OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 30 April 2008 [1]

I — Introduction

1. This reference for a preliminary ruling concerns Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, [2] as amended by Council Directive 97/11/EC of 3 March 1997 [3] ('the EIA Directive'). It relates to five projects to widen and improve a main road in Madrid, which form part of the 'Madrid calle 30' project.

2. That road was classified as an urban road under Spanish law. Urban road construction projects do not fall within the scope of the Spanish rules implementing the EIA Directive. The question therefore arises whether the EIA Directive covers such projects.

1 — Original language: German.
2 — OJ 1985 L 175, p. 40.
3 — OJ 1997 L 73, p. 5.

II — Legal framework

A — *The EIA Directive*

3. Article 2(1) defines the aim of the EIA 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 a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.'

4. Article 3 describes the purpose of the environmental impact assessment:

'The environmental impact assessment shall 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;

— material assets and the cultural heritage;

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

5. Article 4(1) and (2) define which projects are to be assessed:

'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).'

6. Point (7)(b) of Annex I includes certain road construction projects, namely the 'construction of motorways and express roads (2)'. Footnote (2) defines 'express road' as 'a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975'.

7. Other road construction projects are covered by point (7)(c) of Annex I:

'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.'

8. Point (10)(e) of Annex II includes a mention of roads:

'Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I).'

9. Changes to projects are covered by the first indent of point 13 of Annex II:

'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'.

B — *The European Agreement on Main International Traffic Arteries of 15 November 1975*

10. The Agreement has been ratified by 20 Member States, but not by Spain, Estonia, Ireland, Malta, Austria, the United Kingdom or Cyprus. Annex II contains the conditions to which the main international traffic arteries should conform.

11. Section I.1 defines the substantive scope of those conditions:

'The fundamental characteristics of the construction or improvement of the main international traffic arteries, hereafter designated "international roads", are dealt with in the following provisions, which are based on modern concepts of road construction technology. They do not apply in built-up areas. The latter shall be by-passed if they constitute a hindrance or a danger.'

12. In Annex II, sections II.2 and II.3 the terms 'motorway' and 'express road' are defined:

'II. 2. Motorways

"Motorway" means a road specially designed and built for motor traffic, which does not serve properties bordering on it, and which:

(i) Is provided, except at special points or temporarily, with separate carriageways for the two directions of traffic, separated from each other by a dividing strip not intended for traffic or, exceptionally, by other means;

(ii) Does not cross at level with any road, railway or tramway track, or footpath, and;

(iii) Is specially sign-posted as a motorway.

II. 3. Express roads

An express road is a road reserved for motor traffic accessible only from interchanges or controlled junctions and on which, in particular, stopping and parking are prohibited on the running carriageway(s).' [4]

III — Facts, procedure and questions referred for a preliminary ruling

13. On 13 May 2004, the city of Madrid published an invitation to comment, within a period of 20 days, on a total of five projects to improve and widen the M-30 road within the urban area. The public also had 45 days within which to comment in a further development consent procedure under water legislation. On 24 January 2005, the city published its decision of 17 January 2005, by which it had given consent to the projects. The non-governmental organisation Ecologistas en Acción-CODA brought an action against that consent.

4 — After amendment that definition now states:
'An express road is a road reserved for motor traffic accessible from interchanges or controlled junctions only and which,
(i) Prohibits stopping and parking on the running carriageway(s)
(ii) Does not cross at level with any railway or tramway track, or footpath.'

14. The referring court describes the subject-matter of these proceedings as follows:

'In effect what is before the court is a challenge to an administrative measure which approves only five of the sub-projects or specific restructuring works on the road network and surrounding area of the M-30 which, taken together, entail a vast and highly complex civil engineering operation which corresponds to a single overall project to improve and refurbish virtually the whole of the Madrid ring road which is known and referred to as the "Madrid calle 30" project…, which the City Council has split up in this way and treated as 15 distinct and independent projects. Thus all but one of the different sections constitute less than the 5 kilometres of alteration or rehabilitation work on any existing road referred to in epigraph 95 of Annex 2 to Ley 2/2002, although the project as a whole far exceeds these dimensions. It is estimated that this project for the total overhaul and extension of the M-30 will mean an increase in traffic on the motorway of almost 25% and it involves a wide range of different works in the surrounding urban area.'

15. In order for a ruling to be given on the action, the Court has been asked the following questions:

'(1) Are the procedural requirements relating to environmental impact assessments arising from [the EIA Directive] applicable to urban road projects, having regard to their nature, size and effect on densely populated areas or on landscapes of historical, cultural or archaeological significance?

