JUDGMENT OF THE COURT (Second Chamber)

28 February 2008 *

In Case C-2/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Cour de cassation (Belgium), made by decision of 14 December 2006, received at the Court on 4 January 2007, in the proceedings

Paul Abraham and Others

v

Région wallonne,

Société de développement et de promotion de l'aéroport de Liège-Bierset,

T.N.T. Express Worldwide (Euro Hub) SA,

* Language of the case: French.

Société nationale des voies aériennes-Belgocontrol,

État belge,

Cargo Airlines Ltd,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, L. Bay Larsen, K. Schiemann, P. Kūris and J.-C. Bonichot (Rapporteur), Judges,

Advocate General: J. Kokott,
Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 18 October 2007,

after considering the observations submitted on behalf of:

— Mr Abraham and Others, by L. Misson, L. Wysen and X. Close, avocats, and A. Kettels, Rechtsanwältin,

— Mr Beaujean and Others, by L. Cambier and M. t'Serstevens, avocats,

— Mr Dehalleux and Others, by L. Cambier, avocat,

— Mr Descamps and Others, by A. Lebrun, avocat,

— Région wallonne, by F. Haumont, avocat,

— Société de développement et de promotion de l'aéroport de Liège-Bierset, by P. Ramquet, avocat,

— T.N.T. Express Worldwide (Euro Hub) SA, by P. Henfling and V. Bertrand, avocats,

— the Belgian Government, by A. Hubert and C. Pochet, acting as Agents, assisted by F. Haumont, avocat,

— the Czech Government, by T. Boček, acting as Agent,

— the Commission of the European Communities, by M. Konstantinidis and J.-B. Laignelot, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 November 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40; 'Directive 85/337'), in the version existing prior to Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5; 'Directive 97/11'), and in particular point 7 of Annex I and point 12 of Annex II thereto.

2 The reference was made in proceedings between numerous individuals who live near Liège-Bierset Airport (Belgium) and the Région wallonne (Region of Wallonia), Société de développement et de promotion de l'aéroport de Liège-Bierset, T.N.T. Express Worldwide (Euro Hub) SA ('TNT Express Worldwide'), Société nationale des voies aériennes-Belgocontrol, the État belge (Belgian State) and Cargo Airlines Ltd regarding the noise pollution brought about by the establishment of an air freight centre at that airport.

Legal context

Community law

3 Pursuant to Article 1(1) thereof, Directive 85/337, applicable here in its original version, concerns the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

4 Article 1(2) of Directive 85/337 states:

'…

"project" means:

— the execution of construction works or of other installations or schemes,

— other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

"developer" means:

the applicant for authorisation for a private project or the public authority which initiates a project;

"development consent" means:

the decision of the competent authority or authorities which entitles the developer to proceed with the project.'

5 Under Article 2(1) of the directive, 'Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue inter alia, of their nature, size or location are made subject to an assessment with regard to their effects. These projects are defined in Article 4'.

6 Article 3 sets out the subject-matter of the environmental impact assessment:

'The environmental impact assessment will identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

— human beings, fauna and flora,

— soil, water, air, climate and the landscape,

— the interaction between the factors mentioned in the first and second indents,

— material assets and the cultural heritage.'

7 Article 4 distinguishes two types of project.

8 Article 4(1) requires that, subject to Article 2(3), projects of the classes listed in Annex I to the directive are to be made subject to an assessment in accordance with Articles 5 to 10. The projects which fall within Article 4(1) include the 'construction … of airports with a basic runway length of 2 100 m or more', referred to in point 7 of Annex I.

9 Footnote 2 to point 7 states that 'for the purposes of this Directive, "airport" means airports which comply with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14)'.

10 As regards other types of projects, Article 4(2) of Directive 85/337 provides:

'Projects of the classes listed in Annex II shall be made subject to an assessment, in accordance with Articles 5 to 10, where Member States consider that their characteristics so require.

To this end Member States may inter alia specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment in accordance with Articles 5 to 10.'

11 In respect of those projects which fall within Article 4(2) of the directive, point 10(d) of Annex II refers to the 'construction of … airfields (projects not listed in Annex I)' and point 12 of that annex refers to 'modifications to development projects included in Annex I'.

12 Articles 5 to 9 of Directive 85/337, to which Article 4 of that directive refers, essentially state the following: Article 5 specifies the minimum information to be provided by the developer, Article 6 imposes, inter alia, the developer's obligation to inform the authorities and the public, Article 8 refers to the obligation of the competent authorities to take into consideration the information gathered in the assessment procedure, and Article 9 imposes an obligation on the competent authorities to inform the public of the decision taken and any conditions attached to it.

