

**ENVIRONMENTAL IMPACT ASSESSMENT
PRELIMINARY RULING CJUE: CASE C-
142/07, ECOLOGISTAS EN ACCIÓN-CODA
NGO)- ADMINISTRATIVE COURT NUMBER
22 DE MADRID**

Faustino Gudín
Senior Judge
Assistant Professor UAH

AIR POLLUTION IN MADRID IN 2008/2021

INDEX INFO

Pollution Index: 51.99

Pollution Exp Scale: 99.594

POLLUTION IN MADRID, SPAIN

AIR POLLUTION 63.77 HIGH

DRINKING WATER POLLUTION AND INACCESSIBILITY 12.26
VERY LOW

DISSATISFACTION WITH GARBAGE DISPOSAL 38.89 LOW

DIRTY AND UNTIDY 45.51 MODERATE

NOISE AND LIGHT POLLUTION 50.83 MODERATE

WATER POLLUTION 18.95 VERY LOW

DISSATISFACTION TO SPEND TIME IN THE CITY 40.16
MODERATE

DISSATISFACTION WITH GREEN AND PARKS IN THE CITY
29.55 LOW



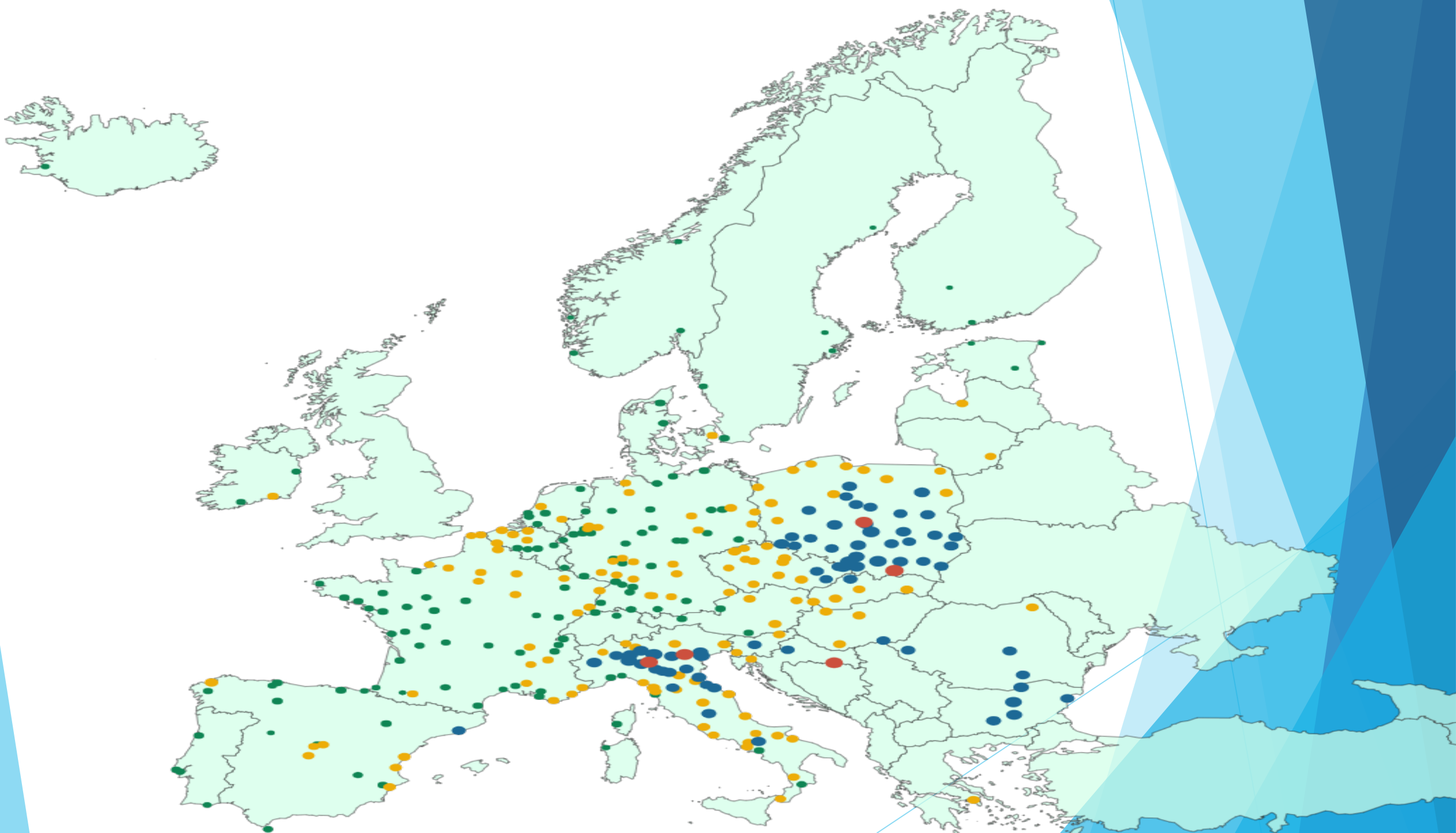
Pollution haze over Madrid

Spain's capital Madrid has been the most premature deaths linked to nitrogen-dioxide pollution in Europe.

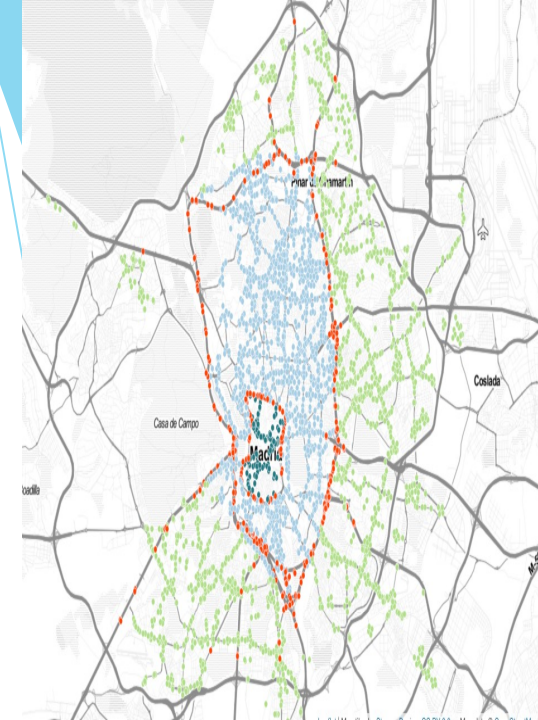
Breathing in high levels of Nitrogen Dioxide increases the risk of respiratory problems. Coughing and difficulty breathing are common and more serious health issues such as respiratory infections can occur with longer exposure

- ▶ The city with the worst air quality was meanwhile found to be Nowy Sacz in Poland, with an average concentration of fine particulate matter reaching $27.3 \mu\text{g}/\text{m}^3$. Cremona in Italy ($25.9 \mu\text{g}/\text{m}^3$) and Croatia's Slavonski Brod ($25.7 \mu\text{g}/\text{m}^3$) complete the bottom trio.
- ▶ Four other Polish cities (Zgierz, Piotrkow Trybunalski, Zory and Krakow), as well as an additional three Italian cities (Vicenza, Brescia and Pavia) and the Bulgarian town of Veliko, occupy the rest of the worst 10 cities.

The city has almost 3.4 million inhabitants and a metropolitan area population of approximately 6.7 million.



