

L-Onor. Marthese Portelli, u l-Onor. Ryan Callus f'isem l-Oppożizzjoni jipproponu:

Billi l-Gvern qiegħed fuq il-mejda tal-Kamra fil-5 ta' Ottubru 2015, l-Ordni tal-2015 li Jemenda l-Ordni dwar in-Notifikazzjoni dwar Żvilupp (Avviż Legali 262 tal-2015), kif ukoll ir-Regolamenti tal-2015 li Jemendaw ir-Regolamenti dwar l-Istudju dwar l-Impatt Ambjentali (Emenda Nru 2) (Avviż Legali 263 tal-2015);

Billi d-Direttivi rilevanti ta' l-Unjoni Ewropeja (Direttiva 2011/92/EU, emendata permezz tad-Direttiva 2014/52/EU, preċeduta mid-Direttiva 85/337/EEC) jinkludu s-segwenti:

'Article 4

...for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment...

(---)

Annex II

(---)

10. INFRASTRUCTURE PROJECTS

(---)

(b) Urban development projects...'

Billi d-dokument tal-Kummissjoni Ewropea intitolat *Interpretation of definitions of project categories of Annex I and II of the EIA Directive*¹, f'pagna 34 jingħad illi

"2. Construction projects such as housing developments, hospitals, universities, sports stadiums, cinemas, theatres, concert halls and other cultural centres could also be assumed to fall within this category. The underlying principle is that all these project categories are of an urban nature and that they may cause similar types of environmental impacts.

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Member States may decide in their national EIA systems that some of the above mentioned projects (for example, sports stadia or water supply networks... fall within other Annex II project categories. Compliance with the Directive will be ensured, irrespective of which Annex II category is considered applicable, provided that such projects do not escape from the scope of application of the Directive.

... an urban development project should be seen as a project that is urban in nature regardless of its location'. This general criterion should be taken into account for projects located outside urban areas, which should therefore be deemed to fall within Annex II(10)(b).

Including noise and traffic-related disruption during the construction phase, traffic generation through the operational phase, land-take, impairment of soil function due to sealing and visual impact.

64 On the other hand, projects located within, or close to, already urbanised areas must also be considered to fall within this project category, as the ECJ confirmed in its judgment in case C-332/04, Commission v Spain, paragraph 87.'

huwa ċar illi skont il-Kummissjoni Ewropeja żvilupp li għandu x'jaqsam ma' sptarijiet m'għandux jiġi awtomatikament eżentat minn Studju dwar l-Impatt Ambjentali;

¹ http://ec.europa.eu/environment/archives/eia/pdf/interpretation_eia.pdf

Billi paragrafu 3 tar-*recitals* tad-Direttiva 2011/92/EU jghid "*The Member States may lay down stricter rules to protect the environment*", li l-iStati Membri jistghu jimponu *standards* oghla fil-ligi domestika tagħhom minn dawk fid-direttivi tal-UE, għaldaqstant, id-direttiva hija biss il-*minimum requirements* li l-ebda pajjiż membru tal-UE ma jista' jdgħajjef permezz tal-ligijiet domestiċi tiegħu;

Billi fir-*recitals* tad- Direttiva 2011/92/EU hemm miktub kif ġej: '*Furthermore, it may be appropriate in exceptional cases to exempt a specific project from the assessment procedures laid down by this Directive, subject to appropriate information being supplied to the Commission and to the public concerned.*', huwa ċar li Stat Membru jista' jiġġustifika każ eċċezzjonali, imma dan irid ikun għal proġett individwali u mhux *blanket exemptions*, kif qieghed jiġi speċifikat fl-Avvizi Legali 262 u 263 tal-2015;

