JUDGMENT OF THE COURT (First Chamber)

15 September 2011 *

In Case C-53/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Germany), made by decision of 3 December 2009, received at the Court on 2 February 2010, in the proceedings

Land Hessen

v

Franz Mücksch OHG,

intervener:

Merck KGaA,

* Language of the case: German.

THE COURT (First Chamber),

composed of A. Tizzano (Rapporteur), President of the Chamber, J.-J. Kasel, M. Ilešič, E. Levits and M. Safjan, Judges,

Advocate General: E. Sharpston,
Registrar: B. Fülöp, Administrator,

having regard to the written procedure and further to the hearing on 27 January 2011,

after considering the observations submitted on behalf of:

— Franz Mücksch OHG, by S. Kobes, Rechtsanwalt,

— Merck KGaA, by C. Weidemann, Rechtsanwalt,

— the German Government, by J. Möller and C. Blaschke, acting as Agents,

— the European Commission, by G. von Rintelen and A. Sipos, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 April 2011

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 12(1) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ 1997 L 10, p. 13), as amended by Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 (OJ 2003 L 345, p. 97) ('Directive 96/82').

2 The reference has been made in proceedings between Land Hessen and Franz Mücksch OHG ('Franz Mücksch') concerning the siting by Franz Mücksch of a garden centre in the vicinity of a chemicals factory belonging to Merck KGaA ('Merck'), which is situated in an area covered by Directive 96/82.

Legal context

European Union law

3 Recital 2 in the preamble to Directive 96/82 is worded as follows:

'Whereas the objectives and principles of the Community's environment policy, as set out in Article [174](1) and (2) [EC] and detailed in the European Community's action programmes on the environment …, aim, in particular, at preserving and protecting the quality of the environment, and protecting human health, through preventive action.'

4 Recital 22 in the preamble to Directive 96/82 states:

'... in order to provide greater protection for residential areas, areas of substantial public use and areas of particular natural interest or sensitivity, it is necessary for land-use and/or other relevant policies applied in the Member States to take account of the need, in the long term, to keep a suitable distance between such areas and establishments presenting such hazards and, where existing establishments are concerned, to take account of additional technical measures so that the risk to persons is not increased.'

5 Article 1 of Directive 96/82, headed 'Aim', provides:

'This Directive is aimed at the prevention of major accidents which involve dangerous substances, and the limitation of their consequences for man and the environment, with a view to ensuring high levels of protection throughout the Community in a consistent and effective manner.'

6 Article 3(1) to (7) of Directive 96/82 provides:

'For the purposes of this Directive:

1. "establishment" shall mean the whole area under the control of an operator where dangerous substances are present in one or more installations, including common or related infrastructures or activities;

2. "installation" shall mean a technical unit within an establishment in which dangerous substances are produced, used, handled or stored. It shall include all the equipment, structures, pipework, machinery, tools, private railway sidings, docks, unloading quays serving the installation, jetties, warehouses or similar structures, floating or otherwise, necessary for the operation of the installation;

3. "operator" shall mean any individual or corporate body who operates or holds an establishment or installation or, if provided for by national legislation, has been given decisive economic power in the technical operation thereof;

4. "dangerous substance" shall mean a substance, mixture or preparation listed in Annex 1, Part 1, or fulfilling the criteria laid down in Annex 1, Part 2, and present as a raw material, product, by-product, residue or intermediate, including those substances which it is reasonable to suppose may be generated in the event of accident;

5. "major accident" shall mean an occurrence such as a major emission, fire, or explosion resulting from uncontrolled developments in the course of the operation of any establishment covered by this Directive, and leading to serious danger to human health and/or the environment, immediate or delayed, inside or outside the establishment, and involving one or more dangerous substances;

6. "hazard" shall mean the intrinsic property of a dangerous substance or physical situation, with a potential for creating damage to human health and/or the environment;

7. "risk" shall mean the likelihood of a specific effect occurring within a specified period or in specified circumstances.'

7 Article 5(1) of Directive 96/82, headed 'General obligations of the operator', provides:

'Member States shall ensure that the operator is obliged to take all measures necessary to prevent major accidents and to limit their consequences for man and the environment.'

8 Article 12(1) of Directive 96/82, headed 'Land-use planning', provides:

'Member States shall ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in their land-use policies and/or other relevant policies. They shall pursue those objectives through controls on:

(a) the siting of new establishments;

(b) modifications to existing establishments covered by Article 10;

(c) new developments such as transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or developments are such as to increase the risk or consequences of a major accident.

