JUDGMENT OF THE COURT (Fourth Chamber)

22 September 2011 *

In Case C-295/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Vyriausiasis administracinis teismas (Lithuania), made by decision of 13 May 2010, received at the Court on 15 June 2010, in the proceedings

Genovaitė Valčiukienė,

Julija Pekelienė,

Lietuvos žaliųjų judėjimas,

Petras Girinskis,

Laurynas Arimantas Lašas

v

Pakruojo rajono savivaldybė,

* Language of the case: Lithuanian.

Šiaulių visuomenės sveikatos centras,

Šiaulių regiono aplinkos apsaugos departamentas,

intervening parties:

Sofita UAB,

Oltas UAB,

Šiaulių apskrities viršininko administracija,

Rimvydas Gasparavičius,

Rimantas Pašakinskas

THE COURT (Fourth Chamber),

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

Advocate General: J. Kokott,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 18 May 2011,

after considering the observations submitted on behalf of:

— Valčiukienė and Pekelienė, the Lietuvos žaliųjų judėjimas as well as P. Girinskis and L. Arimantas Lašas, by S. Dambrauskas, advokatas,

— the Lithuanian Government, by D. Kriaučiūnas and J. Balčiūnaitė, acting as Agents,

— the European Commission, by P. Oliver and A. Steiblytė, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 3(2)(a), (3), (5), 11(1) and (2) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

2 The reference has been made in proceedings between, on the one hand, Ms Valčiukienė and Ms Pekelienė, the Lietuvos žaliųjų judėjimas (Lithuanian Green Movement), Mr Girinskis and Mr Arimantas Lašas and, on the other, the Pakruojo rajono savivaldybė (Pakruojas District Council), Šiaulių visuomenės sveikatos centras (Šiauliai Centre for Public Health) and Šiaulių regiono aplinkos apsaugos departamentas (Šiauliai Regional Department for Environmental Protection) concerning, inter alia, two decisions of 23 March and 20 April 2006 of the Pakruojo rajono savivaldybė confirming two detailed plans governing the construction of an intensive

pig-rearing complex with capacity for 4000 pigs and the proper use of plots of land where the complexes would be based.

Legal context

European Union Law

Directive 2001/42

3 The 10th to 12th and 19th recitals in the preamble to Directive 2001/42 provide:

‘(10) All plans and programmes which are prepared for a number of sectors and which set a framework for future development consent of projects listed in Annexes I and II to 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, “Directive 85/337”)], … are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment. When they determine the use of small areas at local

level …, they should be assessed only where Member States determine that they are likely to have significant effects on the environment.

(11) Other plans and programmes which set the framework for future development consent of projects may not have significant effects on the environment in all cases and should be assessed only where Member States determine that they are likely to have such effects.

(12) When Member States make such determinations, they should take into account the relevant criteria set out in this Directive.

…

(19) Where the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, such as Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds [OJ 1979 L 103, p. 1], Council Directive 92/43/EEC Council [of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7)] or Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [OJ 2000 L 337, p. 1], in order to avoid duplication of the assessment, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation.'

4 As set out in Article 1 of Directive 2001/42, its objective is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with

this directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

5 Article 2 of Directive 2001/42 provides:

'For the purposes of this Directive:

(a) "plans and programmes": shall mean plans and programmes … as well as any modifications to them:

— which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and

— which are required by legislative, regulatory or administrative provisions;

(b) "environmental assessment" shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

…'

6 Article 3 of Directive 2001/42 provides:

‘(1) An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

(2) Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, …

…

(3) Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level … shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.

…

5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive.

…'

7 Article 11 of Directive 2001/42, entitled 'Relationship with other Community legislation', provides in paragraphs 1 and 2:

'(1) An environmental assessment carried out under this Directive shall be without prejudice to any requirements under Directive 85/337… and to any other Community law requirements.

(2) For plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation in order, inter alia, to avoid duplication of assessment.'

8 Annex II to Directive 2001/42 sets out the criteria for determining the likely significance of environmental effects as referred to in Article 3(5) of that directive.