Billi d-Direttiva 2011/92/EU kif emendat mid-Direttiva 2014/52/EU tispeċifika f'l-artiklu 1 (2) (3) illi "*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.*", żvilupp li għandu x'jaqsam ma' sptarijiet mhux ikkunsidrat bħala '*having defence as their sole purpose*'; mill-banda l-oħra huwa minnu li l-isptarijiet iridu jithejjew b'tali mod li jkunu jistghu ilaħħqu mhux biss max-xogħol ta' kuljum, imma anke jekk tinqala' *civil emergency*. Jista' jkun, per eżempju, li l-Gvern jiddeċiedi li jkabbar id-Dipartiment tal-Emergenza (A&E Department) ta' l-Isptar Mater Dei, speċifikament biex ikun jista' jlaħħaq ahjar jekk tinqala' *civil emergency*. Deċiżjonijiet rigward eżenzjonijiet mill-obbligu li ssir Studju dwar l-Impatt Ambjentali pero' għandhom jittiehdu *on a case by case basis*, mhux jiġi eżentat minn qabel, kull żvilupp li għandu x'jaqsam ma' sptarijiet, għaliex mhux kull żvilupp li għandu x'jaqsam ma' sptarijiet huwa intiż biex jikkowpja ma' *civil emergencies*. Per eżempju, ma jistax jinghad li l-Oncology Centre il-ġdid fl-isptar Mater Dei huwa intiż għal *civil emergencies*. Għaldaqstant, l-eċċezzjonijiet fid-Direttiva in kwistjoni hawn fuq ċitata, mhumiex applikabbli għas-sitwazzjonijiet ikkontemplati fl-Avvizi Legali 262 u 263 tal-2015;

Billi d-Direttiva in kwistjoni, artiklu 2(4), tkompli telabora dwar kif isiru dawn l-eċċezzjonijiet: '*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. 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. 5. 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.*', huwa ċar għal darb'ohra li:

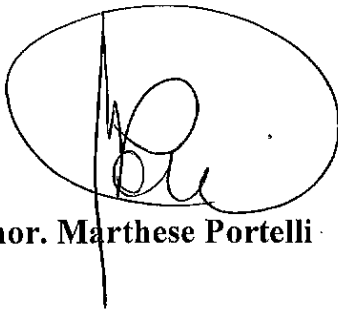
- (i) Stat Membru jista' jiġġustifika eċċezzjonijiet mir-rekwiżiti ta' Studju dwar l-Impatt Ambjentali, imma dawn iridu jkunu proġetti individwali u mhux *a priori blanket exemptions*, kif qieghed jiġi speċifikat fl-Avvizi Legali 262 u 263 tal-2015;
- (ii) Meta l-iStat Membru jagħmel eċċezzjoni mir-rekwiżiti ta' Studju dwar l-Impatt Ambjentali għal proġett partikolari irid jiżgura xorta wahda li l-għanijiet tad-Direttiva xorta jintlaħqu;
- (iii) Meta l-iStat Membru jagħmel eċċezzjoni mir-rekwiżiti ta' Studju dwar l-Impatt Ambjentali għal proġett partikolari, għandu jippubblika l-informazzjoni kollha marbuta ma' din id-deċiżjoni u r-raġunijiet tiegħu għal din l-eċċezzjoni;
- (iv) Meta l-iStat Membru jagħmel eċċezzjoni mir-rekwiżiti ta' Studju dwar l-Impatt Ambjentali għal proġett partikolari, mis-16 ta' Mejju 2017 ikun obligat jinforma wkoll lill-Kummissjoni Ewropeja;
- (v) Stat Membru għandu jaħdem biex l-oġġettivi tad-Direttiva jintlaħqu. Fost affarijiet oħra għandu jikkunsidra jekk xi tip ieħor ta' assessjar huwiex mehtieg, u mhux jeżenta minn qabel żviluppi li għandhom x'jaqsmu ma' sptarijiet minn Studju dwar l-Impatt Ambjentali kif ukoll minn permessi għal żvilupp bħal ma ġara permezz ta' l-Avvizi Legali 262 u 263 tal-2015;
- (vi) Stat Membru lanqas ma għandu jgħaddi liġi li teżenta minn qabel, tibdil u estensjonijiet għal sptarijiet approvati jew diġa koperti minn studju dwar l-impatt ambjentali, mingħajr kunsidrazzjoni tad-daqs tat-tibdil jew estensjoni, għaliex din tammonta għal *blanket exemption* li mhix aċċettabbli skont ir-Regolamenti tal-UE li jirregolaw l-istudji dwar l-impatti ambjentali;
- (vii) Żviluppi relatati ma' sptarijiet għandhom iġġaddu mill-għarbiel ta' l-awtoritajiet konċernati, inkluż il-ksib ta' permess ta' żvilupp mill-awtorita' responsabbli għall-ippjanar. Żviluppi li għandhom x'jaqsmu ma' sptarijiet ma għandhomx jaharbu mill-proċeduri amministrattivi li permezz tagħhom jittiehdu deċiżjonijiet fundamentali inkluż dwar jekk hemmx bżonn ta' Studju dwar l-Impatt Ambjentali.