Member States shall ensure that their land-use and/or other relevant policies and the procedures for implementing those policies take account of the need, in the long term, to maintain appropriate distances between establishments covered by this Directive and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular natural sensitivity or interest and, in the case of existing establishments, of the need for additional technical measures in accordance with Article 5 so as not to increase the risks to people.'

National legislation

9 Paragraph 34(1) of the Building Code (Baugesetzbuch) of 23 September 2004, as most recently amended by the Law of 31 July 2009 (BGBl 2009 I, p. 2585), which is headed 'Permissibility of projects within a built-up area', provides:

'Within built-up areas, a project shall be permissible where, according to the type and scale of the use of the building, method of construction and the plot to be built on, it is in keeping with the features of its immediate surroundings and the provision of utilities has been secured. The requirements relating to healthy living and working conditions must be satisfied; the overall appearance of the locality may not be impaired.'

10 Paragraph 50 of the Federal Law on protection against pollution (Bundes-Immissionsschutzgesetz) of 26 September 2002, as most recently amended by the Law of 11 August 2009 (BGBl 2009 I, p. 2723), which is headed 'Planning', is worded as follows:

'As concerns regionally significant planning projects and measures, land allocated for a particular use shall be zoned so as to avoid as far as possible harmful environmental effects and the effects, caused in industrial areas by major accidents within the meaning of Article 3(5) of Directive [96/82], on areas which are exclusively or predominantly used for residential purposes and on other areas requiring protection, in particular areas of public use, important traffic routes, leisure areas, especially valuable or sensitive conservation areas, and buildings of public use. As concerns regional planning projects and measures in areas in which the pollution limits laid down by regulations in accordance with Paragraph 48a(1) are not exceeded, the maintenance of optimal air quality shall be one of the interests to be taken into consideration when weighing up the affected interests.'

11 Paragraph 3(1) and (3) of the twelfth regulation implementing the Federal Law on protection against pollution [Zwölfte Verordnung zur Durchführung des Bundes Immissionsschutzgesetzes (Störfall-Verordnung)], as published on 8 June 2005 (BGBl. 2005 I, p. 1598), which is headed 'General obligations on operators' states:

'(1) The operator shall take the necessary precautions to prevent major accidents, in accordance with the type and extent of the possible hazards; obligations under legal provisions other than those of the law relating to protection against pollution shall be unaffected.

…

(3) In addition to subparagraph (1), precautionary measures shall be taken to keep the effects of major accidents to a minimum.'

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

12 Franz Mücksch plans to build a garden centre on a plot of land belonging to him in the industrial estate Nordwest of the city of Darmstadt (Germany).

13 The land is currently occupied by a scrap and metal recycling installation and is surrounded by a number of commercial premises, such as large retail outlets, wholesale outlets, workshops and a hotel. However, that area is not covered by a land-use

development plan. According to the national court, in carrying out its mandatory duty as set out in Paragraph 34 of the Building Code, as amended, which prevented it from itself carrying out an assessment of the need to maintain appropriate distances, the city of Darmstadt thus gave Franz Mücksch preliminary planning permission in respect of his building plan ('Bauvorbescheid', 'preliminary planning permission').

14 Merck is situated at around 250 metres from Franz Mücksch's land. It operates installations in which chemical substances are used, inter alia chlorine, which is covered by Directive 96/82 and the provisions of the twelfth regulation implementing the Federal Law on protection against pollution. Merck successfully lodged an administrative objection opposing the preliminary planning permission.

15 Franz Mücksh therefore appealed against that objection. In the course of those new proceedings, an 'expert report on the compatibility of the area in which [Merck's] establishment is situated and planning in the vicinity of that area in the light of Paragraph 50 [of the Federal Law on protection against pollution] and Article 12 of [Directive 96/82]' was drawn up at the request of the city of Darmstadt. In that report 'compliance boundaries' were established in respect of potential hazards posed by Merck's installations. Franz Mücksch's land lies completely within the perimeter circumscribing the compliance boundaries.