Directive 85/337

9 Under Article 4(1) of Directive 85/337, 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.

10 Point 17 of Annex I to Directive 85/337 concerns installations for the intensive rearing of pigs with more than 3 000 places for production pigs.

11 Article 4(2) of Directive 85/337 provides:

'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).'

National law

Law on protection of the environment

12 Under Article 1(10), (17) and (18) of the Law on protection of the environment (Aplinkos apsaugos įstatymas), as amended by the law of 19 February 2004 (Žin., 2004, No 36-1179, 'Law on protection of the environment'), for the purposes of that legislation:

'(10) *environmental impact assessment* shall mean the process of determination, description and assessment of the likely effect of the planned economic activities on the environment;

...

(17) *strategic assessment of consequences for the environment* shall mean the process of establishing, defining and assessing the potential environmental consequences of the implementation of certain plans and programmes, during which documents are to be drawn up concerning the strategic assessment of effects on the environment, consultations carried out, with account being taken of the results of the assessment and consultations before any plan or programme is adopted and/or confirmed, and

information provided in connection with the decision on the adoption and/or confirmation of the plan or programme;

(18) *plans and programmes* are documents relating to planning at national, regional or local level (… land planning documents, …) which are prepared, approved and/or adopted according to the legislation in force or in accordance with the implementing powers of public administrative authorities and the effects of the implementation of which may have a significant environmental impact, including modifications, in whole or in part, to such plans and programmes.'

13 The first paragraph of Article 27 of the Law on protection of the environment provides that the plans and programmes whose implementation may significantly affect the environment are to be prepared and implemented on the basis of that and other laws as well as legal measures governing the strategic assessment of effects on the environment, land planning and environmental monitoring.

Law on land planning

14 According to Article 4(3), subparagraph 4, of the Law on land planning (Teritorijų planavimo įstatymas), as amended by the law of 15 January 2004 (Žin., 2004, No 21-617, 'Law on land planning'), detailed plans, such as those at issue in the main proceedings, are documents relating to land planning at local level.

15 Article 25(4) of the Law on land planning provides that, in the case where a detailed plan is being drawn up, a strategic assessment of the environmental effects of decisions relating to a land planning document is to be carried out only in the case where that is provided for in the legislation and other legal measures.

Decree No 967 of 18 August 2004

16 The provisions of Directive 2001/42 have been implemented in Lithuanian law by Decree No 967 of the Government of the Republic of Lithuania which confirmed the Schedule governing the procedure for the strategic assessment of the environmental effects of plans and programmes (Nutarimas dėl planų ir programų strateginio pasekmių aplinkai vertinimo tvarkos aprašo patvirtinimo), of 18 August 2004 (Žin., 2004, No 130-4650, the 'Schedule confirmed by Decree No 967').

17 Point 7.1 of the Schedule confirmed by Decree No 967 provides that an assessment must mandatorily be carried out in the case where plans and programmes are prepared for the use of land or for land planning and determine the basis for the realisation of projects of economic activity listed in the first or second annexes to the Law of the Republic of Lithuania on the assessment of the environmental impact of planned economic activity (Planuojamos ūkinės veiklos poveikio aplinkai vertinimo įstatymas), as amended by the law of 21 June 2005 (Žin., 2005, No 84-3105, 'Law on the assessment of the environmental impact of planned economic activity').

18 Point 3.4 of the Schedule confirmed by Decree No 967 provides, however, that the Schedule is not to apply to the preparation and confirmation of 'land planning documents … which mention only one subject of economic activity'.

19 Decree No 967 of 18 August 2004 was repealed by Decree No 467 of the Government of the Republic of Lithuania of 27 April 2011 (Žin., 2011, No 50), which annulled point 3.4 relating to the Schedule confirmed by Decree No 967 with effect from 1 May 2011.

Law on the assessment of the environmental impact of planned economic activity

20 The Law on the assessment of the environmental impact of planned economic activity is intended, inter alia, to implement Directive 85/337.

