ORDER OF THE COURT (Sixth Chamber)

10 July 2008 *

In Case C-156/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Consiglio di Stato (Italy), made by decision of 24 October 2006, received at the Court on 21 March 2007, in the proceedings

Salvatore Aiello and Others

v

Comune di Milano and Others,

intervening parties:

Euromilano SpA,

Metropolitana milanese SpA,

* Language of the case: Italian.

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, J.-C. Bonichot, (Rapporteur) and C. Toader, Judges,

Advocate General: J. Mazák,
Registrar: R. Grass,

having informed the referring court that the Court proposes to give its decision by reasoned order in accordance with the second subparagraph of Article 104(3) of its Rules of Procedure,

after hearing the Advocate General,

makes the following

Order

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 impact of certain

public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5; 'Directive 85/337').

2 The reference was made in the course of proceedings between Salvatore Aiello and Others and the Comune di Milano (Municipality of Milan) and Others concerning the construction of a road linking certain districts in the north of Milan.

Legal context

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

'For the purposes of this Directive:

…

"development consent" means:

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

4 Article 1(4) of Directive 85/337 provides:

'Projects serving national defence purposes are not covered by this Directive.'

5 Article 1(5) of Directive 85/337 states:

'This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.'

6 Article 2(1) of Directive 85/337 provides:

'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 a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.'

7 Article 2(3) of Directive 85/337 provides:

'Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.'

8 Article 4 of Directive 85/337 provides:

'1. Subject to Article 2(3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

(b) thresholds or criteria set by the Member State,

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.

4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.'

9 Paragraph 7(c) of Annex I to Directive 85/337 refers to:

'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.'

10 Paragraph 10(e) of Annex II to Directive 85/337 refers to:

'Construction of roads,…'

11 Annex III to Directive 85/337 states:

'1. *Characteristics of projects*

The characteristics of projects must be considered having regard, in particular, to:

— …

— the cumulation with other projects,

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 By a decree of 15 November 2001, the Prime Minister of the Italian Republic declared a state of emergency in the city of Milan on account of the pollution resulting from car traffic and the inadequacy of the existing road network. By order of 28 December 2001, the Minister of the Interior appointed the Mayor of Milan as the Commissioner responsible for the implementation of the necessary measures to deal with that situation.

13 In his capacity as Commissioner for traffic and mobility issues in Milan, the Mayor of that city approved a programme of works, which included the construction project for a road linking certain districts in the north of Milan, of a length of 1 600m. On 29 October 2002, he approved the final project for that road.

14 Mr Aiello and other residents in the area affected challenged that decision before the Tribunale amministrativo regionale per la Lombardia (Lombardy Regional Administrative Court). They claimed, inter alia, that the procedure followed did not comply with Community law because no environmental impact assessment of the project had been carried out.

15 That court dismissed the action as unfounded, and Mr Aiello and Others lodged an appeal against that judgment before the Consiglio di Stato (Council of State).

16 The Consiglio di Stato ordered measures of inquiry from which it is apparent that, although the 1953 General Regulatory Plan for the municipality of Milan envisaged the construction of a road permitting a rapid connection between districts of the city more than 10 kilometres apart, that objective had finally been abandoned in favour of a different project, concerning the construction of a number of separate roads. Two roads are planned, the first of which is at the origin of the main proceedings and the second of which is a different road of a length of 1 300m.

17 The Consiglio di Stato considers, therefore, that the project at issue in the main proceedings does not fall within the context of the construction of a single road of more than 10 kilometres for the purposes of Annex I to Directive 85/337, which lists the projects for which an environmental impact assessment is obligatory, but within that of Annex II to that legislation, which refers merely to the construction of roads.

18 However, the Consiglio di Stato enquires whether the project being challenged should not be subject to such an assessment in accordance with, inter alia, Article 4 of Annex II read in conjunction with Annex III to Directive 85/337, on the ground that that project forms part of a larger operation for the restructuring of all the roads of the districts concerned, so that the competent authority should have taken into consideration the 'cumulation' of the separate projects, a factor expressly set out by Annex III. Accordingly, it decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Must Article 2 of Council Directive [85/337], in so far as it states that projects likely to have significant effects on the environment are to be made subject to an environmental impact assessment, and that such projects are defined in Article 4 [thereof], be interpreted as meaning:

— that any project with a significant effect on the environment must, even if it is not listed in Annexes I or II to the Directive, be made subject to an environmental impact assessment;

— or, conversely, that only projects of a kind listed in Annexes I and II to the Directive must be made subject to an environmental impact assessment?

