JUDGMENT OF THE COURT (Third Chamber)

25 July 2008 *

In Case C-142/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Juzgado de lo Contencioso-Administrativo No 22 de Madrid (Spain), made by decision of 23 January 2007, received at the Court on 12 March 2007, in the proceedings

Ecologistas en Acción-CODA

v

Ayuntamiento de Madrid,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, U. Lõhmus (Rapporteur), J. Klučka, P. Lindh and A. Arabadjiev, Judges,

* Language of the case: Spanish.

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 2 April 2008,

after considering the observations submitted on behalf of:

— Ecologistas en Acción-CODA, by J. Doreste Hernández, abogado,

— the Ayuntamiento de Madrid, by I. Madroñero Peloche, acting as Agent, and A. Sánchez Cordero, abogada,

— the Italian Government, by I.M. Braguglia, acting as Agent, and G. Fiengo, avvocato dello Stato,

— the Commission of the European Communities, by A. Alcover San Pedro and J.-B. Laignelot, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2008,

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), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) ('the amended directive').

2 The reference was made in the course of proceedings between Ecologistas en Acción-CODA ('CODA') and the Ayuntamiento de Madrid (Municipality of Madrid) concerning an administrative act approving various projects forming part of the refurbishment and improvement of virtually the whole of the Madrid urban ring road.

Legal background

Community legislation

3 Directive 85/337 was adopted with the aim of harmonising the principles for the assessment of the environmental effects of certain private and public projects, the main obligations of the developers and the content of the assessment of those effects. Annex I to the directive sets out the projects subject to such an assessment, while

Annex II sets out the projects that, in accordance with Article 4(2) of the directive, the Member States could make subject to that assessment where they considered that the characteristics of the projects concerned so required.

4 The amendments that Directive 97/11 made to Directive 85/337 principally concern making projects likely to have effects on the environment subject to a requirement for development consent and an assessment of those effects, and the harmonisation of the criteria that the Member States must use in order to determine whether or not a project falling into one of the categories covered by Annex II must be made subject to such an assessment. Those criteria are henceforth listed in Annex III to the amended directive.

5 Article 1(2) of the amended directive contains the following definitions:

'"project" means:

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

— other interventions in the natural surroundings and landscape …

"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.'

6 Article 2(1) of the amended directive 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. …'

7 Article 3 of the amended directive provides:

'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.'

8 Under Article 4(1) of the amended directive, projects listed in Annex I thereto are to be made subject to an assessment, subject to the exceptional cases exempted under Article 2(3) of that directive.

9 In accordance with Article 4(2) and (3) of the amended directive, each Member State is to determine, through a case-by-case examination or on the basis of thresholds or criteria which it sets, by taking account of the selection criteria set out in Annex III to the directive, whether the projects referred to in Annex II are to be made subject to an assessment.

10 Point 7 of Annex I to the amended directive mentions, under heading (b), projects for '[c]onstruction 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'.

11 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').

12 In point 10 of Annex II to the amended directive, entitled 'Infrastructure projects', subheading (b) mentions '[u]rban development projects' and subheading (e) projects for '[c]onstruction of roads … (projects not included in Annex I)'.

13 The first indent of point 13 of Annex II covers '[a]ny 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 agreement

14 The agreement was ratified by all the Member States except seven. The Kingdom of Spain did not ratify it.

15 Under Title II thereof, entitled 'Classification of International Roads', Annex II to the agreement contains inter alia the following definitions:

'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).'

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

16 By decision of 17 January 2005, the Concejala del Área de Gobierno de Urbanismo, Vivienda e Infraestructuras del Ayuntamiento de Madrid (Councillor for Planning, Housing and Infrastructure of the Municipality of Madrid) approved various projects for refurbishment and improvement of the Madrid urban ring road, identified under number M-30.

17 Those projects concern specifically the re-routing underground, first, of the M-30 between Marquès de Monistrol and Puente de Segovia, between Puente de Segovia and Puente de San Isidro, between Puente de San Isidro and Puente de Praga and between Puente de Praga and Nudo Sur and, second, of the Avenida de Portugal as far as the San Vicente roundabout. According to CODA's observations, which are not contradicted in that respect, the M-30 is a road intended exclusively for motor traffic, without traffic lights, pavements or verges for pedestrians and without bus stops or taxi ranks.

18 The projects are part of a complex civil engineering scheme which consists in improving and refurbishing virtually the whole of the Madrid urban ring road. That scheme, also called 'Madrid calle 30', aims, according to the observations of the Ayuntamiento de Madrid, to reduce congestion on the roads and the risk of accidents, and not to increase the traffic capacity on that road.

19 After its administrative appeal against the abovementioned decision of 17 January 2005 had been rejected by decision of 23 May 2005, CODA brought an action before the referring court for annulment of the latter decision. Like the administrative appeal, the action for annulment is based, inter alia, on a plea alleging infringement of the national rules on environmental impact assessment applicable to such projects and which derive in part from the amended directive.

20 It is apparent from the order for reference that 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 five 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. It is also clear from the referring court's explanations that, according to certain estimates, 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.

