole purpose of the project. This limitation is used to avoid problems of interpretation (projects of mixed character remain within the scope of the Directive <sup>(1)</sup> and ensure harmonised implementation of the exemption. The term 'defence' includes projects related to activities by allied forces on the territory of Member States in accordance with international obligations (see recital 19 of Directive 2014/52/EU).

<sup>(1)</sup> The CJEU has ruled that Article 1(4) of Directive 85/337/EC is to be interpreted as meaning that an airport which may simultaneously serve both civil and military purposes but whose main use is commercial falls within the scope of the Directive (C-435/97, WWF and Others, paragraphs 65-67).

- 2.3. The scope of Article 1(3) was extended to cover response to civil emergencies <sup>(2)</sup>. This amendment was based on experience of implementation, but is also meant to align the Environmental Impact Assessment Directive with Directive 2001/42/EC <sup>(3)</sup> on the assessment of the effects of certain plans and programmes on the environment (the Strategic Environmental Assessment Directive). As is the case with defence, the Member State concerned can exempt a project from the scope of the Directive under Article 1(3) only if responding to a civil emergency is that project's sole purpose.
- 2.4. It used to be possible for Member States to exempt projects concerning civil emergencies in exceptional cases in accordance with Article 2(4) of Directive 2011/92/EC. Moving this possibility to Article 1(3) means that if the project fulfils the conditions of Article 1(3), Member States do not need to undergo the notification procedure or to meet the objectives of the Environmental Impact Assessment Directive.
- 2.5. Nevertheless, established CJEU case law related to the exemptions indicates that the provision should be given a restrictive interpretation. In the *Bolzano* case C-435/97 the Court made the following statement on Article 1(4) (national defence) of Directive 85/337/EC: 'Such exclusion introduces an exception to the general rule laid down by the Directive that environmental effects are to be assessed in advance and it must accordingly be interpreted restrictively'.
- 2.6. The exemption therefore covers only projects that respond to civil emergencies, not projects introducing measures designed to prevent such emergencies. It would generally be justified only if the emergency that gave rise to the project could not have been foreseen or, if it could have been foreseen, the project could not have been undertaken earlier. For example, an anti-flooding project might only be considered a measure to tackle a potential emergency sufficiently urgent to warrant the exemption being invoked, if it was impossible to undertake it earlier. However, if flooding has occurred in the same place on several occasions and the project is a belated measure taken to stave off a potential future emergency, then the exemption is unlikely to be justified. On the other hand, there could be emergencies, including some natural disasters, which could have been anticipated but not prevented and which give rise to projects (such as urgent/immediate reconstruction works or works to prevent further damage) that might well qualify for the exemption.
- 2.7. The Commission has compiled key CJEU judgments in this area for use by the Member States' public authorities. <sup>(4)</sup>

### 3. Exceptional cases — Article 2(4) of the Environmental Impact Assessment Directive

Article 2(4) of Directive 2011/92/EU as amended by Directive 2014/52/EU

Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project from the provisions laid down in this Directive, where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met.

- <sup>(2)</sup> The term 'civil emergency' was introduced by Directive 2014/52/EU on the basis of experience with implementation. Such experience has shown that compliance with Directive 2011/92/EU could adversely affect the environment, among other things, where projects whose sole purpose is to respond to civil emergencies are involved. The Directive does not define 'civil emergency'. Certain examples of events that could trigger a civil emergency are given in the Commission staff working document 'Overview of Natural and Man-Made Disasters and Risks the European Union may face'. They include floods, earthquakes and industrial accidents.  
[https://ec.europa.eu/echo/sites/echo-site/files/swd\\_2017\\_176\\_overview\\_of\\_risks\\_2.pdf](https://ec.europa.eu/echo/sites/echo-site/files/swd_2017_176_overview_of_risks_2.pdf)
- <sup>(3)</sup> Article 3(8) of the SEA Directive includes an exemption for plans and programmes whose sole purpose is to serve in the event of a civil emergency. While the backgrounds to the EIA and SEA Directives are different, there is a connection between them, in that the latter applies to plans and programmes in the core sectors which establish the framework for consent to the future development of projects under the EIA Directive.
- <sup>(4)</sup> Judgments of the Court of Justice of the EU: [http://ec.europa.eu/environment/eia/pdf/EIA\\_rulings\\_web.pdf](http://ec.europa.eu/environment/eia/pdf/EIA_rulings_web.pdf), p. 26

In that event, the Member States shall:

- (a) consider whether another form of assessment would be appropriate;
- (b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the decision granting exemption and the reasons for granting it;
- (c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.