National law

13 In the Region of Wallonia, the assessment of the effects of projects on the environment was governed, until 1 October 2002, by a decree of 11 September 1985 and by the decree implementing it of 31 October 1991.

14 Those decrees provided that the projects listed in Annex I to the Decree of 11 September 1985, which adopted the list in Annex I to Directive 85/337, and in

Annex II to the Decree of 31 October 1991 were automatically subject to an environmental impact assessment. Other projects, for which an impact assessment was not automatically required, only had to be the subject of a prior notice regarding assessment of their impact on the environment.

15 In accordance with Annex I to the Decree of 11 September 1985, the construction of airports with a runway length of at least 2 100 metres had to be subject to an environmental impact assessment. In addition, pursuant to Annex II to the Decree of 31 October 1991, the construction of airports with a runway length of 1 200 metres or more, including the extension of existing runways beyond that threshold and leisure airports, also had to be subject to an environmental impact assessment.

The dispute in the main proceedings and the questions referred

16 The individuals who live near Liège-Bierset Airport complain of noise pollution, often at night, resulting from the restructuring of the former military airport and its use since 1996 by air freight companies.

17 An agreement signed on 26 February 1996 between the Region of Wallonia, Société de développement et de promotion de l'aéroport de Liège-Bierset and TNT Express Worldwide provided for certain modifications to the infrastructure of that airport in order to enable it to be used 24 hours per day and 365 days per year. In particular, the runways were restructured and widened. A control tower, new runway exits and aprons were also constructed. The length of the runway of 3 297 metres was not altered however.

18 Planning consents and operational authorisations were also granted so that the works could be carried out.

19 The dispute pending before the Belgian national court concerns liability: the claimants in the main proceedings have sought compensation for the harm suffered, in their view, by them as a result of the nuisance — which they claim to be serious — linked to the restructuring of the airport.

20 It is in that context that an appeal on a point of law was brought before the Cour de cassation (Court of Cassation) against a judgment delivered on 29 June 2004 by the Cour d'appel de Liège (Court of Appeal of Liège).

21 Considering that the dispute before it raised questions of interpretation of Community law, the Cour de cassation decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does an agreement between public authorities and a private undertaking, signed with a view to having that undertaking become operational at an airport with a runway more than 2 100 metres in length, featuring an exact description of work on the infrastructure to be carried out in relation to the adaptation of the runway, without its being extended, and the construction of a control tower with a view to permitting large aircraft to fly 24 hours per day and 365 days per year, and which provides for both nighttime and daytime flights with effect from the date on which the undertaking becomes operational at that airport constitute a project within the meaning of … Directive 85/337 …, as applicable before its amendment by … Directive 97/11 …?

(2) Do works to modify the infrastructure of an existing airport with a view to adapting it to a projected increase in the number of night-time and daytime flights, without extension of the runway, correspond to the notion of a "project", for which an impact assessment is required within the terms of Articles 1, 2 and 4 of … Directive 85/337 …, as applicable before its amendment by … Directive 97/11 …?

(3) Since a projected increase in the activity of an airport is not directly referred to in the annexes to Directive 85/337 …, must the Member State in question nevertheless take account of that increase when examining the potential environmental effect of modifications made to the infrastructure of that airport with a view to accommodating that increase in activity?'

The questions

The first question

22 By its first question the national court asks whether an agreement such as the one at issue in the main proceedings is a 'project' within the meaning of Directive 85/337.

23 That question calls for a negative answer. It is apparent from the very wording of Article 1(2) of Directive 85/337 that the term 'project' refers to works or physical interventions. An agreement cannot, therefore, be regarded as a project within the meaning of Directive 85/337, irrespective of whether that agreement contains a more or less exact description of the works to be carried out.

24 However, in order to provide a satisfactory answer to a national court which has referred a question to it, the Court of Justice may also deem it necessary to consider provisions of Community law to which the national court has not referred in the text of its question (see, inter alia, Case 35/85 *Tissier* [1986] ECR 1207, paragraph 9).

25 In the present case, it should be pointed out to the national court that it is for it to determine, on the basis of the applicable national legislation, whether an agreement such as the one at issue in the main proceedings constitutes a development consent within the meaning of Article 1(2) of Directive 85/337, that is to say a decision of the competent authority which entitles the developer to proceed with the project (see, to that effect, Case C-81/96 *Gedeputeerde Staten van Noord-Holland* [1998] ECR I-3923, paragraph 20). Such would be the case if that decision could, under national law, be regarded as a decision of the competent authority or authorities granting the developer the right to proceed with construction works or other installations or schemes or to intervene in the natural surroundings and landscape.

