

Case Study on Transboundary EIA

PROPOSED DEVELOPMENT

The port of Sevilla is a harbor area which comes within the jurisdiction of two EU Member States - *State A and State B*. *State A* is on the northern shores and *State B* on the southern shores. Greenstar Ltd proposes to develop additional port facilities at Drogheda, a small town in Sevilla Port in Member *State B*.

The development will consist of:

- (i) The reclamation of 32 hectares from the foreshore in the Port. This will involve the deposition of over one million tonnes of rock, soil and other construction materials and waste on the existing foreshore.
- (ii) The construction of a new quay to accommodate visiting luxury cruisers and other ships and the construction of an oil refinery on the reclaimed lands.
- (ii) Dredging over an area of 220,000 square metres involving the removal of 1,475,000 cubic metres of materials at the existing southern and eastern berths in the Port and the approaches from the main channel.

The shore in *State A* is the habitat of overwintering migratory birds. The prevailing winds are southwestern so that any air pollution from Drogheda in *State B* is more liable to have significant effects in *State A* than in *State B*.

The entire foreshore of the port of Drogheda in *State B* is a Special Protected Area since 2008. The southern shore of the port of Sevilla in *State B* is also the habitat of the *iudex bukarestis*, which is rare and vulnerable and a priority species under the Habitat Directive.

THE DEVELOPER

The developer is Greenstar, a multinational company that operates a privately owned port in Drogheda in *State B* in Sevilla harbour.

BENEFITS OF THE DEVELOPMENT

Greenstar claim, *inter alia*, that the expanded port at Drogheda would attract luxury cruise liners to berth in Drogheda thereby increasing the tourism potential of the area. These luxury cruise liners currently dock in *State A*. The proposed oil refinery is required to ensure the security of energy supplies in *State B* which is almost totally dependent on imported energy from *State A*. *State B* has a policy to encourage the development of an oil refinery in the State to refine crude oils which have recently been discovered offshore near the port of Sevilla. The expanded port is vitally necessary for the economic development of State B.

SOME OF THE LIKELY IMPACTS

Investigations by Greenstar's environmental consultants indicate that the proposed expansion will involve the deposition of massive amounts of reclamation materials including topsoil, rock and construction waste on the foreshore at Drogheda and some disruption of water flows by dredging. These materials will be brought from various construction sites and quarries in *State A* (which is enjoying a construction boom) and polluted dredged materials will be sent for land filling in *State A*. There is a risk that the deposition of reclamation materials on the foreshore will deflect currents in the Port of Sevilla and this may result in increased flooding on the foreshore of *State A*, create new wetlands there and possibly dewater existing wetlands. Greenstar proposes compensating for these effects by constructing new wetlands in *State A* on lands which it has purchased there and mitigating any possible damage by using a new wave control technology invented by a world famous engineering professor in a leading University in *State A* which will deflect currents in the Port of Sevilla away from the foreshore in *State A*. (Many are skeptical about the potential of this technology which has only been tested as a source of wave energy.)

LEARNED JUDGES CONSIDER:

- (i) Are authorizations needed for this development under either or both the EIA and Habitats directives?
- (ii) Should this project be screened for EIA and /or AA?
- (iii) Do you think the mitigation measures proposed in this example should be taken into account in screening this project for any assessment that might be needed under the Habitats or Birds directives?
- (iv) Are authorizations required in State A or State B or both?
- (v) Assuming that the competent authority in State B is dealing with the application for the proposed development, what are its obligations towards State A?
- (vi) Are ordinary citizens in Member State A entitled to participate in the decision making process on this project in Member State B?
- (vii) Are NGOs in Member State A entitled to participate in decision making on this project in Member State B?
- (viii) Are NGOs in Member State A entitled to challenge the substantive merits of any decision on this project in Member State A?
- (ix) Assume that *Oilco*, the owner of an oil refinery in Member State A, discovers that permission for a new oil refinery has been granted in Member State B and that no notice of this proposed development had ever been given to Member State B or in Member State B.
Has *Oilco* a right to challenge the legality of the permission for the project in Member State B?
- (x) Assume that the competent authorities in Member State B grant permission for this development having totally ignored any effects on the environment in Member State A, what remedies are available against Member State A?
- (xi) Does it matter that the developer is not a public authority?