THE FACTS



- ▶ THE M-30 ORBITAL MOTORWAY CIRCLES THE CENTRAL DISTRICTS OF MADRID, THE CAPITAL CITY OF SPAIN. IT IS THE INNERMOST RING ROAD OF THE SPANISH CITY, WITH A LENGTH OF 32.5 KM.
- ▶ ITS CONSTRUCTION STARTED IN THE 1960S IN THE 1990S, THE RING ROAD WAS COMPLETED WITH THE CONSTRUCTION OF THE NORTHERN SECTION
- ▶ OUTER RINGS ARE NAMED M-40, M-45 AND M-50. ITS LENGTH AND THE SURFACE SURROUNDED BY THE M-30 IS COMPARABLE TO THE BOULEVARD PÉRIPHÉRIQUE OF PARIS OR THE LONDON INNER RING ROAD.
- ▶ WE ARE GOING TO JUDGMENT OF THE COURT (THIRD CHAMBER) OF 25 JULY 2008. BEFORE MADRID CENTRAL.
- ▶ MADRID CENTRAL IS RIGHT NOW THE CENTER OF AN IMPORTANT ENVIRONMENTAL LEGAL DEBATE BECAUSE UP TO THREE REGIONAL ADMINISTRATIVE COURTS HAVE ANNULLED THIS CENTRAL ZONE FOR REDUCING TRAFFIC AND REDUCING EMISSIONS

M-30: URBAN, ECONOMIC, ENVIRONMENTAL AND CULTURAL SIGNIFICANCE



- ▶ The M-30 surrounds the inner core (the central districts) of Madrid: Centro, Arganzuela, Retiro, Salamanca, Chamartín, Tetuán, and Chamberí, as well as a small part of Moncloa-Aravaca.
- ▶ This core is home to one quarter of the population of Madrid (about 800,000 people) and is, in average, wealthier than the rest of the city.
- ▶ Also, housing prices are higher inside the M-30. Popularly, the city Madrid is divided in “dentro de la M-30” (inside the M-30) and “fuera de la M-30” (outside the M-30). The M-30 itself is touted by Madrileños and media as a barrier between the rich and the poor sections of the city.
- ▶ Pay-per-use parking lots and parking meters in Madrid (usually called ORA in Spain, but SER in Madrid) only exist in the area within the M-30. Access by car to the inner core and the M-30 itself may be restricted in days of high air pollution.

MADRID CENTRAL: THE SITUATION IN 2008 AND 2018



- ▶ MADRID CENTRAL IS A LOW-EMISSION ZONE LOCATED IN THE CENTER OF THE CITY. IT WAS INAUGURATED ON NOVEMBER 30, 2018. THERE IS LITTLE INDUSTRY IN THE CENTER OF THE CITY, AND VEHICULAR TRAFFIC HAS BEEN RESPONSIBLE FOR A SIGNIFICANT PROPORTION OF EMISSIONS THERE.
- ▶ MADRID CENTRAL WAS SPAIN'S FIRST LOW-EMISSION ZONE, ALTHOUGH PONTEVEDRA HAD EFFECTIVELY CREATED SUCH A ZONE BY PEDESTRIANISING MUCH OF ITS CITY CENTER. BARCELONA ANNOUNCED THE IMPLEMENTATION OF A LOW EMISSION ZONE FROM THE BEGINNING OF 2020. THE PERIMETER OF MADRID CENTRAL, AN AREA OF 472 HECTARES
- ▶ WITH THE EXCEPTION OF RESIDENTS AND GUESTS, VEHICLE TRAFFIC WAS RESTRICTED TO ELECTRIC OR HYBRID VEHICLES, [WITH A TRANSITORY PERIOD UNTIL 2020 GIVING ADDITIONAL ACCESS OF DIESEL AND GASOLINE VEHICLES ON CONDITION OF PARKING IN A PARKING SPACE.
- ▶ IN MARCH 2019, THE TECHNICAL UNIVERSITY OF MADRID PUBLISHED SOME ESTIMATES SHOWING HOW HARMFUL GAS EMISSIONS (CO₂, NO₂ ...) HAD FALLEN IN THE AREA THAT COMPRISED THE MADRID CENTRAL AREA.
- ▶ DESPITE OF THIS, THE ADMINISTRATIVE COURTS CANCELED THE REGULATION OF MADRID CENTRAL
- ▶ IN SEPTEMBER 2019 MADRID'S MAYOR ANNOUNCED A PLAN FOR AN ALTERNATIVE TO MADRID CENTRAL, CALLED MADRID 360. LESS AMBITIOUS AS REGARDS CUTTING EMISSIONS IN THE CENTER, MADRID 360 WOULD COVER A LARGER AREA OF THE CITY.

