OPINION OF ADVOCATE GENERAL MISCHO

delivered on 29 April 1999 *

1. The Verwaltungsgericht, Autonome Sektion für die Provinz Bozen (Administrative Court, Autonomous Division for the Province of Bolzano), Italy, informs the Court that a project for the 'restructuring of Bolzano St Jakob Airport' was approved in 1997 by Decision No 1230 of 27 March 1997 of the Regional Government of the Autonomous Province of Bolzano-South Tyrol and by letter of 11 April 1997 from the Landeshauptmann (Regional Prime Minister).

2. Those decisions are being challenged by the appellants in the main proceedings, who are persons claiming to reside near the airfield, and by two environmental associations. They take the view that the project is likely to have significant effects on the environment and should therefore have been subject to an environmental assessment within the meaning of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [1] (hereinafter 'the Directive').

3. According to the order for reference, the purpose of the project is to transform an airfield which since 1925/26 has been used for military purposes, for private flying, and, to a limited extent and for a short time, also for civil purposes, into an airport which can be used commercially, with the aim of having regular scheduled flights, and also charter and cargo flights.

4. The work and alterations envisaged are essentially as follows: renewal of the existing runway, construction of access roads and car parks, construction of a control tower with air traffic control installations, construction of a departure building and a hanger, the carrying out of the necessary connections and diversions and so forth, and also extension of the runway from 1 040 to 1 400 metres. At the time when the order for reference was sent, the last work project had not yet been approved because the local development plan had to be altered first.

5. This restructuring of Bolzano Airport is provided for in the regional development plan approved by Law No 3 of the Auton-

* Original language: French.

1 — OJ 1985 L 175, p. 40.

omous Province of Bolzano of 18 January 1995, which mentions the following: 'An environmental study in order to determine the current relevance and the compatibility of a third level airport'.

6. The project was also considered by the Regional Amtsdirektorenkonferenz (Conference of Directors) and an opinion was issued under the 'simplified environmental assessment' procedure provided for in Articles 11 to 13 of Law No 27 of the Province of Bolzano of 7 July 1992 concerning the introduction of environmental impact assessments (hereinafter 'Law No 27/92').

7. According to the referring court, the national rules are as follows:

An environmental assessment is required for the projects listed in Annex I to Law No 27/92.

8. An environmental assessment is also required for the projects set out in Annex II to Law No 27/92. That obligation is, however, dependent on whether the threshold specified in that annex is reached.

9. As regards airports, paragraph 11(e) of Annex II provides that an environmental assessment is required for all projects for the new construction of airports.

10. The respondents contend that the project at issue is accordingly not covered by that provision because it does not involve the construction of a new airport but the alteration of an existing airfield.

11. Under the second paragraph of Article 2 of Law 27/92, projects comprising extensions and alterations are to be subject to an environmental assessment.

12. Firstly, this obligation applies if the projects exceed by more than 20% the thresholds for separate projects specified in

Annex II, which is not so in the present case since Annex II does not give a threshold for airfields.

13. Secondly, the obligation also applies where an environmental assessment is required under Annex I. In the present case, Annex I does not apply either since it only covers airports with a runway length of 2 100 metres or more, and, as we have seen, the project at issue involves extending the existing runway to 1 400 metres.

14. It is clear from the facts stated above, which are taken from the order for reference, that the national rules do not require a project for altering an airfield, like the project at issue in the present case, to be subject to an environmental impact assessment.

15. The national court, however, is of the view that such a project does have a significant impact on the environment. It asks, therefore, whether the relevant national rules are in conformity with the Directive.

16. The Directive, as Article 1(1) states, applies to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

17. Article 1(2) defines 'project' as

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

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

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

18. Article 1(4) provides:

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

19. Article 1(5) provides:

'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.'

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

21. Article 4 provides:

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

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

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

22. Among the projects referred to in Article 4(1) of the Directive, paragraph 7 of Annex I mentions 'Construction of... airports with a basic runway length of 2 100 m or more.'