2. Does Article 4 of Council Directive [85/337], in so far as it gives Member States the possibility of providing for environmental impact assessments to be carried out for projects in the classes listed in Annex II [thereto] on the basis of case-by-case assessments or predetermined criteria — account also being taken of the criteria set out in Annex III [thereto] — create a specific obligation or merely an option for the Member States to take account of all the criteria listed in Annex III ?

3. Does Article 1 of the Presidential Decree of 12 April 1996 constitute due transposition into national law of Article 4 of Directive [85/337] and Annex III thereto by the Italian legislature, given that it does not provide, as a criterion for making projects in the classes listed in Annex II to the Directive subject to an environmental impact assessment, for the criterion of cumulation with other projects, as referred to in Annex III to the Directive?'

The questions referred

19 Under Article 104(3) of the Rules of Procedure, inter alia, where the answer to a question referred may be clearly deduced from its existing case-law or where the answer to that question leaves no scope for any reasonable doubt, the Court may, after hearing the Advocate General, give its decision by reasoned order.

Admissibility

20 The Comune di Milano (Municipality of Milan) submits that the questions raised by the Consiglio di Stato are inadmissible because the two projects for the construction of roads to which the latter refers in the order for reference are distinct projects and are not, moreover, such as to have a cumulative impact on the environment.

21 In accordance with settled case-law, in the context of the cooperation between the Court of Justice and the national courts under Article 234 EC, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted for a preliminary ruling concern the interpretation of Community law, the Court is, in principle, bound to give a ruling (see, inter alia, Joined Cases C-223/99 and C-260/99 *Agorà and Excelsior* [2001] ECR I-3605, paragraph 18).

22 In the present case, the referring court has clearly stated that it requires the interpretation of several of the provisions of Directive 85/337 in order to ascertain whether

the road construction project at issue in the main proceedings should be subject to an environmental impact assessment.

23 In addition, the Court may not decline to give a ruling on a question referred to it by a national court unless it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual facts of the main action or its purpose or where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, *Agorà and Excelsior*, paragraph 20).

24 In the present case, none of those conditions are met.

25 Accordingly, the reference for a preliminary ruling is admissible.

Substance

26 Taking the view that the answer to the three questions referred leaves no scope for any reasonable doubt, the Court, pursuant to the second paragraph of Article 104(3) of its Rules of Procedure, informed the referring court that it proposed to give its decision by reasoned order and called on the interested parties referred to in Article 23 of the Statute of the Court of Justice to submit any observations they might have in that regard.

27 Aeillo and Others and the Commission of the European Communities replied to the Court's request. The Commission in its reply stated that it had no objection to

the Court giving its decision by way of reasoned order. Aiello and Others submitted arguments similar to those raised in their written observations and requested that a hearing be held. However, those factors have not persuaded the Court to depart from the procedural approach envisaged.

— The first question

28 By its first question, the referring court is essentially asking whether Article 2(1) of Directive 85/337 must be interpreted as meaning that projects likely to have significant effects on the environment, but which are not referred to in Annexes I and II to that directive, must nevertheless be subject to an environmental impact assessment which complies with the assessment set out in that directive.

29 Article 2(1) of Directive 85/337 provides that projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location and which must, therefore, be subject to an assessment with regard to those effects, are defined in Article 4 of that directive.

30 Article 4 provides, in paragraph 1 thereof, that the projects listed in Annex I shall be made subject to an environmental impact assessment and, in paragraph 2 thereof, that, with regard to projects listed in Annex II to that directive, it is for the Member States to determine whether they should be subject to such an assessment on the basis of certain thresholds or certain criteria.

31 It must also be noted that that article renders both situations referred to in the preceding paragraph subject to the application of Article 2(3) of Directive 85/337,

which allows Member States, in exceptional cases, to exempt a specific project in whole or in part from the requirement to make an assessment.