The Commission shall immediately forward the documents received to the other Member States.

The Commission shall report annually to the European Parliament and to the Council on the application of this paragraph.

*\* The underlined text indicates the amendments introduced by Directive 2014/52/EU*

#### *Provisions of the Directive*

- 3.1. Article 2(4) of the Environmental Impact Assessment Directive (former Article 2(3) of Directive 85/337/EC) provides for the possibility for Member States to exempt a specific project from the requirements of the Directive in 'exceptional cases' and, in such cases, for the possibility of using an alternative form of assessment. Such exemption would therefore be applied on a case-by-case basis and would not allow for example for an exemption of an entire project category. It sets out the procedural steps to be taken when the exemption is used. It also requires the Commission to report every year to the European Parliament and the Council on how the provision has been applied. Article 2(3) was amended slightly by Directive 97/11/EC by including the words 'without prejudice to Article 7' (transboundary provisions) and by substituting 'where appropriate' in 2(3)(c) by 'where applicable'. It was further amended by Directive 2003/35/EC, with effect from 25 June 2005, in order to incorporate the Aarhus Convention provisions on public participation and access to justice. The main effect of this amendment was to remove Member States' discretion on whether information about other forms of assessment had to be made available to the public. Directive 2014/52/EU added two requirements for the use of Article 2(4): the exemption can be applied 'where the application of those provisions [provisions of the Directive] would result in adversely affecting the purpose of the project' and 'provided the objectives of this Directive are met'.

#### *Transposition*

- 3.2. Article 2(4) provides Member States with an option to transpose the provision. If this option is used, the wording of the transposing legislation should follow that of the Directive as closely as possible, for reasons of legal certainty, to avoid departing from the conditions of the Directive.

#### *Meaning of exceptional cases*

- 3.3. In the previous versions of the Environmental Impact Assessment Directive, Article 2(4) does not define 'exceptional cases' or provide examples of the kind of cases that might fall within its scope
- 3.4. The position of the CJEU is that 'the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope is normally to be given throughout the Community an autonomous and uniform interpretation which must take into account the context of the provision and the purpose of the legislation in question' (see judgment in case C-201/02 (*Delena Wells*), paragraph 37).
- 3.5. The term 'exceptional cases' is interpreted narrowly by the CJEU, which has followed this approach in relation to the exemptions in Article 1(4) (national defence) and Article 1(5) (projects adopted by specific act of national legislation) of Directive 85/337/EC. In *Linster* (C-287/98, paragraph 49), the Court pronounced that 'Article 1(5) of the Directive should be interpreted having regard to the objectives of the Directive and to the fact that, since it is a provision limiting the Directive's field of application, it must be interpreted restrictively.' It is clear from the wording of the

Directive 2014/52/EU that, just because a case can be shown to be exceptional, the Article 2(4) exemption would not be justified. It would be unreasonable to apply the exemption in a case where the factors that make it exceptional do not preclude full compliance with the Directive. In other words, the exemption has to be linked to the impossibility to meet the full requirements of the Directive without compromising the purpose of the project.

- 3.6. The CJEU found in its recent ruling in case *Doel* (C-411/17, paragraphs 97 and 101) that the need to ensure security of supply in electricity could amount to an 'exceptional case'. According to the CJEU Art. 2(4) requires the Member State to demonstrate that the risk for this security in supply must be 'reasonably probable' <sup>(5)</sup> and the envisaged project must be sufficiently urgent to justify not carrying out the assessment. In addition, the Commission's experience with the notifications for exemption under Article 2(4) can provide examples of situations that would qualify as 'exceptional cases'. Between 2014 and 2017, the European Commission has received several notifications that fell under the category of exceptional cases. Although most of them were cases of response to civil emergency, which according to Article 2(4) of the Directive 2014/52/EU do not require a notification procedure, some were of exceptional nature for other reasons than response to civil emergency.
- 3.7. The exemption under Article 2(4) regarding the 'exceptional cases' was applied between 2014 and 2017 in three cases. In one of these there was a need to secure a supply of gas, in another the project was needed to satisfy a strategic interest in renewable energies, and in the third case the reason for the project was to meet high-level political commitments made by public authorities to build confidence between communities in the context of broader reconciliation negotiations. In all these cases, the urgent need for the project was such that failure to proceed would have been against the public interest and would have threatened political, administrative or economic stability and security. If such a situation occurs, there is some, though limited, scope to apply this exemption, provided that all conditions are met.
- 3.8. As indicated above, the circumstances of an exceptional case must be such that compliance with all the Directive's requirements would be impossible or impracticable and counter-productive in terms of achieving the purpose of the project. For example, a development might need to be approved and completed so quickly that there would be too little time to prepare all the environmental information required under Article 5(1) or to conduct a public consultation before deciding to proceed. Under Article 2(4) of the Directive, it is not possible to derogate from the provisions of Article 7 on transboundary consultations, even in exceptional cases <sup>(6)</sup>.