16 The Verwaltungsgericht (Administrative Court) and the Verwaltungsgerichtshof (Higher Administrative Court) ordered Land Hessen to reject Merck's objection. Merck and Land Hessen therefore appealed on a point of law before the Bundesverwaltungsgericht (Federal Administrative Court) against the judgment on appeal delivered by the Verwaltungsgerichtshof claiming that the interpretation of national law on which that court based its decision is not in conformity with Directive 96/82 in so far as the authorisation of Franz Mücksch's project is incompatible with Article 12(1) of that directive.

17 In those circumstances the Bundesverwaltungsgericht, taking the view that the resolution of the dispute before it turns on the interpretation of that directive, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 12(1) of … Directive [96/82] to be interpreted as meaning that the Member States' obligations contained therein, in particular the obligation to ensure that their land use policies and the procedures for implementing those policies take account of the need, in the long term, to maintain appropriate distances between the establishments covered by the directive and buildings of public use, are imposed on planners who have to take decisions on land-use by weighing up the public and private interests affected, or are they imposed also on the planning permission authorities that have to take a non-discretionary decision on the authorisation of a project in an already built-up area?

(2) If Article 12(1) of … Directive [96/82] is also addressed to the planning permission authorities that have to take a non-discretionary decision on the authorisation of a project in an already built-up area:

Do the abovementioned obligations include the prohibition on authorising the siting of a building of public use which fails to maintain – as required by the principles applicable to overall planning – an appropriate distance from an existing establishment, where there are already several comparable buildings of public use at a distance from the establishment which is not greater or not significantly greater, where the operator does not – as a result of the new project – have to reckon with additional requirements concerning the limitation of the consequences of an accident, and where the requirements relating to healthy living and working conditions are satisfied?

(3) If the answer to this question is in the negative:

Does a legislative provision under which it is mandatory to authorise the siting of a building of public use in the circumstances set out in the previous question sufficiently take into account the requirement to maintain distances?'

Consideration of the questions referred

The first question

18 By its first question, the national court asks, in essence, whether Article 12(1) of Directive 96/82 is to be interpreted as meaning that the obligation of Member States to ensure that account is taken of the need, in the long term, to maintain appropriate distances between establishments covered by that directive and buildings of public use applies also to a public authority, such as the city of Darmstadt, responsible for issuing planning permissions, even though it has no discretion in the exercise of that prerogative.

19 In that regard, it must be stated that, although it is true that the second subparagraph of Article 12(1) of Directive 96/82 requires Member States to take account of the need to maintain appropriate distances in the first place in their land-use policies, the fact remains that, under that provision, Member States also have the same obligation in relation to other relevant policies and 'procedures for implementing those policies'.

It follows that that obligation also covers authorities participating in the execution of plans and policies connected with the objectives of preventing major accidents and limiting the consequences of such accidents, which are pursued by the abovementioned directive.

20 Consequently, in so far as the planning permission authorities take part in the direct management of the procedures for issuing those planning permissions, as does the city of Darmstadt in the main proceedings, which issued the preliminary planning permission in favour of Franz Mücksch, they contribute to the implementation of the land-use policies referred to by Article 12(1).

21 It follows that the absence, as in the main proceedings, of a land-use development plan cannot exempt those authorities from the obligation of taking into consideration, when assessing applications for planning permission, the need to maintain appropriate distances between establishments covered by Directive 96/82 and adjacent areas.

22 First, if authorities that are not responsible for urban planning were permitted to plead the absence of a land-use development plan to avoid their obligation to take account of the need to maintain appropriate distances, that obligation would easily be circumvented and the practical effect of Directive 96/82 would be disregarded. In such circumstances the objective of limiting the consequences of major accidents for man and the environment, set out in Article 1 of that directive, and, more broadly, the objectives and principles of the European Union's policy on the environment referred to in Article 174(1) EC, which include, inter alia, protecting health and improving the quality of the environment, would be undermined.

23 Secondly, the interpretation mentioned in paragraph 21 of this judgment cannot be called into question by the fact that that directive merely lays down the obligation to take account of the need, in the long term, to maintain appropriate distances whilst leaving it to the assessment of the Member States to establish those distances.

24 The second subparagraph of Article 12(1) of Directive 96/82 imposes on Member States, in unequivocal terms, an obligation to take into account the maintenance of appropriate distances in their land-use and/or other relevant policies and in the procedures for implementing those policies in order to achieve the objectives of preventing major accidents and limiting the consequences of such accidents. That provision nevertheless leaves to the competent authorities of the Member States discretion to specify those distances and that discretion must in any event be exercised within the limits of that obligation.