32 Furthermore, Article 1 of Directive 85/337 provides, in paragraph 4 thereof, that the directive does not cover projects serving national defence purposes and, in paragraph 5 thereof, that it does not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of that directive are deemed to be achieved through the legislative process.

33 In any event, it must also be pointed out that the scope of Directive 85/337 is wide and its purpose very broad (see Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 31, and Case C-227/01 *Commission* v *Spain* [2004] ECR I-8253, paragraph 46), and it must be implemented in that spirit.

34 Consequently, having regard to paragraphs 29 to 32 of this order, the answer to the first question referred must be that Article 2(1) of Directive 85/337 must be interpreted as not requiring that any project likely to have a significant effect on the environment be made subject to the environmental impact assessment provided for in that directive, but only those referred to in Annexes I and II to that directive, under the conditions set out in Article 4 thereof and subject to Articles 1(4) and (5) and 2(3) thereof.

— The second question

35 By its second question, the referring court essentially asks whether Member States are required to take account of the selection criteria listed in Annex III to Directive 85/337 when they determine, pursuant to Article 4(2) of that directive, in respect

of the projects in the classes listed in Annex II thereto and on the basis of case-by-case assessments, or thresholds or criteria fixed by the Member State, whether those projects must be subject to the environmental impact assessment procedure.

36 In this connection, the Court has already held that, although Member States may establish the criteria and/or thresholds necessary to determine which of the projects in the classes listed in Annex II to Directive 85/337, in its original version, are to be subject to an assessment, their discretion is limited by the obligation, set out in Article 2(1) of that directive, to subject projects likely to have significant effects on the environment, particularly by virtue of their nature, size or location, to an assessment with regard to their impact (see, inter alia, Case C-486/04 *Commission* v *Italy* [2006] ECR I-11025, paragraph 53).

37 Under Article 4(2) of Directive 85/337, it is for the Member States to determine themselves in which cases the projects in the classes listed in Annex II to that directive must be made subject to an environmental impact assessment, whereas the projects in Annex I thereto must always be subject to such a procedure.

38 That provision leaves the Member States two options. The first is to decide on a case-by-case basis whether a project covered by Annex II must be made subject to the assessment. The second is to determine, in a general and abstract manner and according to thresholds or criteria, the projects in that annex which must be made subject to the assessment.

39 It stems from the actual wording of Article 4(3) of Directive 85/337 that that Directive requires Member States, in both cases, to take into account the relevant selection criteria set out in Annex III to that directive, that is to say, those of the criteria which must be applied in the light of the characteristics of the project concerned.

40 Therefore, the answer to the second question referred is that Directive 85/337 does require the Member States to take account of the relevant selection criteria listed in Annex III to Directive 85/337 when they determine, in respect of the projects in the classes listed in Annex II thereto, either on the basis of case-by-case assessments, or on the basis of thresholds or criteria fixed by the Member State, whether the projects concerned must be subject to the environmental impact assessment procedure.

— The third question

41 By its third question, the referring court is essentially requesting the Court to specify whether the Italian legislation at issue in the main proceedings constitutes due transposition into national law of Article 4 of Directive 85/337, given that that secondary legislation does not set out the criterion of cumulation with other projects, which is none the less referred to in Annex III to that directive, as a selection criterion to be taken into account when the competent national authority determines whether projects in the classes listed in Annex II to that directive must be made subject to an environmental impact assessment.

42 It is settled case-law that the Court has no jurisdiction, in proceedings brought on the basis of Article 234 EC, to rule on the compatibility of national rules with Community law. On the other hand, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of Community law necessary to enable that court to rule on the compatibility of those national rules with Community law (see Joined Cases C-338/04, C-359/04 and C-360/04 *Placanica and Others* [2007] ECR I-1891, paragraph 36 and the case-law cited).

43 In the present case, it is apparent from the order for reference that the national court wishes to establish whether the Member States, in the transposition of the Directive into their domestic legal order, are required to adopt a provision drawing attention to the obligation to apply the criteria of the cumulation of the project concerned with other projects, referred to in Annex III to that directive, when an assessment is made

of whether a project in the classes listed in Annex II thereto must be made subject to the environmental impact assessment provided for in that directive.