26 In addition, where national law provides that the consent procedure is to be carried out in several stages, the environmental impact assessment in respect of a project must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment (see Case C-201/02 *Wells* [2004] ECR I-723, paragraph 53). Thus, where one of those stages involves a principal decision and the other involves an implementing decision which cannot extend beyond the parameters set by the principal decision, the effects which a project may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision. It is only if those effects are not identifiable until the time of the procedure relating to the implementing decision that the assessment should be carried out in the course of the latter procedure (*Wells*, paragraph 52).

27 Finally, the national court should be reminded that the objective of the legislation cannot be circumvented by the splitting of projects and that failure to take account of their cumulative effect 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 Directive 85/337 (see, to that effect, Case C-392/96 *Commission* v *Ireland* [1999] ECR I-5901, paragraph 76).

28 Consequently, the answer to the first question must be that, while an agreement such as the one at issue in the main proceedings is not a project within the meaning of Directive 85/337, it is for the national court to determine, on the basis of the applicable national legislation, whether such an agreement constitutes a development consent within the meaning of Article 1(2) of Directive 85/337. It is necessary, in that context, to consider whether that consent forms part of a procedure carried out in several stages involving a principal decision and implementing decisions and whether account is to be taken of the cumulative effect of several projects whose impact on the environment must be assessed globally.

The second question

29 By its second question the national court asks, in essence, whether works relating to the infrastructure of an existing airport whose runway is already more than 2 100 metres in length fall with the scope of point 12 of Annex II, read in conjunction with point 7 of Annex I, to Directive 85/337, in its original version.

30 Pursuant to point 12 of Annex II in the version prior to Directive 97/11, 'modifications to development projects included in Annex I' constitute projects subject to Article 4(2). Point 7 of Annex I refers to the 'construction … of airports … with a basic runway length of 2 100 m or more'.

31 Société de développement et de promotion de l'aéroport de Liège-Bierset, TNT Express Worldwide and the Kingdom of Belgium submit that it necessarily follows from that wording that only modifications to the 'construction' of an airport with a runway length of 2 100 metres or more are covered and not modifications to an existing airport.

32 The Court has frequently pointed out, however, that the scope of Directive 85/337 is wide and its purpose very broad (see, to that effect, Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 31, and Case C-435/97 *WWF and Others* [1999] ECR I-5613, paragraph 40). It would be contrary to the very objective of Directive 85/337 to exclude works to improve or extend the infrastructure of an existing airport from the scope of Annex II on the ground that Annex I covers the 'construction of airports' and not 'airports' as such. Such an interpretation would indeed allow all works to modify a pre-existing airport, regardless of their extent, to fall outside the obligations resulting from Directive 85/337 and would, in that regard, thus deprive Annex II to Directive 85/337 of all effect.

33 Consequently, point 12 of Annex II, read in conjunction with point 7 of Annex I, must be regarded as also encompassing works to modify an existing airport.

34 That interpretation is in no way called into question by the fact that Directive 97/11 has replaced point 12 of Annex II to Directive 85/337 with a new point 13, which expressly designates 'any change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed …' as a project subject to Article 4(2) of Directive 85/337, as amended by Directive 97/11, whereas point 12 of Annex II merely referred to 'modifications to development projects included in Annex I. The new wording adopted by Directive 97/11, the fourth recital in the preamble to which makes reference to experience acquired in environmental impact assessment and stresses the need to introduce provisions designed to clarify, supplement and improve the rules on the assessment procedure, merely sets out with greater clarity the meaning to be given here to the original wording of Directive 85/337. The Community legislature's amendment cannot, therefore, warrant an *a contrario* interpretation of the directive in its original version.

35 In addition, the fact that the works at issue in the main proceedings do not concern the length of the runway is not relevant to the question whether they fall within the scope of point 12 of Annex II to Directive 85/337. Point 7 of Annex I to Directive 85/337 makes a point of defining the term 'airport' by reference to the definition given in Annex 14 to the Chicago Convention of 7 December 1994 on International Civil Aviation. Under that annex, an aerodrome is 'a defined area on land or water (including any buildings, installations and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft'.

36 It follows that all works relating to the buildings, installations or equipment of an airport must be considered to be works relating to the airport as such. For the application of point 12 of Annex II, read in conjunction with point 7 of Annex I, to Directive 85/337, that means that works to modify an airport with a runway length

of 2 100 metres or more thus comprise not only works to extend the runway, but all works relating to the buildings, installations or equipment of that airport where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. That is the case in particular for works aimed at significantly increasing the activity of the airport and air traffic.