25 As regards the persons to whom that obligation applies, the German Government submits that the requirement to maintain appropriate distances must be taken into consideration above all in planning decisions relating to land use, including those which seek to ascertain whether planning is necessary. It is therefore only exceptionally, in the interest of the practical effect of Directive 96/82, and by way of assessment, that such a requirement could be taken into account when decisions or authorisations are adopted without planning having been carried out to assess the public and private interests affected.

26 However, it must be pointed out that, although it is true that that requirement will most often be implemented by the competent planning authorities, nothing in Directive 96/82 precludes, for example, those authorities from merely, in their planning instruments, transferring the obligation to take into account appropriate distances to the authorities responsible for implementing land-use plans, for reasons of the proximity of those implementing authorities with regard to the projects on which

they must decide. In that respect, the fact remains that that directive imposes on the authorities of the Member States only the obligation to comply with that requirement at some point in time in the procedure for implementing land-use plans or policies and it is, by contrast, for the Member States to choose that point in time.

27 Furthermore, it must be noted that that directive did not set out anything as regards the method for determining appropriate distances or as regards the manner in which to apply them, but merely requires account to be taken of them without specifying the hierarchical level of the authorities responsible for the land-use policies and the procedures for implementing those policies. It follows that such a determination, as well as the assessment of the relevant factors for that purpose, constitutes an activity which, with a view to ensuring the practical effect of the obligation to maintain those distances, must be capable of being carried out at all decision-making levels by the competent administrative authorities of the Member States.

28 As regards the fact that, under national law, the city of Darmstadt had to issue the preliminary planning permission as a matter of carrying out a mandatory duty, as stated in paragraph 13 of the present judgment, which prevented it from itself carrying out an assessment of the need to maintain appropriate distances, it is important to point out that, the planning authorities having taken no account at all of those distances, it becomes all the more important, for the purpose of ensuring the effectiveness of Article 12(1) of Directive 96/82, for the authority entitled to issue the planning permission to fulfil that obligation itself.

29 In that regard, it must be borne in mind, first, that the obligation, arising from a directive, to achieve the result envisaged by that directive and the duty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation in accordance with the principle of sincere cooperation in the second subparagraph

of Article 4(3) TEU is binding on all the authorities of the Member States (Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 110, and Joined Cases C-444/09 and C-456/09 *Gavieiro Gavieiro and Iglesias Torres* [2010] ECR I-14031, paragraph 72).

30 Secondly, it is settled case-law that Member States may not plead provisions, practices or circumstances in their internal legal orders to justify a failure to comply with obligations under directives (Case C-33/90 *Commission* v *Italy* [1991] ECR I-5987, paragraph 24, and Case C-388/01 *Commission* v *Italy* [2003] ECR I-721, paragraph 27).

31 It follows that, in the case in the main proceedings, the city of Darmstadt should have taken the necessary measures to comply with the obligation under Directive 96/82 to assess the need to maintain appropriate distances.

32 As to its being impossible for the city of Darmstadt, on account of the mandatory duty which it has in the present case, to take account of appropriate distances, it must be stated, as was pointed out by the Advocate General at point 44 of her Opinion, that it is for the national court to have recourse to the principle that national law must be interpreted in conformity with EU law, which is inherent in the EC Treaty system in that it enables the national court to ensure, for matters within its jurisdiction, the full effectiveness of European Union law when it determines the dispute before it (see, to that effect, Case C-160/01 *Mau* [2003] ECR I-4791, paragraph 34, and Case C-555/07 *Kücükdeveci* [2010] ECR I-365, paragraph 48).

33 In that regard, it is important to point out that the principle of interpreting national law in conformity with EU law thus imposed by EU law requires the national court to

consider national law as a whole in order to assess to what extent it may be applied so as not to produce a result contrary to that sought by the directive at issue (see, to that effect, *Pfeiffer and Others*, paragraph 115, and Case C-239/09 *Seydaland Vereinigte Agrarbetriebe* [2010] ECR I-13083, paragraph 50).

34 Furthermore, although the main proceedings are between a public authority and an individual, it is important to bear in mind that the Court has held that a Member State may, in principle, impose on individuals an interpretation of national law in keeping with the Directive (Case 80/86 *Kolpinghuis Nijmegen* [1987] ECR 3969, paragraphs 12 to 14, and Case C-321/05 *Kofoed* [2007] ECR I-5795, paragraph 45).