23. As regards the projects referred to in Article 4(2) of the Directive, they include, in point 10(d) of Annex II, 'Construction of... airfields (projects not listed in Annex I)'.

24. Lastly, point 12 of Annex II to the Directive also mentions 'Modifications to development projects included in Annex I' to the Directive.

Questions referred by the national court

25. The questions referred by the national court are as follows:

'(1) Is Article 4(2) of Directive 85/337/EEC to be interpreted as meaning:

(a) that certain classes of the projects listed in Annex II may from the outset, in the absolute discretion of the Member States, be excluded in their entirety from the obligation to carry out an environmental assessment; or

(b) that the margin of discretion enjoyed by the Member States is limited by the obligation laid down in Article 2(1) of the Directive to subject to an environmental assessment in any event those projects likely to have significant effects on the environment, by virtue inter alia of their nature, size or location?

(c) Does Article 4(2) of the Directive, in conjunction with Article 2(1) thereof, allow a Member State to specify (or not to specify) types of project or criteria and/or thresholds so that the restructuring of an airport with a runway shorter than 2 100 metres is excluded from environmental assessment from the outset although it is environmentally significant, or is the margin of discretion which the Member State enjoys under Article 4(2) of the Directive (if (b) is answered in the affirmative) thereby exceeded?

(2) Is Article 4(2) of the Directive, in conjunction with Article 2(1), to be interpreted as meaning that the obligation to carry out an environmental assessment also applies to the extension and restructuring of the projects in Annex II if significant effects on the environment are likely, or do Arti-

cles 4(2) and 2(1) allow environmentally significant projects comprising restructuring to be excluded, expressly or *impliedly* (for example, by rules which are not applicable to airports), from environmental assessment from the outset?

(3) To what extent does Article 2(1) of the Directive, also in conjunction with Article 2(2), allow the Member States to introduce (or use) alternative assessment procedures to that of an ordinary environmental assessment and if a positive answer is given to this question:

(a) what essential requirements or minimum requirements must such an assessment satisfy in order to accord with the objectives of the Directive and, in particular,

(b) is the participation of the public within the meaning of Article 6 of the Directive an essential requirement of an environmental assessment?

(4) May Article 1(5) of Directive 85/337 be interpreted as also covering projects which, while provided for in a legislative provision which sets out a programme, are approved under a separate administrative procedure?

What minimum environmental requirements must the "legislative process" contain in order to achieve the "objectives... including that of supplying information" pursued by the Directive?

(5) Is the exclusion of projects from the scope of the Directive pursuant to Article 1(4) to be applied to an airfield used for both civil and military purposes?

Could the applicable criterion be the *predominant use* or is it sufficient for the exclusion to apply that the airfield is *also* used for military purposes?

(6) If the Directive has been incorrectly transposed, is Article 4(2) thereof, in conjunction with Article 2(1), vertically directly effective (self-executing) in the sense that the authorities of the

Member State are required to subject the projects at issue to an environmental assessment?'

Preliminary observations

26. A few preliminary observations are called for.

27. The appellants in the main proceedings are asking the Court to rule on what the practical consequences of its decision might be, particularly in view of the fact that the work at issue appears to be already well advanced.

28. The respondents have also made a number of criticisms of the order for reference, contesting the statement of the facts. They also claim that the referring court exceeded its powers by taking certain decisions.

29. Considerations such as those set out above do not fall within the jurisdiction of the Court in the course of preliminary ruling proceedings. The Court is only called upon to provide the national court, on the basis of the order for reference, with guidance on the points of Community law needed in order to resolve the case brought before it. All other aspects of the case, including the legal consequences to be drawn in this particular instance from the interpretation provided by the Court, remain within the jurisdiction of the court making the reference.

The first and second questions

30. These two questions should be dealt with together because they relate essentially to the same issue, namely the extent of the discretion left to Member States by the abovementioned Article 4(2) of the Directive.

31. The national court would like to know, firstly, whether, under Article 4(2), Member States are entitled from the outset to exclude in their entirety certain classes of projects listed in Annex II to the Directive from the obligation to carry out an environmental assessment or if their discretion in this matter is limited by Article 2(1) of the Directive.