Billi d-Direttivi tal-UE in kwistjoni jesigū li proġetti li jaqgħu taħthom jinhtiegu permess għal żvilupp (e.ż. art 1 li fost affarijiet oħra tiddefinixxi '*development consent*', art. 2(1) '*before development consent is given*' u artiklu 6²), huwa evidenti li żviluppaturi ta' proġetti infrastrutturali, inkluż *urban development projects* bħal sptarijiet, m'għandhomx ikunu eżenti mill-obbligu li japplikaw u jiksbu permessi għal żvilupp. Il-kunsidrazzjoni ta' jekk hux mehtieg Studju dwar l-Impatt Ambjentali jew le, huwa parti integrali ta' l-ipproċessar tal-applikazzjoni għal permess għal żvilupp.

Għaldaqstant għal dawn ir-raġunijiet prinċipali jehtieg illi l-Avvizi Legali 262 u 263 tal-2015 ikunu rrevokati u għalhekk din il-Kamra tirrizolvi u tiddeċiedi li l-Avvizi Legali 262 u 263

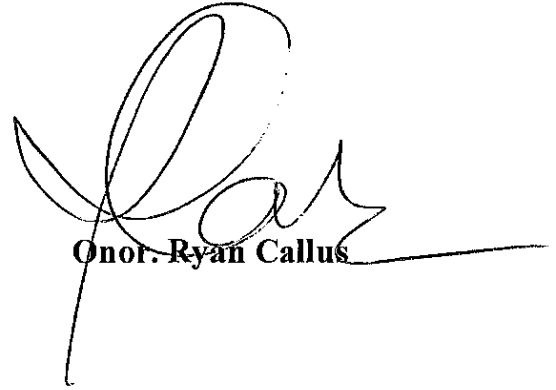
² 'Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences are given an opportunity to express their opinion on the information supplied by the developer **and on the request for development consent...**'

tal-2015 ikunu revokati, annullati u dikjarati bla ebda effetti fil-ligi ghaliex l-eżenzjoni ta' żvilupp li ghandu x'jaqsam ma' sptarijiet, mill-htiega ta' permess ghal żvilupp u minghajr ma jigi kkunsidrat ghal Studju dwar Impatt Ambjentali fil-ligi ta' Malta tmur kontra l-kelma u l-ispirtu tad-Direttivi Ewropeja tal-Istudju dwar l-Impatt Ambjentali. Ma tistax teskludi minn qabel kwalunkwe żvilupp li ghandu x'jaqsam ma' sptar, iktar w iktar numru ta' żviluppi fi sptarijiet diversi, mill-htiega ta' applikazzjonijiet ghal permessi ghal żvilupp, l-ipproċessar ta' liema applikazzjonijiet jinkludi analiżi dwar il-htiega ta' Studju dwar l-Impatt Ambjentali.



Onor. Marthese Portelli

30 ta' Ottubru 2015



Onor. Ryan Callus