(2) Are the procedural requirements relating to environmental impact assessments arising from [the EIA Directive] applicable to the projects which form the subject-matter of these administrative appeal proceedings, having regard to their nature, the nature of the road on which they are to be carried out, their characteristics, size, effect on the surrounding area, density of population, budget and the possible splitting up of a larger project which contemplates similar works on the same road?

(3) Are the criteria set out in Case C-332/04 [5] *Commission* v *Spain*, and specifically those contained in paragraphs 69 to 88 of the judgment, applicable to the projects which are the subject-matter of these proceedings, having regard to their nature, the nature of the road on which

5 — Case C-332/04 *Commission* v *Spain* [2006] ECR I-40.

they are to be carried out, their characteristics, size, effect on the surrounding area, budget and the possible splitting up of a larger project which contemplates similar works on the same road, such that there was a requirement to submit them to the prescribed environmental impact assessment procedure?

(4) Do the relevant administrative records and, specifically, the studies and reports contained therein, demonstrate that the Spanish authorities have, in practice, complied with the obligations arising from [the EIA Directive] relating to the environmental assessment of the projects which are the subject-matter of these proceedings, even if the project was not formally made subject to the prescribed environmental assessment procedure set out in the directive?'

16. The applicant in the main proceedings, the non-governmental organisation Ecologistas en Acción-CODA, the defendant, the municipality of Madrid, Italy and the Commission took part in the written procedure, whilst only the municipality of Madrid and the Commission took part in the oral procedure on 2 April 2008.

IV — Legal assessment

A — *The first three questions — urban road construction projects*

17. The Court should consider the first three questions together, as they are essentially identical. The referring court would like to ascertain the conditions under which urban road construction projects, in particular the five projects to be examined by it, are to be made subject to an environmental impact assessment. With reference to the judgment in Case C-332/04, [6] it highlights certain characteristics of the projects:

— the nature and size of the project, in particular the nature of the road, its characteristics and its size,

— the effect on densely populated areas or on landscapes of historical, cultural or archaeological significance,

— the budget, and

6 — Cited in footnote 5.

— the possible splitting up of a larger project which contemplates similar works on the same road.

18. As the Italian Government rightly argues, in answering these questions, it is not possible to examine the compatibility of Spanish law with the EIA Directive. The Court may none the less provide the national court with all the criteria of interpretation of Community law which may enable the national court to assess that compatibility of a national provision with Community law for the purposes of deciding the case before it. [7]

1. Exclusion of urban roads from the environmental impact assessment

19. The municipality of Madrid takes the view that the EIA Directive does not cover the contested projects. Those projects relate to an urban road. The Spanish legislature and the Spanish authorities and courts considered that urban roads do not fall within the scope of the EIA Directive because they are not mentioned in the annexes to the directive.

20. In my view, that is an incorrect interpretation of the EIA Directive. It is true that the EIA Directive does not expressly mention 'urban roads' as such. However, point (7)(b) and (c) of Annex I and point (10)(e) of Annex II refer to *motorways*, *express roads* and *roads*. As the Commission in particular stresses, these are Community-law concepts which must be given an autonomous interpretation. From the perspective of Community law, it would be quite alien to exclude urban roads from the three abovementioned types of roads. In principle all those roads may also occur within urban areas and have significant effects on the environment there.

The significance of the European Agreement on Main International Traffic Arteries of 15 November 1975 for the interpretation of the EIA Directive

21. Motorways and express roads are not defined under point 7(b) of Annex I to the EIA Directive, but recourse may be had to the European Agreement on Main International Traffic Arteries of 15 November 1975. In the case of express roads the application of the Agreement follows from an express reference in point 7(b) of Annex I to the EIA Directive. [8] Although point 7(b) of Annex I to the EIA Directive does not refer to the Agreement for the definition of motorway, its definition can also be used to ensure a uniform interpretation in all the Member States.

7 — See, for example, Case C-107/97 *Rombi and Arkopharma* [2000] ECR I-3367, paragraph 29.

8 — With regard to such a reference to the definition of airports, see Case C-2/07 *Abraham and Others* [2008] ECR I-1197, paragraph 35.

22. Under Article 17(3), the Agreement is authentic in the Community languages of English and French, and in Russian, which is of no further relevance in this case. In order to understand the reference to express roads in the EIA Directive, recourse should be had to the English version of the directive and the Agreement, as both use the expression 'express roads'. On the other hand, the French version of the directive wrongly uses the expression 'voies rapides' rather than the expression 'routes express' from the Agreement.