#### *Confidentiality constraints*

- 3.9. There might be circumstances where the disclosure of environmental information would not be in the public interest or might even prejudice the interests that the Environmental Impact Assessment Directive is designed to protect. For example where the need to protect a habitat dictates that its location should be kept secret. Article 10 is relevant to such cases. It states that the provisions of the Directive do not affect the obligation on competent authorities to 'respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.' There is a correlation here with measures such as those that implement Directive 2003/4/EC <sup>(7)</sup> on public access to environmental information; Article 4 of which allows Member States to refuse a request for environmental information if disclosure would adversely affect, among other things, 'the protection of the environment to which such information relates, such as the location of rare species'. It goes on to emphasise that in every particular case the public interest served by disclosure must be weighed against the interest served by refusal. To the extent that environmental information could be withheld by virtue the combined effect of Article 10 of the Environmental Impact Assessment Directive and of Article 4 of Directive 2003/4/EC on public access to information, there would be therefore no need to invoke the Article 2(4) exemption.

<sup>(5)</sup> See judgment in case C-411/17, para 101.

<sup>(6)</sup> See judgment in case C-411/17, para 101.

<sup>(7)</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1558533359746uri=CELEX:32003L0004>

*Meeting the objectives of the Directive*

- 3.10. As noted in points 1.4 and 3.1 above, one of the conditions for applying the exemption under Article 2(4) is that Member States should ensure that the objectives of the Environmental Impact Assessment Directive are met. Member States are therefore allowed a measure of discretion, in that they can exempt specific projects from the provisions of the Environmental Impact Assessment Directive. That flexibility must not undermine the fundamental objective set out in Article 2(1) of the Environmental Impact Assessment Directive.
- 3.11. The fundamental objective of the Environmental Impact Assessment Directive as set out in Article 2(1) is this: before development consent is given, projects likely to have a significant environmental impact should be made subject to a requirement for development consent and an assessment of their effects. This involves a process comprising a minimum set of requirements that need to be met to achieve that objective. These include drawing up an environmental report, supplying information, conducting consultations, taking the results of the environmental assessment into account, providing information on the decision taken at the end of the assessment, and ensuring access to justice. As there are exceptional cases in which the minimum set of requirements detailed above cannot be met under Article 2(4), Member States need to meet the conditions under Article 2(4)(a) to (c) on considering another form of assessment. They should also keep the public and the Commission informed, to ensure that the fundamental objective under Article 2(1) is respected. As the Court confirmed in *Doel* (C-411/17, paragraph 99), these [conditions] are not mere formal requirements but rather conditions that seek to ensure respect of the objectives of the EIA Directive as far as possible.

*Consideration of other forms of assessment and public involvement*

- 3.12. A Member State invoking the Article 2(4) exemption must consider whether it is appropriate to undertake another form of assessment. As explained above, the objectives of the Directive are to be observed when judging whether another form of assessment is appropriate. Where another form of assessment is possible and considered to be appropriate, the information obtained must be made available to the public concerned and the public concerned must be informed about the decision granting exemption and the reasons for granting it. Given the similarity with Article 6(3) of the Environmental Impact Assessment Directive, Member States should consider making any environmental information obtained under another assessment available in the same way. However, the application of this provision is without prejudice to the assessment obligations resulting from other Directives (e.g. Article 6(3) and (4) of the Habitats Directive <sup>(8)</sup> or Article 4(7) of the Water Framework Directive <sup>(9)</sup>).
- 3.13. Assessments could take a number of different forms. For example, where a project comprises several stages, it might be appropriate to carry out a partial environmental impact assessment that covers only some of them. While compliance with Environmental Impact Assessment requirements might be precluded in the first stage by the urgency of the project, it might be entirely feasible for subsequent stages. This would be a proportionate response to the exceptional case, ensuring that the requirements of the Directive were followed as far as possible.
- 3.14. A partial environmental impact assessment might be appropriate where for example not all of the elements of Annex IV to the Directive can be included in the environmental impact assessment report because of the exceptional circumstances. Such a case might be where only some of the data required to identify and assess the likely main effects of the project on the environment could be produced at the outset (for example, where surveys to establish the possible presence of protected species would be needed over at least a 1-year period but the proven urgency of the project requires work to be commenced within a shorter period). Another example might be where an urgent and unexpected need to dispose of hazardous waste arises, and the most suitable landfill site out of a large number of potential sites has to be identified quickly, but there is insufficient time to carry out a full assessment of each. While the environmental impact assessment has to be carried as far as possible, in such a case an assessment of the most pressing environmental considerations (such as effects on groundwater) at each site might be appropriate.