32. As all the intervening parties make clear, the settled case-law of the Court points to the second answer.

33. The Court has ruled that: [2]

'... although the second paragraph of Article 4(2) of the Directive confers on Member States a measure of discretion to specify certain types of projects which will be subject to an assessment or to establish the criteria or thresholds applicable, the limits of that discretion are to be found in the obligation set out in Article 2(1) that projects likely, by virtue *inter alia* of their nature, size or location, to have significant effects on the environment are to be subject to an impact assessment.'

34. The Court inferred from this, in the *Kraaijeveld* judgment, that a Member State could exclude an entire class of projects from the obligation to carry out an impact assessment only if all the projects excluded could be regarded in their entirety as not being likely to have significant effects on the environment.

35. Those principles should be extended to cover alterations and other restructuring work which the national court mentions in its second question.

36. It is true that the Directive does not mention them explicitly in respect of the projects listed in Annex II. Nevertheless, it cannot be inferred from this that only new constructions come within the scope of the Directive. The Court held in its judgment in *Kraaijeveld and Others*, cited above, that:

'the mere fact that the Directive does not expressly refer to modifications to projects included in Annex II, as opposed to modifications to projects included in Annex I, does not justify the conclusion that they are not covered by the Directive.'

37. Lastly, the national court asks the Court of Justice about the scope of the above principles in circumstances such as those of this case.

38. The first question to be considered is whether, in the light of those principles, the project at issue is covered by the Directive.

39. There is no disagreement between the various intervening parties that, as the

2 — Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403. See also Case C-133/94 *Commission* v *Belgium* [1996] ECR I-2323.

court making the reference also recognises, the project at issue cannot fall within Annex I to the Directive. Point 7 of that Annex covers the 'Construction... of airports with a basic runway length of 2 100 m or more', whereas the project at issue relates to a runway which is to be extended by 1 040 metres to 1 400 metres.

40. The parties disagree, however, over whether the project should be regarded as falling within Annex II, point 10(d) of which relates to the 'Construction... of airfields (projects not listed in Annex I)'.

41. The respondents in the main proceedings claim that it follows from that provision that only new constructions are covered by Annex II and not the restructuring of existing airfields.

42. The other intervening parties in the proceedings consider, however, that Annex II of the Directive should be interpreted as covering the restructuring and alteration of existing facilities.

43. In my view, the last analysis is the one to be adopted. It is apparent from the case-law cited above, and from the principles underlying it, that the scope of the Directive should be interpreted broadly, in order not to jeopardise its effectiveness. This is why the Court has already ruled, as we saw above, that alterations to projects coming under Annex II are also covered by that Annex, even if they are not explicitly mentioned in it.

44. It will also be seen that the legislature confirmed that interpretation in the new version of Annex II introduced by Council Directive 97/11/EC of 3 March 1997, amending Directive 85/337.[3] Indeed, it includes an additional point 13, which reads:

'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.'

45. It is clear from the order for reference that the effect of the relevant national rules, contained in Regional Law No 27/92, is to exempt all projects for the restructuring of existing airports from the obligation to carry out an impact assessment.

3 — OJ 1997 L 73, p. 5.

46. As we can see from the case-law quoted above, the competent national authorities were not at liberty to exclude in this way any class of projects unless it could be shown that all the projects excluded could be regarded in their entirety as not being likely to have significant effects on the environment.

47. The present case, however, has certain special aspects.

48. Thus, it is claimed by the respondents that the airport in question is the only one in the entire region capable of being restructured. This consideration was clearly in the mind of the regional legislature when it adopted Law No 27/92.

49. The regional legislature did not therefore, through provisions implicitly excluding alterations to airports, exclude an entire class of projects within the meaning of the case-law of the Court, but, in adopting that Law, exercised its right to regard a specific project, namely the alteration of the only airport capable of alteration, as not being likely to have a significant effect on the environment.

50. To that argument there is, however, the objection that, even if the region did have only one airport with the potential for enlargement, such enlargement could take very differing forms and scale and, consequently, it would be impossible for the legislature to assess the impact of possible restructuring on the environment when adopting Law No 27/92.