21 Point 1.1 of Annex 1 to that law includes a 'pig-rearing plant (900 or more sows; 3 000 or more other pigs)'.

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

22 By decision of 24 March 2005, the Pakruojo rajono savivaldybė approved the request submitted by Saerimner UAB to construct up to 11 pig-rearing complexes in the Pakruojas district.

23 On 23 February 2006, the Pakruojo rajono savivaldybė authorised Sofita UAB and Oltas UAB, whose parent company is Saerimner UAB, to commission detailed plans concerning the construction of two intensive pig-rearing complexes with capacity for 4 000 pigs in two villages near to Klovainiai, which is situated in the Pakruojas district.

24 By two decisions of 23 March and 20 April 2006, the Pakruojo rajono savivaldybė approved those detailed plans, governing, in the same way, the construction of those complexes, each with capacity for 4 000 pigs and a 10 000 m3 capacity reservoir for pig slurry, as well as the use of the land where the complexes would be based.

25 Those detailed plans have defined the use of land at local level. Under Article 4(3), subparagraph 4, of the Law on land planning, such detailed plans are documents relating to land planning at local level.

26 The applicants in the main proceedings disputed, before the Šiaulių apygardos administracinis teismas (Šiauliai Regional Administrative Court), inter alia, the legality of the two decisions approving the plans, claiming that the competent authorities should have carried out a strategic assessment of the effects on the environment as provided for in Article 1(17) of the Law on protection of the environment.

27 By its judgment of 21 February 2009, the Šiaulių apygardos administracinis teismas dismissed the action as unfounded.

28 It held that, according to national law, and in particular point 3.4 of the Schedule confirmed by Decree No 967, the procedure for the strategic assessment of environmental effects does not apply to land planning documents which mention only one subject of economic activity.

29 It stated that, in this case, only the Law on the assessment of the environmental impact of planned economic activity had to be applied, as had been the case. Therefore, only an environmental impact assessment within the meaning of Article 1(10) of the Law on protection of the environment had been carried out in respect of the economic activity planned by the companies in question.

30 The Šiaulių apygardos administracinis teismas therefore rejected the argument of the applicants in the main proceedings that a strategic assessment of the effects on the environment ought also to have been carried out.

31 In their appeal, brought before the referring court, the applicants in the main proceedings observed that, according to Article 16 of the Law on land planning, in the case where documents relating to general land planning have not been prepared, the competent authorities are required, prior to the construction of a building development, to draw up a plan and to carry out a strategic assessment of its effects on the environment.

32 In respect of point 3.4 of the Schedule confirmed by Decree No 967, the applicants submitted, in essence, that the plans approved by decisions of 23 March and 20 April 2006 cannot be characterised as plans in which mention is made of only one subject of economic activity within the meaning of national law. That did not correspond to the facts and, consequently, a strategic assessment of the effects on the environment should have been carried out.

33 The referring court considered that the national legislation applicable at the time of the facts in the main proceedings did not require that a strategic assessment of the effects on the environment be carried out in respect of the two plans at issue. However, in view of the fact that the legislation constituted an implementation of Directive

2001/42, the referring court entertained doubts as to whether that legislation was compatible with that directive.

34 In that context, the Vyriausiasis administracinis teismas (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Can the determination that a strategic assessment of effects on the environment need not be carried out in the case of documents relating to land planning at local level, in which only one subject of economic activity is mentioned, as laid down in the legislation of the Republic of Lithuania, inter alia in point 3.4 of [the Schedule confirmed by Decree No 967], be regarded as a specification of types of plans and programmes within the meaning of Article 3(5) of Directive 2001/42/EC …?

2. Are the provisions of national law applicable in the present case, which provide that, in each specific case in which the potential significance of effects on the environment is not determined, a strategic assessment of the effects on the environment of land planning documents applied to small areas of land at local level, as in the present case, is not to be carried out solely on the basis that mention is made in those documents of one subject of economic activity, compatible with the requirements of Article 3(2)(a), (3) and (5) of Directive 2001/42?