21 Having regard to the scale and the implications of the scheme, the referring court wonders whether, in accordance with the amended directive, it should not be made subject to an environmental impact assessment.

22 Before the referring court, the Ayuntamiento de Madrid, while asserting that it had never had the intention of preventing the application of the amended directive, pointed out that the dispute arose from an interpretation common to all the national authorities which have reviewed the legality of the relevant projects. It also submitted that to extend, in this case, the judgment in Case C-332/04 *Commission* v *Spain* of 16 March 2006 to situations other than that at issue in the case which gave rise to that judgment would require detailed reasoning by the Court of Justice.

23 The referring court also set out the observations submitted by the Communidad autónoma de Madrid (Autonomous Community of Madrid), according to which there is confusion between preliminary ruling proceedings and actions for failure to fulfil obligations, because the hearing mainly concerned possible infringements of Community law.

24 In those circumstances the national court decided to stay its proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are the procedural requirements relating to environmental impact assessments arising from [the amended 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 amended 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 [*Commission* v *Spain*, paragraphs 69 to 88] applicable to the projects which are the subject-matter of these 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, 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 amended 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?'

The questions referred for a preliminary ruling

The first three questions

25 By the first three questions, which it is appropriate to examine together, the referring court asks essentially whether the amended directive must be interpreted as meaning that projects for the refurbishment and improvement of virtually the whole of an urban ring road must be made subject to an environmental impact assessment taking account, inter alia, of the nature of those projects, the type of road in question, the characteristics and size of the projects, their effect on densely populated areas or landscapes having a historical, cultural or archaeological significance, and the fact that they are the result of the splitting up of a larger project concerning the execution of a series of similar works on the same road.

26 Under Article 4(1) of the amended directive, projects listed in Annex I thereto are to be made subject to an environmental impact assessment. According to Article 4(2), the Member States are to determine, by taking account of the conditions set out in that provision, which projects listed in Annex II to the directive must be made subject to such an assessment.

27 According to the Ayuntamiento de Madrid, the ring road concerned in the main proceedings 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. Furthermore, those terms are not defined, except, with respect to the notion of express road, by reference to the definition given by the agreement. According to the defendant in the main proceedings, in the absence of clarification as to those terms, the Spanish law transposing the amended directive repeated its exact words. Since urban roads are not mentioned there, 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.

28 That argument cannot be accepted. The Court has stated on numerous occasions that the scope of Directive 85/337 and that of the amended directive is very wide (see, to that effect, 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; and Case C-2/07 *Abraham and Others* [2008] ECR I-1197, paragraph 32). 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.

29 Point 7(b) and (c) of Annex I to the amended directive mentions among the projects which must be made subject to an environmental impact assessment 'motorways', 'express roads' and '[c]onstruction 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'. As to Annex II, it mentions in point 10(e) and the first indent of point 13 respectively '[c]onstruction of roads' and '[a]ny 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' among the projects for which the Member States may require an environmental impact assessment to be carried out in accordance with Article 4(2) of that directive. In that regard it must be stated, first, as the Commission of the European Communities rightly submits, that the concepts in those annexes are Community law concepts which must be interpreted independently and, second, that it is conceivable that the types of road which are mentioned therein are sited both in and outside built-up areas.

30 The amended directive does not define the concepts mentioned above with the exception of 'express roads', for which it refers to the agreement thereby including the definition of 'express road' contained therein. Since not all the Member States are parties to that agreement, this reference concerns the version of the agreement in force when Directive 85/337 was adopted, that is the agreement of 15 November 1975

31 According to Annex II to the agreement, an express road is a road reserved for motor traffic accessible only from interchanges or controlled junctions and on which stopping and parking are prohibited on the running carriageway(s). It does not follow from that definition that roads sited in urban areas would a priori be excluded. On the contrary, unless roads in built-up areas are expressly excluded, the words 'express roads' cover urban roads which have the characteristics set out in that annex.

32 The same agreement defines the concept of 'motorway' as inter alia a road specially designed and built for motor traffic, which does not serve properties bordering on it, does not cross at level with any road, railway or tramway track, or footpath, and is specially sign-posted as a motorway. Even though the amended directive does not make express reference to that definition, the agreement may be a useful tool for understanding the similar concept in Annex I to the directive.

33 It follows from case-law which is now well established that the Member States must implement the amended directive, in the same way as Directive 85/337, in a manner which fully corresponds to its requirements, having regard to its fundamental objective which, as is clear from Article 2(1), is that, 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 (see, to that effect, Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 52, and Case C-486/04 *Commission* v *Italy* [2006] ECR I-11025, paragraph 36).

34 Accordingly, urban road projects must be regarded as falling within the scope of the amended directive.

35 As is clear from CODA's observations, which are not contradicted in that respect, the projects at issue in the main proceedings concern a road intended exclusively for motor traffic, without traffic lights, pavements or verges for pedestrians and without

bus stops or taxi ranks. It is for the referring court to make the findings of fact from which it may verify those aspects in order to determine, taking account of the guidance set out in paragraphs 30 to 33 of this judgment, whether those projects are covered by one of the concepts in Annex I to the amended directive and must therefore be made subject to an environmental impact assessment.