23. Because the definition of express road has now been amended, the question arises whether the amended or the original version of the definition should be used in interpreting the EIA Directive. The wording of the reference, which does not state that subsequent amendments are to be taken into consideration, would suggest that the original version should be used. In addition, the Community and some Member States are not party to the Agreement. Where there is a reference to the version applicable at a certain time, they would have to accept amendments without being able to influence them directly. Only the original and not the amended version of the definition is therefore to be used.

24. In the view of the municipality of Madrid, urban roads are not express roads or motorways within the meaning of the Agreement. It bases its view on the general rules laid down in section I.1 of Annex II to the Agreement, under which the provisions of the Annex do not apply to built-up areas. This relates in particular to the definitions of express road and motorway in sections II.2 and II.3 of that Annex.

25. However, both the wording of the reference with regard to express roads and the objective of the EIA Directive and the Agreement would suggest that the exclusion of built-up areas from the application of Annex II to the Agreement should not be taken into consideration for the definition of express road and motorway within the meaning of the EIA Directive.

26. The footnote for the definition of 'express road' in point 7(b) of Annex I to the EIA Directive does not make a general reference to express roads within the meaning of the Agreement, but to 'a road which complies with the definition' laid down in the Agreement. It is not therefore a question of transferring the scope of the Agreement; the Community legislature merely employed a definition developed in a different context. That definition does not exclude built-up areas. In the case of the application of the definition of motorway, for which no express provision is made, there is even less reason to exclude urban roads.

27. Furthermore, in interpreting the reference, as with other matters of interpretation in connection with the EIA Directive, account should be taken of its objective.[9] Under Article 2(1) its fundamental objective is that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their

9 — Case C-486/04 *Commission* v *Italy* [2006] ECR I-11025, paragraph 36. With regard to the interpretation of a reference to the definition of airports, see my Opinion in Case C-2/07 *Abraham and Others* [2007], point 45.

nature, size or location should be made subject to an assessment with regard to their effects. [10]

28. Many environmental effects of roads can occur both within and outside urban areas. Furthermore, urban areas are particularly sensitive places for the construction of roads because of the population density, existing environmental pollution, but also any places of historical, cultural or archaeological significance. It is therefore consistent with the aim of the EIA Directive if it covers urban roads. [11]

29. This conclusion is also suggested by the parallelism of the EIA Directive and the Convention on environmental impact assessment in a transboundary context (Espoo, 1991). The Community is a contracting party to that Convention [12] and the EIA Directive seeks to implement it, as is shown in particular by recital 13 in the preamble to Directive 97/11. For the definition of express road and motorway the Espoo Convention uses the original definitions laid down in the European Agreement on Main International Traffic Arteries, and does not preclude an application to urban roads.

10 — Case C-486/04 *Commission* v *Italy* (cited in footnote 9, paragraph 36). See also Case C-287/98 *Linster* [2000] ECR I-6917, paragraphs 49 and 52.

11 — With regard to road construction projects, see Case C-332/04 *Commission* v *Spain* (cited in footnote 5, paragraph 81).

12 — Council Decision of 15 October 1996 on the conclusion, on behalf of the Community, of the Convention on environmental impact assessment in a transboundary context; not published.

The definition of express road and motorway

30. Accordingly, under Annex II, section II.3 of the Agreement, an *express road* is a road reserved for motor traffic accessible only from interchanges or controlled junctions and on which, in particular, stopping and parking are prohibited on the running carriageway. It is irrelevant whether such roads run within urban areas.

31. Annex II, section II.3 of the Agreement defines a *motorway* as a road specially designed and built for motor traffic, which does not serve properties bordering on it. It is generally provided with separate carriageways for the two directions of traffic, separated from each other by a dividing strip not intended for traffic or, exceptionally, by other means. In addition, it does not cross at level with any road, railway or tramway track, or footpath.

32. Lastly, the Agreement requires that the road is specially sign-posted as a motorway. However, that requirement should not be taken into account to satisfy the definition of motorway under the EIA Directive, otherwise the Member States could possibly circumvent the environmental impact assessment requirement by designating a road accordingly.

33. The definition of motorway within the meaning of the EIA Directive therefore also covers urban motorways.

Other roads

34. Many translations of the term 'road' indicate that urban roads should be excluded from the scope of the EIA Directive. For example, in the Spanish version of the EIA Directive the term 'carretera' is used for single-carriageway roads, which like the term 'route' used in the French is understood primarily to mean rural roads. If the EIA Directive covered only motorways, express roads and rural roads, it would not be wrong to relate all three terms to roads outside urban areas.