3. Are the provisions of Directive 2001/42, including Article 11(1) thereof, to be construed as meaning that in circumstances such as those obtaining in the present case, in which an environmental impact assessment was carried out pursuant to Council Directive 85/337/EEC …, the requirements of Directive 2001/42 are not applicable?

4. Does the scope of application of Article 11(2) of Directive 2001/42 encompass Directive 85/337?

5. If the answer to Question 4 is in the affirmative, does the fact that an assessment has been carried out pursuant to Directive 85/337 mean that the obligation to carry out an assessment of effects on the environment pursuant to the requirements of Directive 2001/42, in a situation such as that which has arisen in the present case, would be regarded as constituting duplication of assessment within the meaning of Article 11(2) of Directive 2001/42?

6. If the answer to Question 5 is in the affirmative, does Directive 2001/42, including Article 11(2) thereof, place Member States under an obligation to provide in national law for joint or coordinated procedures governing the assessment to be carried out pursuant to Directive 2001/42 and Directive 85/337 with a view to avoiding duplication of assessment?'

Consideration of the questions referred

The first and second questions

35 First of all, it should be noted that it is apparent from the order for reference that the 'detailed plans' in question in the main proceedings are 'documents relating to land planning at local level' within the meaning of points 3.4 and 7.1 of the Schedule confirmed by Decree No 967. Those documents constitute 'plans and programmes' within the meaning of Article 1(18) of the Law on protection of the environment.

The plans at issue in the main proceedings were approved prior to the preparation of documents relating to general land planning.

36 In view of those preliminary observations, it must be held that the referring court, by its first two questions, which it is appropriate to examine together, seeks essentially to ascertain whether Article 3(2)(a), (3) and (5) of Directive 2001/42 must be interpreted as precluding national legislation, such as that in question in the main proceedings, which provides that assessment under that directive is not to be carried out where plans which determine the use of small areas of land at local level mention only one subject of economic activity.

37 As is clear from Article 1 of Directive 2001/42, the fundamental objective of that directive is to ensure that plans and programmes which are likely to have significant effects on the environment are subject to an environmental assessment when they are prepared and prior to their adoption.

38 First, it should be noted that plans such as those at issue in the main proceedings are referred to in Article 3(2)(a) of Directive 2001/42 as plans for which, subject to Article 3(3), an environmental assessment must be carried out and that, in practical terms, they set, as is apparent from the order for reference, the framework for the implementation of projects listed in point 17 of Annex I to Directive 85/337.

39 In this respect, Article 3(2)(a) of Directive 2001/42 must be interpreted as meaning that it also covers a plan which, in only one sector, sets the framework for a project which has only one subject of economic activity.

40 The wording of Article 3(2)(a), read in the light of the 10th recital in the preamble to Directive 2001/42, does not lead to the conclusion that its field of application should be limited to plans and programmes that set the framework for projects concerning several subjects in one or more of the sectors referred to by that provision.

41 Furthermore, the words 'all plans and programmes which are prepared for a number of sectors' in that recital confirm that Article 3(2)(a) of Directive 2001/42 concerns all plans and programmes which are prepared for each of the sectors referred to in that provision, including country planning by itself, and not only the plans and programmes which are prepared concomitantly for several of those sectors.

42 As the sectors concerned are all very broad, any other interpretation would have the effect of appreciably restricting the field of application of that provision and therefore jeopardising the fundamental objective pursued by Directive 2001/42. The consequence of such an interpretation would be that major projects might not be covered by that directive if they concerned only one subject of economic activity.

43 Lastly, it must be stated that the plans at issue in the main proceedings are capable of falling within the scope of Article 3(3) of Directive 2001/42, under which plans which determine the use of small areas at local level require an environmental assessment only where the Member States 'determine that they are likely to have significant environmental effects'.