<sup>(8)</sup> OJ L 206, 22.7.1992, p. 7.

<sup>(9)</sup> OJL 327, 22.12.2000, p. 1.

*Obligation to inform the Commission*

- 3.15. Article 2(4)(c) requires a Member State that uses the exemption to inform the Commission before granting consent to the project. Reasons justifying the exemption and, where it applies, the information made available to the public must be sent to the Commission.
- 3.16. Given that the exemption is often invoked in circumstances that require immediate action, it is recommended that Member States devise internal procedures, possibly including standard forms, to ensure that this notification requirement is not overlooked. The reasons justifying the exemption should specify not only why the situation is exceptional or urgent, but also why compliance with Environmental Impact Assessment Directive requirements is not possible. As this must be sent to the Commission before consent for the project is granted, Member States need to act quickly. It is recommended that, as well as sending a formal letter to the Commission, electronic notification should be used.
- 3.17. It is recommended that Member States specify the type of project exempted by referring to the relevant Annex of the Environmental Impact Assessment Directive.
- 3.18. Under the Article 2(4)(c) requirement, the Commission has to forward the documents it has received to the other Member States. There is no specific provision for another Member State to comment on them. In practice, the Commission informs the Group of Environmental Impact Assessment/Strategic Environmental Assessment national experts by email and notifies the Permanent Representations of the Member States to the European Union.

**4. Legislative acts — Article 2(5) of the Environmental Impact Assessment Directive**

Article 2(5) of Directive 2011/92/EU as amended by Directive 2014/52/EU

Without prejudice to Article 7, in cases where a project is adopted by a specific act of national legislation, Member States may exempt that project from the provisions relating to public consultation laid down in this Directive, provided the objectives of this Directive are met.

Member States shall inform the Commission of any application of the exemption referred to in the first subparagraph every two years from 16 May 2017.

\* New Article introduced by Directive 2014/52/EU

- 4.1. This Article allows Member States to exempt projects from the public consultation provisions of the Environmental Impact Assessment Directive in case they are adopted by a specific act of national legislation and provided the national legislative procedure meets the objectives of the Directive. The justification for this exemption is that the objectives relating to public consultation are achieved through the legislative process (see recital 24 of Directive 2014/52/EU). This exemption is without prejudice to the obligation of the Member State to provide for a transboundary consultation in accordance with Article 7 where relevant. Member States making use of Article 2(5) shall inform the Commission of any application of the exemption every two years from 16 May 2017.
- 4.2. The provision of exclusion for projects adopted by acts of national legislation used to fall under Article 1(4) of Directive 2011/92/EU (Article 1(5) of Directive 85/337/EC respectively). The obligation was of a general nature and allowed such projects to be fully excluded from the scope of the Directive. Under the Environmental Impact Assessment Directive as revised by Directive 2014/52/EU, the substance of this exclusion has shifted and now relates only to the procedure of public consultation. As a result, all obligations related to information of the public and consultations of environmental or regional/local authorities (see Article 6(1) of the Directive) have to be complied with.