35. However, there are also language versions of the EIA Directive in which the notion of road explicitly also covers urban transport routes, such as the German term 'Straße' or the English term 'road'.

36. The different language versions of a Community text must be given a uniform interpretation. In the case of divergence between the language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part. [13]

37. This applies to the EIA Directive in particular. It has a wide scope and a broad purpose. [14] As has already been mentioned, [15] before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location should be made subject to an assessment with regard to their effects. The environmental effects of roads can often also occur specifically within urban areas. Consequently, an interpretation of the term 'road' which would exclude urban roads from the scope of the EIA Directive should also be rejected.

Interim conclusion

38. In summary, it must be stated that urban road construction projects fall within the scope of the EIA Directive. It must therefore be examined specifically whether the environmental impact of the contested projects should have been assessed.

13 — With regard to the EIA Directive see Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 28; and, more generally, Case 29/69 *Stauder* [1969] ECR 419, paragraph 3; Case C-300/05 *ZVK* [2006] ECR I-11169, paragraph 16; and Case C-56/06 *Euro Tex* [2007] ECR I-4859, paragraph 27.

14 — Case C-72/95 *Kraaijeveld and Others* (cited in footnote 13, paragraph 31); Case C-435/97 *WWF and Others* [1999] ECR I-5613, paragraph 40; and Case C-2/07 *Abraham and Others* (cited in footnote 8, paragraph 32).

15 — See point 27 et seq. above.

2. Road construction projects under point 7(b) and (c) of Annex I to the EIA Directive

39. Under Article 4(1) and point 7 of Annex I to the EIA Directive, an environmental impact assessment must be carried out where a motorway or an express road is constructed (letter b) and in the case of the 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 (letter c).

40. As has already been stated, the definition of motorway and express road can be found in the European Agreement on Main International Traffic Arteries. Roads within the meaning of point 7(c) of Annex I to the EIA Directive are defined sufficiently there, in particular if it is taken into account that a general exclusion of urban roads from the environmental impact assessment is unlawful. The application of the rules on roads under point 7(b) and (c) of Annex I to the EIA Directive therefore depends neither on their specific effects on the environment nor on their location, their budget or their combined effects with other projects.

41. It cannot therefore be ruled out that the contested projects concern roads which fall within the scope of one of the definitions laid down in point 7(b) or (c) of Annex I to the EIA Directive. However, the requirement to carry out an environmental impact assessment under Article 4(1) exists only where the projects are to be regarded as construction of the road in question.

42. Whilst the present case does concern the improvement and widening of existing roads, such measures can also be treated as equivalent to the construction of roads. In the case of point 7(c) of Annex I to the EIA Directive, this follows directly from the definition, which includes the widening of certain roads.

43. The widening of motorways and express roads within the meaning of point 7(b) of Annex I to the EIA Directive is possibly also to be regarded as construction, however. In a judgment on a Spanish railway project, the Court found that the doubling of an already existing railway track could not be considered a mere modification to an earlier project within the meaning of point 12 of Annex II to the EIA Directive but the construction of a line for long-distance railway traffic under point 7 of Annex I. [16] It relied on the likely significant environmental effects of that project.

16 — Case C-227/01 *Commission* v *Spain* [2004] ECR I-8253, paragraph 46 et seq. See Case C-431/92 *Commission* v *Germany* (Großkrotzenburg) [1995] ECR I-2189, paragraph 35, where the Court considered the enlargement of a power station through the addition of a new block to be a separate project.

44. As the Commission also argues, this idea may be applied in principle to road construction projects. However, a distinction must also be drawn vis-à-vis *changes* to road construction projects under the first indent of point 13 of Annex II. Works in connection with existing roads can therefore be regarded as construction only where they are equivalent to the construction of a new road in terms of their effects on the environment. [17] The construction of a new road could in particular be treated as equivalent to the widening of a single-carriageway road into one of the roads referred to in point 7(b) and (c) of Annex I to the EIA Directive.

3. Other road construction projects

45. If, on the basis of the above criteria, the contested projects do not fall within the scope of Annex I to the EIA Directive, it may nevertheless be necessary to assess their environmental impact. Under Article 4(2) and point 10(e) of Annex II to the EIA Directive, the Member States must determine through a case-by-case examination or thresholds or criteria set by them whether the environmental impact of the construction of roads not included in Annex I must be assessed. The same applies to changes to road construction projects under the first indent of point 13 of Annex II in conjunction with point 7(b) and (c) of Annex I and point 10(e) of Annex II.