44 Pursuant to Article 3(5) of Article 2001/42, the Member States are to determine, either through case-by-case examination or by specifying types of plans and programmes, whether plans, such as those at issue in the main proceedings, are likely to

have significant environmental effects thereby requiring an assessment to be carried out in accordance with that directive. According to that provision, Member States may also decide to combine both approaches.

45 In that regard, it must be pointed out that the examination methods referred to in Article 3(5) of Directive 2001/42 are designed to facilitate the specification of plans that require assessment because they are likely to have significant environmental effects.

46 The margin of discretion enjoyed by Member States pursuant to Article 3(5) of Directive 2001/42 to specify certain types of plans which are likely to have significant environmental effects is limited by the requirement under Article 3(3) of that directive, in conjunction with Article 3(2), to subject the plans likely to have significant effects on the environment to environmental assessment, in particular on account of their characteristics, their effects and the areas likely to be affected.

47 Consequently, a Member State which establishes a criterion which leads, in practice, to an entire class of plans being exempted in advance from the requirement of environmental assessment would exceed the limits of its discretion under Article 3(5) of Directive 2001/42, in conjunction with Article 3(2) and (3), unless all plans exempted could, on the basis of relevant criteria such as, inter alia, their objective, the extent of the territory covered or the sensitivity of the landscape concerned, be regarded as not being likely to have significant effects on the environment (see, to that effect, in respect of the margin of discretion accorded to Member States pursuant to Article 4(2) of Directive 85/337, Case C-427/07 *Commission* v *Ireland* [2009] ECR I-6277, paragraph 42 and the case-law cited).

48 That requirement is not met by the criterion that the land planning document in question mentions only one subject of economic activity. Such a criterion, besides being contrary to Article 3(2)(a) of Directive 2001/42, is not one which can determine whether or not a plan has 'significant effects' on the environment.

49 The unclear wording of point 3.4 of the Schedule confirmed by Decree No 967 could, moreover, create difficulties in clearly establishing the scope of the category of plans that competent authorities may consider to be plans 'which mention only one subject of economic activity'.

50 However, it should be noted that a national provision such as point 3.4 means that any plans mentioning only one subject of economic activity, such as the complexes for the rearing of pigs referred to in point 17 of Annex I to Directive 85/337, could avoid an environmental assessment under Article 1(17) of the Law on protection of the environment, although it cannot be ruled out that an assessment of the plans covered by such a provision may reveal significant effects on the environment.

51 It is therefore not possible to find, on the basis of an overall assessment, that all plans exempted by a national provision such as point 3.4 of the Schedule established by Decree No 967 are not likely to have significant effects on the environment.

52 Furthermore, even if several plans were to fall within the scope of such a provision without having significant effects on the environment, there are no grounds for concluding, without an overall assessment, that this would also be true of the cumulative effects of those plans.

53 Lastly, it should be noted that rules such as those in point 3.4 of the Schedule established by Decree No 967 not only undermine the objective of Directive 2001/42 and, in particular, Article 3(2), (3) and (5) thereof which aims to not exempt any plan likely

to have significant effects on the environment from the requirement of environmental assessment, but also do not in the least ensure that the competent authorities will take the criteria established in Annex II to Directive 2001/42 into account, as in fact is required by the second sentence of Article 3(5) of that directive in order to ensure that plans with likely significant effects on the environment are covered by it.

54 Consequently, the answer to the first and second questions is that Article 3(5) of Directive 2001/42, in conjunction with Article 3(3) thereof, must be interpreted as precluding national legislation, such as that in question in the main proceedings, which provides, in fairly general terms and without assessment of each case, that assessment under that directive is not to be carried out where mention is made, in the land planning documents applied to small areas of land at local level, of only one subject of economic activity.

The third, fourth and fifth questions

55 By those questions, which it is appropriate to examine together, the referring court seeks essentially to ascertain whether Article 11(1) and (2) of Directive 2001/42 must be interpreted as meaning that an environmental assessment carried out under Directive 85/337 permits exemption from the obligation to carry out such an assessment under Directive 2001/42.