51. At all events, the question whether, in adopting Law No 27/92 excluding the alterations to the airport from the obligation to carry out an impact assessment, the legislature exceeded the margin of discretion it enjoyed under Article 4(2) of the Directive, which is what the referring court is asking the Court to rule, is not decisive as regards the case in the main proceedings.

52. It is not disputed between the parties that, in the present case, an examination was carried out into the environmental effects of the specific project concerned. The developer for the proposed work was asked to carry out a study. Various regional bodies, including the Environment Agency, were subsequently approached. The municipalities concerned were informed and numerous opinions were sought. The decision to grant consent for the work, apart from the extension of the runway which required different procedures, was not adopted until all these steps had been taken.

53. Thus, in addition to the question whether, by excluding in its legislation all

airport alterations from the assessment obligation, the Autonomous Province of Bolzano-South Tyrol exceeded the margin of discretion it has under Article 4(2) — which, as we have seen, is indisputable — we should consider whether the individual examination, following which the regional authorities excluded the specific project at issue, was carried out in compliance with that provision.

54. Article 4(2) provides that Member States 'may *inter alia*' specify certain types of projects or establish the criteria and/or thresholds necessary to determine which of the projects are to be subject to an assessment in accordance with the Directive.

55. This is clearly an option not an obligation. Even if Member States do not exercise that option, they are none the less required to take in each particular case an *ad hoc* decision as to whether or not the project concerned should, or should not, be subject to an assessment within the meaning of the Directive.

56. This is made even clearer in the new version of the Directive, cited above, which includes an Article 4(2) now worded as follows:

'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.

...'

57. In the present case, the competent authorities carried out a 'case-by-case examination'. The Directive does not give

us any explicit details regarding the procedure to be followed in order to carry out an examination of this type or its substantive content.

58. It is therefore up to the national authorities to follow the procedures which they deem appropriate. Ultimately, it is clear that the examination at issue, which is a way in which Member States exercise their margin of discretion under Article 4(2) of the Directive, must meet the conditions laid down in the case-law of the Court relating to that provision.

59. Thus, the objectives of the Directive would be jeopardised if, in opting for such an individual examination, the national authorities excluded a project having significant effects on the environment from the obligation to carry out an impact assessment.

60. The examination at issue must therefore enable the competent authorities to assess as accurately as possible the environmental impact of the project as a whole, even if some of the work, as in the present case, is subject to a specific consent procedure.

61. It is appropriate to point out in this connection that the new version of the Directive lists, in Annex III, the criteria to be taken into account.

62. It is for the national court to determine, on the basis of its monitoring powers under national law, whether in the present case the examination carried out by the competent authorities was such that it enabled them to assess properly whether the effects of the project on the environment were significant or not.

The third question

63. By this question the court making the reference is asking the Court to what extent Article 2(1) of the Directive, also in conjunction with Article 2(2), authorises Member States to apply assessment procedures which are different from those provided for in the Directive. It also asks whether, if so, there are any minimum requirements which such procedures must satisfy.

64. Article 2(2) provides: 'The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing

this, into other procedures or into procedures to be established to comply with the aims of this Directive.'

65. In the statement of the grounds of its order for reference, the national court explains that it has doubts as to whether the impact study which was carried out in this case under an existing national procedure meets the conditions laid down by the Directive.

66. Here, a fundamental clarification is necessary. As was established above, the competent authorities do not say that they followed an 'alternative' assessment procedure but rather a case-by-case examination under Article 4(2) of the Directive, following which, they decided that an assessment within the meaning of the Directive was not necessary. I have already analysed above the conditions which such an examination must meet.

67. The Court could therefore decide that no answer need be given to the third question.

68. I myself, however, would prefer to give an explicit answer which could be along these lines:

'The environmental impact assessment of a project must satisfy the requirements laid down in Articles 5 to 10 of the Directive even where that assessment is integrated into an existing national consent procedure within the meaning of Article 2(2) of the Directive.'