44 First of all, it should be observed that each of the Member States to which a directive is addressed is obliged to adopt, within the framework of its national legal system, all the measures necessary to ensure that the directive is fully effective, in accordance with the objective it pursues (Case C-32/05 *Commission* v *Luxembourg* [2006] ECR I-11323, paragraph 32).

45 The Court has also held that the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the need for legal certainty, which requires that, in the case of a directive intended to confer rights on individuals, the persons concerned must be enabled to ascertain the full extent of their rights (Case C-207/96 *Commission* v *Italy* [1997] ECR I-6869, paragraph 26).

46 In the present case, Article 4 of Directive 85/337 must be interpreted as requiring the competent authority to take into account the relevant selection criteria set out in Annex III to that directive when an assessment is made of whether a project in the classes listed in Annex II thereto must be subject to an environmental impact assessment, both when that assessment is made on the basis of a case-by-case examination and when the Member State concerned has opted for general rules.

47 Where a Member State chooses to determine in a general and abstract manner, as it is permitted to do by Directive 85/337, the projects in the classes listed in Annex II to that directive which must be made subject to an environmental impact assessment, it bears responsibility for drawing up the list of those projects by applying one or more of the relevant criteria in Annex III, as appropriate. The criterion of cumulation can therefore, where relevant, be used to make one type of project subject to such an assessment, having regard to the completion of that project with other projects and if necessary taking into consideration the completion of all those projects during a specific period of time.

48 Where a Member State opts, on the contrary, wholly or partially, to determine on a case-by-case basis the projects in the classes listed in Annex II to Directive 85/337 which must be made subject to an environmental impact assessment, it bears responsibility for ensuring that the competent national authorities have regard to the various criteria listed in Annex III to that directive in so far as those criteria are relevant having regard to the characteristics of the project concerned.

49 For that purpose, the Member State may refer, in its national legislation, to the criteria in Annex III. It can also integrate those criteria into its legislation, by expressly providing that the competent authorities must refer to them for the purpose of determining, on a case-by-case basis, whether a project in the classes listed in Annex II to Directive 85/337 must be made subject to an environmental impact assessment.

50 In any event, where a Member State chooses to proceed by that route it cannot, without failing to fulfil its Community obligations, exclude expressly or impliedly one or more of the criteria in Annex III to Directive 85/337, in so far as any of those criteria may, depending on which project in the classes listed in Annex II is concerned, be relevant for the purposes of ascertaining whether an environmental impact procedure must be organised. Depending on the characteristics of the national legal order in question, such an exclusion might dissuade or even prevent the competent national authority from taking into account the criterion or criteria in question.

51 The answer to the third question referred is therefore that, where a Member State opts for determining on a case-by-case basis those of the projects in the classes listed in Annex II to Directive 85/337 which must be made subject to an environmental impact assessment, it must, either by referring in its national rules to Annex III to that directive or by reproducing in its national rules the criteria listed there, ensure that all of those criteria can in fact be taken into account where one or more of them is relevant for the purposes of the project concerned, and cannot expressly or impliedly exclude them.

Costs

52 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 (Sixth Chamber) hereby rules:

1. **Article 2(1) 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, as amended by Council Directive 97/11/EC of 3 March 1997, must be interpreted as not requiring that any project likely to have a significant effect on the environment be made subject to the environmental impact assessment provided for in that directive, but only those referred to in Annexes I and II to that directive, under the conditions set out in Article 4 thereof and subject to Articles 1(4) and (5) and 2(3) of that directive.**

2. **Member States are required to take into account the relevant selection criteria listed in Annex III to Directive 85/337, as amended by Directive 97/11, when they determine, in respect of the projects in the classes listed in Annex II thereto, either on the basis of case-by-case assessments or on the basis of thresholds or criteria fixed by the Member State, whether those projects must be subject to the environmental impact assessment procedure.**

3. **Where a Member State opts for determining on a case-by-case basis those of the projects in the classes listed in Annex II to Directive 85/337, as amended**

by Directive 97/11, which must be made subject to an environmental impact assessment, it must, either by referring in its national rules to Annex III to that directive or by reproducing in its national rules the criteria listed there, ensure that all of those criteria can in fact be taken into account where one or more of them is relevant for the purposes of the project concerned, and cannot expressly or impliedly exclude them.

[Signatures]