THE FACTS II: THE REFURBISHMENT OF M-30

- ▶ By decision of 17 January 2005, the Councillor for Planning, Housing and Infrastructure of the Municipality of Madrid approved **various projects for refurbishment and improvement the M-30** (Madrid urban ring road).
- ▶ **The execution of the overall scheme will lead to an increase in traffic of nearly 25% and will involve different kinds of works in the urban area surrounding the M-30.**
- ▶ **The Madrid City Council has split the larger ‘Madrid calle 30’ project into 15 independent sub-projects**, treated separately, only one of which concerns alteration or rehabilitation work on any existing road on a section exceeding 5 kilometres, the threshold at which the regional rules applicable make a project subject to an environmental impact assessment, while the larger project taken as a whole substantially exceeds that threshold.
- ▶ **According to the Madrid Council**, the ring road concerned is an urban road. The amended directive does not refer to that type of road in Annexes I and II, which mention only motorways, express roads and roads. Since urban roads are not mentioned, it was entitled to take the view that projects for the alteration of such a road were not covered by the amended directive and, consequently, did not have to be made subject to an environmental impact assessment

LEGAL BACKGROUND(I)



- ▶ The **EIA Directive (85/337/EEC)** is in force since 1985 and applies to a wide range of defined public and private projects, which are defined in Annexes I and II:
 - ▶ **Mandatory EIA:** all projects listed in **Annex I** are considered as having significant effects on the environment and require an EIA (e.g. long-distance railway lines, motorways and express roads, airports with a basic runway length \geq 2100 m, installations for the disposal of hazardous waste, installations for the disposal of non-hazardous waste > 100 tonnes/day, waste water treatment plants > 150.000 p.e.).
 - ▶ **Discretion of Member States (screening):** for projects listed in **Annex II**, the national authorities have to decide whether an EIA is needed. This is done by the "screening procedure", which determines the effects of projects on the basis of thresholds/criteria or a case by case examination. However, the national authorities must take into account the criteria laid down in Annex III. The projects listed in Annex II are in general those not included in Annex I (railways, roads waste disposal installations, waste water treatment plants), but also other types such as urban development projects, flood-relief works, changes of Annex I and II existing projects...).
- ▶ The EIA Directive of 1985 has been amended three times, in 1997, in 2003 and in 2009:
 - ▶ **Directive 97/11/EC** brought the Directive in line with the UN ECE Espoo Convention on EIA in a Transboundary Context. The Directive of 1997 widened the scope of the EIA Directive by increasing the types of projects covered, and the number of projects requiring mandatory environmental impact assessment (Annex I). It also provided for new screening arrangements, including new screening criteria (at Annex III) for Annex II projects, and established minimum information requirements.
 - ▶ **Directive 2003/35/EC** was seeking to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.
 - ▶ **Directive 2009/31/EC** amended the Annexes I and II of the EIA Directive, by adding projects related to the transport, capture and storage of carbon dioxide (CO₂).

LEGAL BACKGROUND (II)

► Annex I

- Point 7 of Annex I to the amended directive mentions, under heading (b), projects for ‘**construction of motorways and express roads**’ and, under heading (c), projects for ‘**construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length**’.
- Point 7(b) refers, for the definition of ‘**express roads**’, to that in the European Agreement on Main International Traffic Arteries of 15 November 1975 (‘the agreement’).

► Annex II

- In point 10 of Annex II to the amended directive, entitled ‘**Infrastructure projects**’, subheading (b) mentions ‘**urban development projects**’ and subheading (e) projects for ‘**construction of roads ... (projects not included in Annex I)**’.
- The first indent of point 13 of Annex II covers any change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment’.

THE JURISPRUDENCE OF EUROPEAN THE COURT

- ▶ Previously the Court has stated on numerous occasions that the scope of Directive 85/337 and that of the amended directive should be considered very wide.
- ▶ It would, therefore, be contrary to the very purpose of the amended directive to allow any urban road project to fall outside its scope solely on the ground that the directive does not expressly mention among the projects listed in Annexes I and II those concerning that kind of road. Other similar cases:
 - ▶ Case C-72/95 Kraaijeveld and Others [1996] ECR I-5403, paragraph 31;
 - ▶ Case C-435/97 WWF and Others [1999] ECR I-5613, paragraph 40;
 - ▶ Case C-2/07 Abraham and Others [2008] ECR I-1197, paragraph 32).