35 Consequently, the answer to the first question is that Article 12(1) of Directive 96/82 must be interpreted as meaning that the obligation of Member States to ensure that account is taken of the need, in the long term, to maintain appropriate distances between establishments covered by that directive and buildings of public use also applies to a public authority, such as the city of Darmstadt, responsible for issuing planning permissions, even when it has no discretion in the exercise of that prerogative.

The second and third questions

36 By its second and third questions, which it is appropriate to examine together, the national court asks, in essence, what the scope is of the obligation set out in Article 12(1) of Directive 96/82 under which Member States must take account of appropriate distances. It seeks to ascertain, first, whether that obligation is to be interpreted as requiring Member States to prohibit the siting of a building of public use in circumstances such as those described by the national court by imposing an

absolute prohibition on worsening the situation. Secondly, that court raises the question whether that obligation precludes national legislation, such as that at issue in the main proceedings, which provides that it is mandatory to authorise the siting of such a building in those circumstances, without the hazards connected with the siting of such a building within the perimeter of the compliance boundaries having been duly assessed at the planning stage or at that of the individual decision.

37 It is important to point out at the outset that the land-use planning, provided for in Article 12(1) of Directive 96/82, is based on the principle that land uses incompatible with each other must be separated by appropriate distances. In that regard, clearly those distances, as such, essentially constitute a factor that makes it possible to determine the areas covered by that directive, the objectives of which seek, first, to prevent major accidents and limit the damage they cause and, secondly, to define those areas in relation to those which are not covered.

38 Furthermore, in the cases referred to in point (c) of the first subparagraph of Article 12(1) of Directive 96/82, of which the dispute in the main proceedings is one, controls on new developments in the vicinity of existing establishments must in particular be carried out where those developments are such as to increase the risk or consequences of a major accident.

39 It is by reference to those principles that the second and third questions referred by the national court must be examined.

40 In the first place, as regards the possible prohibition of worsening the situation, it is necessary to analyse the scope of the obligation set out in Article 12(1) of Directive 96/82. In that regard, it is important to point out that, as was stated in paragraph 24 of this judgment, that obligation admittedly imposes on Member States, in unequivocal terms, a requirement to take into account appropriate distances. The fact remains that, as Franz Mücksch and the European Commission state, the Member States retain discretion in the application of that requirement.

41 That discretion may be inferred from the wording of the provision in question, in so far as, although it is true that Member States are required to ensure that their land-use policies take into consideration the need to maintain appropriate distances, the fact remains that Article 12(1) requires merely that those policies 'take account' of the maintenance of those distances.

42 The expression 'take account of the need … to maintain appropriate distances', the rest of the wording of Article 12(1) of Directive 96/82 and recital 22 in the preamble to that directive cannot be interpreted as meaning that they require any project falling short of the appropriate distances to be refused.

43 Furthermore, the grant of such a discretion is apparent from the fact that, in the light of the fundamental objectives of Directive 96/82 of preventing major accidents which involve dangerous substances and limiting the consequences thereof, as referred to in Article 1 of that directive, the implementation of Article 12(1)(c) of the directive requires the national authorities in charge of land-use policies, inter alia as regards built-up areas, to carry out certain activities, such as an assessment of the increase in

the risk or consequences of accidents, which requires an assessment not only of the risks and damages, but also of all the other relevant factors in each specific case.

44 It is clear that those factors vary, most often substantially, depending on the particular data in respect of the areas subject to planning or of those in which individual decisions may be adopted although there is no land-use plan relating to them. Those specific factors may include, in addition to the nature of the dangerous substances in question, the likelihood of a major accident's occurring during the use of an establishment covered by Directive 96/82, as well as the consequences for human health and the environment resulting from a possible accident; the nature of the activity of the new site or the intensity of its use by the public; and the ease with which emergency teams may act if there are accidents. Furthermore, as the national court correctly points out, all those specific factors may be combined with the taking into consideration of socio-economic factors.

45 Although Member States are required, when drawing up land-use policies, to take into account the need to maintain appropriate distances and, at the very least implicitly, to determine those distances, such an obligation does not however imply that they must establish such distances as the sole criterion for authorisation or refusal in the light of the location of projects for new sitings in the vicinity of existing establishments. In those circumstances, it is possible to guarantee the full effectiveness of the need to maintain appropriate distances only if Member States are recognised as having discretion.