36 For that purpose, the fact that point 7(b) and (c) of Annex I to the amended directive refers to projects for the 'construction' of the types of road mentioned, whereas the case in the main proceedings concerns projects for refurbishment and improvement of an existing road, does not mean that the latter 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 (see, to that effect, Case C-227/01 *Commission* v *Spain* [2004] ECR I-8253, paragraph 46, and *Abraham and Others*, paragraph 32).

37 If it appeared that the projects at issue in the main proceedings do not concern motorways or express roads within the meaning of point 7(b) of Annex I to the amended directive or projects referred to in point 7(c) thereof, the referring court would still be required to examine whether the projects at issue in the main proceedings are covered by Annex II to the amended directive, either under point 10(e), inasmuch as they concern construction of a road, or under the first indent of point 13 read together with point 10(e) of Annex II, in so far as they concern a change to a road construction project.

38 In that respect, it must be recalled that if, like Article 4(2) of Directive 85/337, the same provision of the amended directive confers on Member States a measure of discretion in order to determine whether a project falling in the categories listed in Annex II thereto must be made subject to an environmental impact assessment, the limits of that discretion are to be found in the obligation set out in Article 2(1) of the amended 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 (see, regarding Directive 85/337, *Kraaijeveld and Others*, paragraph 50, and *Abraham and Others*, paragraph 37). In applying their discretion, the Member

States must take account of each of those criteria in order to determine whether projects are likely to have an effect on the environment (Case C-332/04 *Commission* v *Spain*, paragraph 77).

39 In that regard, in the same way as Directive 85/337, the amended directive adopts an overall assessment of the effects of projects or the alteration thereof on the environment. 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 (see, as regards Directive 85/337, *Abraham and Others*, paragraphs 42 and 43).

40 As far as concerns the location of projects, point 2(g) and (h) of Annex III to the amended directive mentions densely populated areas and landscapes of historical, cultural or archaeological significance as selection criteria which the Member States must take into account, in accordance with Article 4(3) of the directive, for the case-by-case examination or the setting of the thresholds or criteria provided for in Article 4(2), in order to determine whether a project must be made subject to an assessment. Those selection criteria may also concern urban road projects (see, to that effect, Case C-332/04 *Commission* v *Spain*, paragraph 79).

41 However, the fact relied on by the Ayuntamiento de Madrid that the projects at issue in the main proceedings should have beneficial effects on the environment is not relevant in determining whether it is necessary to make those projects subject to an assessment of their environmental impact.

42 Moreover, like that in Article 3 of Directive 85/337, the list in Article 3 of the amended directive of the factors to be taken into consideration, such as the effects of a project on, inter alia, human beings, fauna and flora, soil, water, air or cultural heritage, shows, in itself, that the environmental impact whose assessment the amended directive 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 (see, to that effect, *Abraham and Others*, paragraph 44).

43 As the Advocate General rightly stated, in point 28 of her Opinion, projects concerning roads may have many environmental effects both within and outside urban areas, since those areas are particularly sensitive because of population density, existing pollution, but also given the presence of any places of historical, cultural or archaeological importance (see, to that effect, Case C-332/04 *Commission* v *Spain*, paragraph 81).

44 Lastly, as the Court has already noted with regard to Directive 85/337, 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 (see, as regards Directive 85/337, Case C-392/96 *Commission* v *Ireland* [1999] ECR I-5901, paragraph 76, and *Abraham and Others*, paragraph 27).

45 As regards the projects at issue in the main proceedings, it is clear from the order for reference that they are all part of the larger project 'Madrid calle 30'. It is for the referring court to verify whether they must be dealt with together by virtue, in particular, of their geographical proximity, their similarities and their interactions.

46 Therefore, the answer to the first three questions must be that the amended directive 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.

The fourth question

47 By its fourth question, the referring court asks essentially whether the studies undertaken and reports compiled on the projects at issue in the main proceedings satisfy the requirement of an environmental impact assessment as prescribed by the amended directive.

48 Under the procedure envisaged in Article 234 EC, which is based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts in the case is a matter for the national court. The Court of Justice is thus empowered only to rule on the interpretation or validity of Community provisions on the basis of the facts which the national court puts before it (see, in particular, Case C-235/95 *Dumon and Froment* [1998] ECR I-4531, paragraph 25, and Case C-467/04 *Gasparini and Others* [2006] ECR I-9199, paragraph 41).

49 This question invites the Court to express a view on certain factual elements on which the dispute in the main proceedings is based, that is to determine whether the inquiries, hearings and analyses carried out by the national authorities constitute, with respect to the projects concerned, an environmental impact assessment within the meaning of the amended directive.

50 It is for the national court to undertake such an examination, in the knowledge that a formal assessment may be replaced by equivalent measures where they satisfy the minimum requirements set out in Article 3 and Articles 5 to 10 of the amended directive.

51 Therefore there is no need to answer the fourth question.

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 (Third Chamber) hereby rules:

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.

[Signatures]