69. However, where it appears, in particular at the end of a case-by-case examination carried out under Article 4(2), that observance of the assessment procedure provided for in the Directive is not required, a Member State is at liberty to establish an alternative procedure, or not to do so, and to lay down the requirements thereof.

The fourth question

70. By its fourth question, the national court is essentially asking the Court of Justice what requirements must be satisfied in order for a project to be covered by the

exemption provided for in Article 1(5) of the Directive, which reads as follows:

'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.'

71. The national court states that in the present case the project was certainly provided for 'in a legislative provision which sets out a programme', but, according to that court, consent for it was granted under a separate administrative procedure.

72. It is clear from the actual words used in the Directive that the legislation in question must take the form of a specific act of legislation which adopts the details of the project.

73. As the intervening governments and the Commission correctly state, this means firstly that all the aspects of the project which are relevant to the environmental impact assessment must be known when such legislation is adopted and have been taken into account at that time.

74. This is indeed confirmed by the reference to the objectives of the Directive in Article 1(5). The sixth recital in the preamble to the Directive states that 'development consent for... projects... should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out;... this assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question'.

75. The national legislation at issue should therefore contain those various items of information in order to comply with Article 1(5) of the Directive. Otherwise, the objectives of the Directive would be jeopardised since a project could be adopted without a prior assessment of its environmental impact.

76. The national legislation must also grant consent for the project concerned, in the sense that it should not be necessary to adopt subsequently a consent decision imposing additional requirements on the

developer, or add further details in addition to those contained in the legislative act.

77. It is true that Article 1(5) refers to 'details' being 'adopted' rather than 'consent' being given. However, it is impossible to regard a project as having been adopted in detail where the detailed requirements regarding its implementation are to be laid down subsequently in another instrument. 'Adoption in detail' implies a measure which is both sufficiently detailed and sufficiently definitive. As the Italian Government correctly states, once the specific act of legislation is adopted, there should no longer be any margin of discretion with regard to aspects of the project concerning its impact on the environment.

78. The requirement that the specific act of national legislation concerned must comprise development consent for the project is, moreover, as the United Kingdom Government points out, also the result of the fact that the purpose of the Directive is, according to the fifth recital in the preamble, to coordinate and supplement national development consent procedures, and by the fact that the act of national legislation has the same effect in law as development consent which has taken into account the information specified in the Directive.

79. It follows therefore that legislation which only refers in general terms to the project concerned, by stating for example the need to carry out studies in advance to determine its feasibility, and which must be followed by further procedures designed *inter alia* to impose additional requirements, in particular as regards the project's environmental impact, before development consent is finally given, cannot be covered by Article 1(5) of the Directive.

80. It is for the national court to apply the requirements set out above to the legislation at issue in the present case.

81. The referring court also asks what minimum requirements, from the point of view of environmental assessment, must be satisfied by the legislative process in order to attain 'the objectives of [the] Directive, including that of supplying information'.

82. In view of the foregoing, if an answer must still be given to this question I would say that the Directive does not impose any minimum requirements on the legislative process followed in a Member State. The objectives of the Directive are deemed to be protected if a specific act of legislation has adopted the details of the project concerned. The provision is based on the principle that, where those requirements

are met, all the groups concerned have been adequately informed and have been put in a position to make known their reactions.

The fifth question

83. The fifth question relates to whether an airport which is used for both civilian and military purposes is excluded from the scope of the Directive on the ground that, under Article 1(4), the Directive does not cover projects serving national defence purposes.

84. Like the Kingdom of the Netherlands and the Commission, I am of the view that this is a special provision which should be interpreted restrictively.

85. It is apparent from its wording that it is the purpose of the project concerned which is the decisive factor.

86. Article 1(4) is therefore only applicable to projects primarily intended to serve national defence purposes. It is not sufficient that the new installations could continue to serve national defence purposes also, and that military units would remain stationed there and use the airport on a permanent and institutionalised basis for national defence purposes, which is the argument put forward by Airport Bolzano-Bozen AG and Südtiroler Transportstrukturen AG.