THE LITIGANTS: NGO ECOLOGIST IN ACTION(CODA)

- ▶ UNTIL NOW NGOS HAVE THE LEGAL CAPACITY TO INTERVENE IN JUDICIAL PROCESSES IS WIDE AND IS EVEN PROTECTED IN ART. 125 OF THE SPANISH CONSTITUTION
- ▶ THE THIRD PILLAR OF THE CONVENTION (ARTICLE 9) IS THE ACCESS TO JUSTICE.
- ▶ IN SPAIN THE NGO HAS AN THE RIGHT TO PARTICIPATE IN CRIMINAL AND ADMINISTRATIVE PROCEEDINGS.
- ▶ REGARDING ADMINISTRATIVE MATTERS, LAW 27/2006, (RELATED TO IMPLEMENTATION ARRHUS CONVENTION IN SPAIN) ARTICLE 22 RECOGNIZES POPULAR ACTION IN ENVIRONMENTAL MATTERS AS FOLLOWS: "ACTS AND, WHERE APPROPRIATE, OMISSIONS ATTRIBUTABLE TO PUBLIC AUTHORITIES THAT VIOLATE THE NORMS RELATED TO THE ENVIRONMENT.
- ▶ IN ACCORDANCE WITH ART. 23 THREE REQUIREMENTS ARE NEEDED:
 - ▶ 1) THAT THE PROTECTION OF THE ENVIRONMENT IS AMONG THE PURPOSES ACCREDITED IN ITS STATUTES.
 - ▶ 2) THAT THEY HAD BEEN LEGALLY ESTABLISHED AT LEAST TWO YEARS BEFORE THE EXERCISE OF THE ACTION.
 - ▶ 3) THAT THEY CARRY OUT THEIR ACTIVITY IN THE TERRITORIAL SCOPE AFFECTED BY THE CONTESTED ACT OR OMISSION.

OPINION OF ADVOCATE GENERAL KOKOTT

- ▶ 1. **The procedural requirements relating to environmental** impact assessments arising from Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, **are applicable to urban road projects,**
 - ▶ - where they are projects within the meaning of point 7(b) or (c) of Annex I, or
 - ▶ - where they are projects within the meaning of point 10(e) or the first indent of point 13 of Annex II which are likely to have significant effects on the environment by virtue of their nature, size or location, or if appropriate their combined effects with other projects.
- ▶ 2. A formal **environmental impact assessment** may be replaced by **equivalent measures** if they meet the minimum requirements laid down in Article 3 and Articles 5 to 10 of Directive 85/337.

THREE CONCLUSIONS OF THE EUROPEAN HIGH COURT(I)

- ▶ The fact that point 7(b) and (c) of Annex I to that directive refers to projects for the 'construction' of the types of road mentioned does not mean that projects for refurbishment and improvement of an existing road are excluded from the scope of the amended directive. A project for refurbishment of a road which would be **equivalent**, by its size and the manner in which it is carried out, to construction may be regarded as a construction project for the purposes of that annex.
- ▶ In order to analyze the need to implement an environmental assessment, it is necessary to take into account not only the literal words of the Directive 85/337/EEC , but also their collective meaning, analyzing them in relation to the context and the impact that it may produce in the area.
- ▶ According to the Court the purpose of the amended directive cannot be circumvented by the splitting of projects and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the amended directive.

RULING OF THE COURT

- ▶ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, **must be interpreted as meaning that it provides for environmental impact assessment of refurbishment and improvement projects for urban roads, either where they are projects covered by point 7(b) or (c) of Annex I to the directive, or where they are projects covered by point 10(e) of Annex II or the first indent of point 13 thereof, which are likely, by virtue of their nature, size or location and, if appropriate, having regard to their interaction with other projects, to have significant effects on the environment.**

THANK YOU SO MUCH
FOR YOUR ATTENTION!