46 Consequently, having regard to the wording of Article 12(1) of Directive 96/82 and to the requirement to assess factors that are to a large extent dependent on matters specific to each case, it must be pointed out, as has the national court and contrary to what Merck maintains, that the obligation to maintain appropriate distances cannot be understood in an absolute manner as meaning that it requires the prohibition of

any project for a new siting in a built-up area in which there are establishments covered by that directive, including cases where that siting concerns a building of public use such as that at issue in the main proceedings.

47 That interpretation cannot be called into question by the temporal criterion that it is necessary to maintain 'in the long term' appropriate distances between establishments covered by Directive 96/82 and buildings of public use. In that regard, it must be noted, first, that, as Merck correctly points out, that expression implies a certain respect for the status quo, in the sense that the authorities responsible for the implementation of land-use plans cannot impose compliance with those distances on developments which already exist when those distances are established for the first time at a later stage. Secondly, as the Advocate-General pointed out at point 40 of her Opinion, that expression must be understood as a requirement that seeks to keep those distances when they are already observed and to introduce them in the future as a long-term goal when they have not yet been implemented.

48 Neither of those two interpretations of the expression 'in the long term' is capable of strengthening the binding nature of Article 12(1) of Directive 96/82 in such a way that that provision imposes a prohibition of worsening the situation and therefore prohibits any siting of a building of public use near an existing establishment.

49 As regards, in the second place, the question whether the obligation set out in Article 12(1) of the directive precludes national legislation that provides that it is mandatory to authorise the siting of a building without the hazards connected with the siting of such a building within the perimeter of those distances having been duly assessed at the planning stage or at that of the individual decision, it is important to point out that the discretion enjoyed by Member States cannot be interpreted, as the

Commission has stated, as being such as to permit those Member States to disregard the taking into account of appropriate distances.

50 Although Directive 96/82 leaves to the national authorities the task of calculating those distances and of determining them in the light of all the relevant factors, the 'taking into account' of appropriate distances requires however that, during the risk assessment, those distances are actually taken into consideration with other factors, whether generally at the time when land-use plans are drawn up or, in the absence of planning, specifically, inter alia, when decisions on planning permissions are adopted.

51 It follows that, in so far as national legislation requires that it is mandatory to issue an authorisation for the siting of a building without the hazards connected with the siting of such a building within the perimeter of the appropriate distances having been duly assessed at the planning stage or at that of the individual decision, such legislation is such as to render meaningless the obligation to take account of the maintenance of appropriate distances and, therefore, to render that obligation redundant. Consequently, it must be held that Article 12(1) of Directive 96/82 precludes national legislation that provides that it is mandatory to issue an authorisation in such circumstances.

52 In that regard, it is for the national court, in accordance with the principles set out in paragraphs 32 to 34 of the present judgment, in so far as is possible, to interpret the national law in conformity with that directive.

53 In view of the foregoing considerations, the answer to the second and third questions is that the obligation set out in Article 12(1) of Directive 96/82 to take account of the need, in the long term, to maintain appropriate distances between establishments covered by that directive and buildings of public use does not require the competent

national authorities to prohibit the siting of a building of public use in circumstances such as those of the case in the main proceedings. By contrast, that obligation precludes national legislation that provides that it is mandatory to issue an authorisation for the siting of such a building without the hazards connected with the siting of the building within the perimeter of those distances having been duly assessed at the planning stage or at that of the individual decision.

Costs

54 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 (First Chamber) hereby rules:

1. Article 12(1) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, as amended by Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003, must be interpreted as meaning that the obligation of Member States to ensure that account is taken of the need, in the long term, to maintain appropriate distances between establishments covered by that directive and buildings of public use also applies to a public authority, such

as the city of Darmstadt (Germany), responsible for issuing planning permissions, even when it has no discretion in the exercise of that prerogative.

2. The obligation set out in Article 12(1) of Directive 96/82, as amended by Directive 2003/105, to take account of the need, in the long term, to maintain appropriate distances between establishments covered by that directive and buildings of public use does not require the competent national authorities to prohibit the siting of a building of public use in circumstances such as those of the case in the main proceedings. By contrast, that obligation precludes national legislation that provides that it is mandatory to issue an authorisation for the siting of such a building without the hazards connected with the siting of the building within the perimeter of those distances having been duly assessed at the planning stage or at that of the individual decision.

[Signatures]