46. It is settled case-law that Article 4(2) of the EIA Directive confers on Member States a measure of discretion, the limits of which are to be found in the obligation set out in Article 2(1), to specify 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. [18] In this connection, the characteristics of the projects mentioned by the referring court are significant.

47. The Member States must take into consideration the nature, size and location of the project in order to determine whether significant effects on the environment are likely. [19] In that regard, the EIA Directive seeks an overall assessment of the environmental impact of projects or of their modification. [20] Specifically, both the direct effects of the works envisaged themselves and the environmental impact liable to result from the use and exploitation of the end product

17 — See my Opinion in Case C-2/07 *Abraham and Others* (cited in footnote 9, point 47).

18 — Case C-121/03 *Commission* v *Spain* [2005] ECR I-7569, paragraph 87, and Case C-332/04 *Commission* v *Spain* (cited in footnote 5, paragraph 76). With regard to the original version of the EIA Directive, see Case C-72/95 *Kraaijeveld and Others* (cited in footnote 13, paragraph 50); Case C-392/96 *Commission* v *Ireland* [1999] ECR I-5901, paragraph 64; Case C-117/02 *Commission* v *Portugal* [2004] ECR I-5517, paragraph 82; Case C-83/03 *Commission* v *Italy* [2005] ECR I-4747, paragraph 19; and Case C-2/07 *Abraham and Others* (cited in footnote 8, paragraphs 37 and 42).

19 — Case C-332/04 *Commission* v *Spain* (cited in footnote 5, paragraph 77) and Case C-2/07 *Abraham and Others* (cited in footnote 8, paragraph 38).

20 — Case C-2/07 *Abraham and Others* (cited in footnote 8, paragraph 42).

of those works must be taken into account. [21] Consideration would thus have to be given, for instance, to an increased volume of transport.

48. Furthermore, a high density of population and the historical, cultural or archaeological significance of locations are among the criteria which the Member States must take into account under Article 4(3) of the EIA Directive in the case-by-case examination or the setting of thresholds or criteria for the purpose of Article 4(2). Precisely the same considerations apply in this respect to road construction projects as to urban development projects, which were the subject of the judgment in Case C-332/04. [22]

49. Whilst the budget of a project is possibly an indicator of its size, it appears unlikely that its mere scale allows inferences to be drawn as to its environmental effects. If the budget contains information on environmental effects or the reduction of those effects, other planning documents generally exist which describe those effects or their reduction much better. It therefore appears rather strange to use the budget of a project as a criterion for determining whether an environmental impact assessment is necessary.

50. In principle, favourable environmental effects of a project, as put forward by the municipality of Madrid at the hearing, are not as such significant within the meaning of the EIA Directive. The aims of the directive — preventing the creation of pollution (first recital) and the protection of the environment and the quality of life (third recital) — do not require an assessment to be conducted only because a project can significantly improve the state of the environment. In examining whether an environmental impact assessment is necessary, however, the expectation of favourable environmental effects cannot offset significant adverse environmental effects of a project in such a way that no assessment at all takes place because on balance the project as a whole is beneficial to the environment.

51. Lastly, the objective of the EIA Directive cannot be circumvented by the splitting of projects. [23] Where several projects, taken together, may have significant effects on the environment within the meaning of Article 2(1), their environmental impact should be assessed as a whole. [24] It is necessary to consider projects jointly in particular where they are connected, follow on from one another, or their environmental effects overlap.

21 — Case C-2/07 *Abraham and Others* (cited in footnote 8, paragraph 43).

22 — Cited in footnote 5, paragraph 79.

23 — Case C-392/96 *Commission* v *Ireland* (cited in footnote 18, paragraph 76) and Case C-2/07 *Abraham and Others* (cited in footnote 8, paragraph 27).

24 — Case C-392/96 *Commission* v *Ireland* (cited in footnote 18, paragraph 76) and Case C-2/07 *Abraham and Others* (cited in footnote 8, paragraphs 27 and 28).

52. In the present case, the geographical proximity of the five projects, their similarity, their combined effects in terms of urban traffic management and the fact that they were dealt with together at the hearing and in the development consent procedure would suggest that they should be considered together. Because all the sub-projects affect a limited sector of the urban road network, their environmental effects will in all likelihood overlap and accentuate one another, both in the construction phase and when the improved and widened roads are used.