*Defining projects adopted by a national legislative act*

- 4.3. To correctly apply the exemption in accordance with Article 2(5) of the Environmental Impact Assessment Directive, it is necessary to follow the requirements defining a specific act of national legislation and procedures leading to its adoption, as set out in the existing CJEU judgments concerning this issue. <sup>(10)</sup>
- 4.4. On the degree of precision required of the legislative act, it needs to be clear that it is a specific act adopting the details of the project through the legislative process. The wording of the act in question must also demonstrate that the objectives of the Directive relating to public consultation have been achieved with regard to the project in question.
- 4.5. It is important to note that the mere existence of an administrative procedure cannot automatically mean that the project is regarded as a project the details of which are adopted by a specific legislative act in accordance with Article 2(5). A measure should be adopted by a legislative body, e.g. a national or regional parliament, after public parliamentary debate. At the same time its adoption has to fulfil the two following conditions:
1. The first condition requires the details of the project to be adopted by a specific legislative act. It should be pointed out that the terms 'project' and 'development consent' are defined in Article 1(2) of Environmental Impact Assessment Directive. A legislative act adopting a project must, if it is to fall within the scope of Article 2(5) of the Environmental Impact Assessment Directive, therefore be specific and display the same characteristics as development consent of that kind. It must in particular grant the developer the right to carry out the project without the need to adopt other measures in order for the developer to be entitled to proceed with the project.
  2. Under the second condition, the objectives of the Directive <sup>(11)</sup>, including that of supplying information, must be achieved through the legislative process. As a result, the national legislature must have sufficient information at its disposal at the time when the project is adopted and this information has to be equivalent to that, which would have been submitted to the competent authority in an ordinary procedure for granting consent for a project, in accordance with Article 5(1) of the Environmental Impact Assessment Directive and its Annex IV.
- 4.6. A legislative act that simply ratifies a pre-existing administrative act by referring only to overriding reasons in the general interest, without undergoing a substantive legislative process and meeting the two conditions set out in the previous part, cannot be regarded as a specific legislative act for the purposes of the provision of Article 2(5).

*Judicial control for projects adopted by a national legislative act*

- 4.7. Another important aspect when it comes to the application of exclusions under Article 2(5) is the prerequisite of ensuring that any such legislative act must be challengeable, under the national procedural rules, before a national court or another independent and impartial body established by law as to its substantive or procedural legality, in accordance with Article 11 of the Environmental Impact Assessment Directive.

<sup>(10)</sup> In 2017 the Commission services have issued a document summarising the case law of the CJEU that contains, among others, a section dedicated to the concept of projects being adopted by a legislative act in relation to the Environmental Impact Assessment Directive 2011/92/EU (Directive 85/337/EC respectively), as this provision was subject to several judgments of the CJEU. The judgments relate to the provisions prior to the 2014/52/EU amendment of the Environmental Impact Assessment Directive, nevertheless the general principles remain applicable. For section on legislative acts, see p. 33. [http://ec.europa.eu/environment/eia/pdf/EIA\\_rulings\\_web.pdf](http://ec.europa.eu/environment/eia/pdf/EIA_rulings_web.pdf). In addition, the Court recently confirmed its case-law in *Doel* (C-411/17, paragraphs 104-111).

<sup>(11)</sup> The fundamental objective according to Article 2(1) of the Environmental Impact Assessment Directive is to ensure that projects likely to have significant impacts on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their environmental effects before the development consent is given.



- 4.8. If no review procedure was available for such an act, any national court before which an action falling within its competence is brought would have the task of carrying out such a review and, as the case may be, drawing the necessary conclusions by setting aside that legislative act <sup>(12)</sup>.

### 5. Summary of the main points

- Exemptions to general rules must be interpreted and applied restrictively;
- Defence or response to civil emergencies in Article 1(3) have to be the sole purpose of the project in question in order to apply the general exemption from the scope of the Directive;
- The exclusion ‘response to civil emergencies’ is unlikely to be justified if it is intended to meet a situation that could be both anticipated and prevented;
- In Article 2(4) the term ‘exceptional cases’ is to be interpreted restrictively; to be considered ‘exceptional’, the Member State has to show that the risk involved (e.g. for the security in supply of electricity) is ‘reasonably probable’ and the envisaged project is sufficiently urgent;
- An important criterion for justifying the use of Article 2(4) is that full compliance with the Directive is not possible, and not just that the case is exceptional;
- When considering the use of Article 2(4), consideration should be given to providing a partial assessment or other form of assessment provided that the objectives of the Directive are met;
- Member States need to act quickly (before consent is granted) to provide the Commission with reasons justifying the exemption;
- The exemption under Article 2(5) relates only to public consultation requirements;
- When applying an exemption, Member States still have to ensure that other obligations under the Directive (e.g. transboundary consultation, provisions relating to access to justice) or requirements of other Directives have to be complied with.

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<sup>(12)</sup> C-128/09, *Boxus and Others*, paragraphs 52-55, 57; C-182/10, *Solvay and Others*, paragraph 52.