37 Finally, it is appropriate to remind the national court that, although the second subparagraph of Article 4(2) of Directive 85/337 confers on Member States a measure of discretion to specify certain types of projects which will be subject to an assessment or to establish the criteria and/or thresholds applicable, the limits of that discretion are to be found in the obligation set out in Article 2(1) of the directive that projects likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment are to be subject to an impact assessment (*Kraaijeveld and Others*, paragraph 50).

38 Thus, a Member State which establishes criteria and/or thresholds taking account only of the size of projects, without also taking their nature and location into consideration, would exceed the limits of its discretion under Articles 2(1) and 4(2) of Directive 85/337.

39 It is for the national court to establish that the competent authorities correctly assessed whether the works at issue in the main proceedings were to be subject to an environmental impact assessment.

40 The answer to the second question must therefore be that point 12 of Annex II, read in conjunction with point 7 of Annex I, to Directive 85/337, in their original version,

also encompasses works to modify the infrastructure of an existing airport, without extension of the runway, where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. That is the case in particular for works aimed at significantly increasing the activity of the airport and air traffic. It is for the national court to establish that the competent authorities correctly assessed whether the works at issue in the main proceedings were to be subject to an environmental impact assessment.

The third question

41 By its third question the national court asks, in essence, whether the competent authorities have an obligation to take account of the projected increase in the activity of an airport in determining whether a project covered by point 12 of Annex II to Directive 85/337 must be made subject to an assessment of its impact on the environment.

42 As stated in paragraph 32 of this judgment, the Court has frequently pointed out that the scope of Directive 85/337 is wide and its purpose very broad. In addition, although the second subparagraph of Article 4(2) of Directive 85/337 confers on Member States a measure of discretion to specify certain types of projects which will be subject to an assessment or to establish the criteria and/or thresholds applicable, the limits of that discretion are to be found in the obligation set out in Article 2(1) that projects likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment are to be subject to an impact assessment. In that regard, Directive 85/337 seeks an overall assessment of the environmental impact of projects or of their modification.

43 It would be simplistic and contrary to that approach to take account, when assessing the environmental impact of a project or of its modification, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable to result from the use and exploitation of the end product of those works.

44 Moreover, the list laid down in Article 3 of Directive 85/337 of the factors to be taken into account, such as the effect of the project on human beings, fauna and flora, soil, water, air or the cultural heritage, shows, in itself, that the environmental impact whose assessment Directive 85/337 is designed to enable is not only the impact of the works envisaged but also, and above all, the impact of the project to be carried out.

45 The Court has thus held, in relation to a project to double an existing railway track, that a project of that kind can have a significant effect on the environment within the meaning of Directive 85/337, since it is likely to produce, inter alia, significant noise effects (Case C-227/01 *Commission* v *Spain* [2004] ECR I-8253, paragraph 49). In that case, the significant noise effects were brought about not by the works involved in doubling the railway track but by the foreseeable increase in rail traffic permitted precisely by the works involved in doubling the track. The same must apply to a project, such as the one in dispute in the main proceedings, which seeks to enable an increase in the activity of an airport and, consequently, in the intensity of air traffic.

46 Therefore, the answer to the third question must be that the competent authorities have to take account of the projected increase in the activity of an airport when examining the environmental effect of modifications made to its infrastructure with a view to accommodating that increase in activity.

Costs

47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **While an agreement such as the one at issue in the main proceedings is not a project within the meaning of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, it is for the national court to determine, on the basis of the applicable national legislation, whether such an agreement constitutes a development consent within the meaning of Article 1(2) of Directive 85/337. It is necessary, in that context, to consider whether that consent forms part of a procedure carried out in several stages involving a principal decision and implementing decisions and whether account is to be taken of the cumulative effect of several projects whose impact on the environment must be assessed globally.**

2. **Point 12 of Annex II, read in conjunction with point 7 of Annex I, to Directive 85/337, in their original version, also encompasses works to modify the infrastructure of an existing airport, without extension of the runway, where they may be regarded, in particular because of their nature, extent and char-**

acteristics, as a modification of the airport itself. That is the case in particular for works aimed at significantly increasing the activity of the airport and air traffic. It is for the national court to establish that the competent authorities correctly assessed whether the works at issue in the main proceedings were to be subject to an environmental impact assessment.

3. The competent authorities have to take account of the projected increase in the activity of an airport when examining the environmental effect of modifications made to its infrastructure with a view to accommodating that increase in activity.

[Signatures]