53. Furthermore, it seems to be common ground that the contested projects form part of the overall project 'Madrid calle M-30' to improve and widen urban main roads. It cannot therefore be ruled out that their environmental impact should be assessed having regard to the overall project.

54. In this connection, the municipality of Madrid raises the additional question whether the contested projects are to be regarded as urban development projects within the meaning of point 10(b) of Annex II. However, there is no need to answer that question in the present case because in any event the case concerns changes of road construction projects within the meaning of point 10(e) and the first indent of point 13. The question whether the environmental impact is to be assessed because the projects are likely to have significant environmental effects does not depend on their classification in another category of projects in the same annex.

4. Interim conclusion

55. The procedural requirements relating to environmental impact assessments arising from the EIA Directive 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.

56. Moreover, neither the information in nor the nature of the present reference for a preliminary ruling allows the Court to examine whether specific characteristics of the contested projects require an environmental impact assessment. It is therefore for the referring court to carry out that examination.

B — *The fourth question — Alternatives to the environmental impact assessment*

57. Lastly, the referring court asks whether the relevant administrative records and, specifically, the studies and reports contained therein, demonstrate that the Spanish authorities have, in practice, complied with the obligations arising from the EIA Directive relating to the environmental assessment of the projects which are the subject-matter of these proceedings, even if the project was not formally made subject to the prescribed environmental assessment procedure set out in the directive.

58. In this respect, it should be stated first of all — in accordance with the view taken by Italy and the Commission — that the Court cannot examine, having regard to the relevant records from the national administrative procedure and, specifically, the studies and reports contained therein, whether the environmental impact of the contested projects was sufficiently assessed. In preliminary ruling proceedings the Court may interpret the relevant provisions of Community law only on the basis of the information contained in the reference made by the national court. It is for the national court to apply that interpretation to the main proceedings.

59. It must also be borne in mind that when ruling on the interpretation of Community provisions, the Court is empowered to do so only on the basis of the facts which the national court puts before it whilst it is for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver. [25] The information provided in orders for reference must not only be such as to enable the Court to reply usefully but must also enable the Governments of the Member States and other interested parties to submit observations pursuant to Article 23 of the Statute of the Court of Justice. [26]

60. In the present case, the reference for a preliminary ruling does not contain any information on the studies and hearings conducted by the competent authorities. Therefore, despite the relatively detailed submissions of the parties to the main proceedings on this point, it is not possible to discuss the extent to which the Spanish authorities actually complied with the requirements of the EIA Directive.

61. Taking these reservations into account, the Court is nevertheless required to give an answer to the fourth question.

25 — Case C-435/97 *WWF and Others* (cited in footnote 14, paragraph 31 et seq.).

26 — Case C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633, paragraph 20, and Case C-467/05 *Dell'Orto* [2007] ECR I-5557, paragraph 42.

62. The Court has recognised in principle that a formal environmental impact assessment may be replaced by equivalent measures. [27] In order to be equivalent, the minimum requirements for an environmental impact assessment under Article 3 and Articles 5 to 10 of the EIA Directive must be met. [28] Measures which were taken only after development consent was given are irrelevant since environmental impact is to be assessed under Article 2(1) of the EIA Directive before consent is given.

63. If the national court concludes that the environmental impact of the contested road construction projects should have been assessed, it will therefore have to examine whether, before consent was given

— the environmental effects were sufficiently investigated and described (Article 3 and Article 5),

— those findings were made available to the public (Article 6 and Article 7),

— the public were able to comment (Article 6 and Article 7), and

— the information on the environmental effects and the comments made by the public were taken into consideration (Article 8).

64. Finally, it should be pointed out, on the basis of the submissions made by the municipality of Madrid, that any statements made by the Commission in connection with Treaty infringement proceedings cannot relieve the referring court of its responsibility to examine itself whether the requirements of the EIA Directive were complied with.

65. The answer to the fourth question must therefore be that 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 the EIA Directive.

27 — Case C-431/92 *Commission* v *Germany* (Großkrotzenburg) (cited in footnote 16, paragraph 41 et seq.) and Case C-227/01 *Commission* v *Spain* (cited in footnote 16, paragraph 56).

28 — With regard to these requirements, see Case C-287/98 *Linster* (cited in footnote 10, paragraph 52 et seq.).

V — Conclusion

66. I therefore suggest that the Court answers the questions referred for a preliminary ruling as follows:

(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.