87. As the United Kingdom Government points out, the alteration and extension of an airport is covered by the derogating provision only where the project serves the predominant purpose of national defence.

88. The file on the case shows that the objective of the disputed project is essentially to adapt the airport in question for increased civilian, particularly tourist, use.

89. As the Italian Government states, that objective has no discernable link with military use. It adds, in this connection, that the Province of Bolzano, which is responsible for giving development consent for the work, has no jurisdiction in national defence matters. Under Italian law, projects and decisions concerning schemes intended for national defence purposes are the responsibility of the defence authority.

90. It follows from the foregoing that a project such as that at issue in this case, which is designed to adapt an airport for

increased civilian use, is not covered by the exception provided for in Article 1(4) of the Directive.

The sixth question

91. The referring court asks whether the provisions of Article 4(2) in conjunction with Article 2(1) of the Directive are sufficiently precise and unconditional to have direct effect and require the competent national authorities to submit a project to an environmental impact assessment where the Directive has been incorrectly transposed at national level.

92. As all the intervening parties state, the Court in *Kraaijeveld and Others*, cited above, has already considered the question of the direct effect of those provisions. In that case, national rules under which certain classes of project were excluded from the obligation to conduct an environmental impact assessment were at issue.

93. In the present case, we have seen that the situation is slightly different since the problem is not limited to the exclusion of certain projects by the operation of rules having general application but also relates to a decision taken, after examination, not to conduct an environmental impact assessment in the case of a specific project.

94. None the less, both situations concern the same issue, namely the extent of the margin of discretion which Member States enjoy under Article 4(2) of the Directive, and whether an individual can assert his rights where that margin is exceeded.

95. I therefore consider that it is necessary to apply here also the principles set out by the Court in the case of *Kraaijeveld and Others*. In that case, it held that the national court is under an obligation to monitor whether the legislative or administrative authorities of a Member State remained within the margin of discretion laid down in Article 2(1) and Article 4(2) of the Directive.

96. The fact that those authorities considered that a given project did not require an assessment within the meaning of the Directive could not of itself provide proof that that margin had been exceeded.

97. The Court ruled, moreover, that, where that discretion has been exceeded, the national provisions must be set aside and it is for the authorities of the Member State to take all the general or particular mea-

sures necessary to ensure that projects are examined in order to determine whether they are likely to have a significant impact on the environment and, if so, to ensure that they are subject to an assessment of that impact.

98. As the United Kingdom Government states, the final decision lies with the authorities appointed by the Member State in accordance with Article 1(3) of the Directive.

Conclusion

99. I therefore propose that the Court give the following answers to the questions submitted by the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen:

The first and second questions

Article 4(2) 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 must be interpreted as meaning that it does not permit a Member State to exclude a particular project from the obligation to conduct an environmental impact assessment until after the project has been examined as a whole, allowing it to be concluded that it is not likely to have significant effects on the environment.

The third question

An assessment of the effects of a project on the environment must satisfy the requirements laid down in Articles 5 to 10 of Directive 85/337 even where that assessment is integrated into the existing national consent procedure within the meaning of Article 2(2) of the Directive.

However, where it appears, in particular following a case-by-case examination carried out under Article 4(2) of Directive 85/337, that the assessment procedure provided for by the Directive is not required, the Member State is at liberty to follow an alternative procedure, or not to do so, and to lay down the conditions thereof.

The fourth question

Article 1(5) of Directive 85/337 must be interpreted as meaning that it only covers projects which have been approved by a specific act of legislation which relates to all the aspects of a particular project which are likely to be relevant as regards possible effects on the environment.

The fifth question

Article 1(4) of Directive 85/337 must be interpreted as not being applicable to a project which is essentially for civil purposes.

The sixth question

The provisions of Article 4(2) in conjunction with those of Article 2(1) of Directive 85/337 must be interpreted as meaning that, where the margin of discretion conferred under those provisions has been exceeded by the legislative or administrative authorities of a Member State, the national rules or measures which are incompatible with those provisions must be set aside and the competent authorities must take all the general or particular measures within their powers necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an assessment of those effects.