56 For the purpose of answering that question, it should be pointed out that it is apparent from the order for reference that when the detailed plans in question were being prepared, no assessment under Directive 2001/42 was carried out.

57 According to the very wording of Article 11(1) of Directive 2001/42, an environmental assessment carried out under that directive is without prejudice to any requirements under Directive 85/337.

58 It follows that an environmental assessment carried out under Directive 85/337, when required by its provisions, is in addition to an assessment carried out under Directive 2001/42.

59 Similarly, an assessment of the effects on the environment carried out under Directive 85/337 is without prejudice to the specific requirements of Directive 2001/42 and cannot dispense with the obligation to carry out an environmental assessment pursuant to Directive 2001/42 in order to comply with the environmental aspects specific to that directive.

60 As assessments carried out pursuant to Directive 2001/42 and Directive 85/337 differ for a number of reasons, it is necessary to comply with the requirements of both of those directives concurrently.

61 In that regard, it should be pointed out that, on the assumption that a coordinated or joint procedure was provided for by the Member State concerned, it is clear from Article 11(2) of Directive 2001/42 that, in the context of such a procedure, it is mandatory to verify that an environmental assessment has been carried out in accordance with the dispositions of the different directives in question.

62 Under those circumstances, it is for the referring court to assess whether the assessment which, in the main proceedings, was carried out pursuant to Directive 85/337 may be considered to be the result of a coordinated or joint procedure and whether it already complies with all the requirements of Directive 2001/42. If that were to be

the case, there would then no longer be an obligation to carry out a new assessment pursuant to Directive 2001/42.

63 In light of those considerations, the answer to the third, fourth and fifth questions is that Article 11(1) and (2) of Directive 2001/42 must be interpreted as meaning that an environmental assessment carried out under Directive 85/337 does not dispense with the obligation to carry out such an assessment under Directive 2001/42. However, it is for the referring court to assess whether an assessment which has been carried out pursuant to Directive 85/337 may be considered to be the result of a coordinated or joint procedure and whether it already complies with all the requirements of Directive 2001/42. If that were to be the case, there would then no longer be an obligation to carry out a new assessment pursuant to Directive 2001/42.

The sixth question

64 By that question, the referring court seeks essentially to ascertain, whether Article 11(2) of Directive 2001/42 must be interpreted as placing Member States under an obligation to provide, in national law, for joint or coordinated procedures in accordance with the requirements of Directive 2001/42 and Directive 85/337.

65 It is clear from the wording of Article 11(2) of Directive 2001/42 as well as the 19th recital that Member States are in no way placed under an obligation to provide for joint or coordinated procedures for plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from Directive 2001/42 and other directives.

66 Consequently, the answer to the sixth question is that Article 11(2) of Directive 2001/42 must be interpreted as not placing Member States under an obligation to provide, in national law, for joint or coordinated procedures in accordance with the requirements of Directive 2001/42 and Directive 85/337.

Costs

67 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 (Fourth Chamber) hereby rules:

1. **Article 3(5) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, in conjunction with Article 3(3) thereof, must be interpreted as precluding national legislation, such as that in question in the main proceedings, which provides, in fairly general terms and without assessment of each case, that assessment under that directive is not to be carried out where mention is made, in the land planning documents applied to small areas of land at local level, of only one subject of economic activity.**

2. **Article 11(1) and (2) of Directive 2001/42 must be interpreted as meaning that an environmental assessment carried out under 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, does not dispense with the obligation to carry out such an assessment under Directive 2001/42. However, it is for the referring court to assess whether an assessment which has been carried out pursuant to Directive 85/337, as amended, may be considered to be the result of a coordinated or joint procedure and whether it already complies with all the requirements of Directive 2001/42. If that were to be the case, there would then no longer be an obligation to carry out a new assessment pursuant to Directive 2001/42.

3. **Article 11(2) of Directive 2001/42 must be interpreted as not placing Member States under an obligation to provide, in national law, for joint or coordinated procedures in accordance with the requirements of Directive 2001/42 and Directive 85/337, as amended.**

[Signatures]