Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

2 June 2022 *

(Reference for a preliminary ruling – Directive 2010/75/EU – Article 3(9) – Integrated pollution prevention and control – Procedure for amending a permit – Participation of the public concerned – Concept of 'substantial change' to the installation – Extension of the duration of operation of a landfill)

In Case C-43/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), made by decision of 20 January 2021, received at the Court on 27 January 2021, in the proceedings

FCC Česká republika, s.r.o.

v

Ministerstvo životního prostředí,

Městská část Ďáblice,

Spolek pro Ďáblice,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, S. Rodin, J.-C. Bonichot (Rapporteur), L.S. Rossi and O. Spineanu Matei, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Czech Government, by L. Dvořáková, M. Smolek and J. Vláčil, acting as Agents,

– the European Commission, by M. Noll-Ehlers, P. Ondrůšek and C. Valero, acting as Agents,

* Language of the case: Czech.

after hearing the Opinion of the Advocate General at the sitting on 27 January 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(9) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17).

2 The request has been made in proceedings between FCC Česká republika, s.r.o., on the one hand, and, on the other, the Ministerstvo životního prostředí (Ministry of the Environment, Czech Republic), Městská část Praha-Ďáblice (the borough of Praha-Ďáblice, Czech Republic) and Spolek pro Ďáblice, concerning the decision of 29 December 2015 amending the permit to operate the Praha-Ďáblice landfill granted to FCC Česká republika, s.r.o., in order to extend the duration of waste disposal from 31 December 2015 until 31 December 2017.

Legal context

European Union law

3 Recital 2 of Directive 2010/75 is worded as follows:

‘In order to prevent, reduce and as far as possible eliminate pollution arising from industrial activities in compliance with the “polluter pays” principle and the principle of pollution prevention, it is necessary to establish a general framework for the control of the main industrial activities, giving priority to intervention at source, ensuring prudent management of natural resources and taking into account, when necessary, the economic situation and specific local characteristics of the place in which the industrial activity is taking place.’

4 Recital 5 of that directive states:

‘In order to ensure the prevention and control of pollution, each installation should operate only if it holds a permit …’

5 Recital 18 of that directive provides:

‘Changes to an installation may give rise to higher levels of pollution. Operators should notify the competent authority of any planned change which might affect the environment. Substantial changes to installations which may have significant negative effects on human health or the environment should not be made without a permit granted in accordance with this Directive.’

6 Recital 27 of that directive states:

‘In accordance with the Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters [(OJ 2005 L 124, p. 4), concluded by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1)], effective public participation in decision-making is necessary to enable the public to express, and the

decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. …'

7 Under Article 3(9) of Directive 2010/75, a '"substantial change" means a change in the nature or functioning, or an extension, of an installation or combustion plant, waste incineration plant or waste co-incineration plant which may have significant negative effects on human health or the environment'.

8 Article 4 of that directive requires Member States to take the necessary measures in order to ensure that no installation or combustion plant, waste incineration plant or waste co-incineration plant is operated without a permit.

9 Article 10 of that directive, entitled 'Scope', states:

'This Chapter shall apply to the activities set out in Annex I and, where applicable, reaching the capacity thresholds set out in that Annex.'

10 Article 12 of that directive, entitled 'Application for permits', is worded as follows:

'1. Member States shall take the necessary measures to ensure that an application for a permit includes a description of the following:

(a) the installation and its activities;

(b) the raw and auxiliary materials, other substances and the energy used in or generated by the installation;

(c) the sources of emissions from the installation;

(d) the conditions of the site of the installation;

(e) where applicable, a baseline report in accordance with Article 22(2);

(f) the nature and quantities of foreseeable emissions from the installation into each medium as well as identification of significant effects of the emissions on the environment;

(g) the proposed technology and other techniques for preventing or, where this is not possible, reducing emissions from the installation;

(h) measures for the prevention, preparation for re-use, recycling and recovery of waste generated by the installation;

(i) further measures planned to comply with the general principles of the basic obligations of the operator as provided for in Article 11;

(j) measures planned to monitor emissions into the environment;

(k) the main alternatives to the proposed technology, techniques and measures studied by the applicant in outline.

An application for a permit shall also include a non-technical summary of the details referred to in the first subparagraph.

2. Where information supplied in accordance with the requirements provided for in [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)] or a safety report prepared in accordance with [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)] or other information produced in response to other legislation fulfils any of the requirements of paragraph 1, that information may be included in, or attached to, the application.'

11 Article 14(1) and (2) of Directive 2010/75, entitled 'Permit conditions', states:

'1. Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 11 and 18.

Those measures shall include at least the following:

(a) emission limit values for polluting substances listed in Annex II, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another;

(b) appropriate requirements ensuring protection of the soil and groundwater and measures concerning the monitoring and management of waste generated by the installation;

(c) suitable emission monitoring requirements specifying:
(i) measurement methodology, frequency and evaluation procedure; and
(ii) where Article 15(3)(b) is applied, that results of emission monitoring are available for the same periods of time and reference conditions as for the emission levels associated with the best available techniques;

(d) an obligation to supply the competent authority regularly, and at least annually, with:
(i) information on the basis of results of emission monitoring referred to in point (c) and other required data that enables the competent authority to verify compliance with the permit conditions; and
(ii) where Article 15(3)(b) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques;

(e) appropriate requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point (b) and appropriate requirements concerning the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site and having regard to the possibility of soil and groundwater contamination at the site of the installation;

(f) measures relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations;

(g) provisions on the minimisation of long-distance or transboundary pollution;

(h) conditions for assessing compliance with the emission limit values or a reference to the applicable requirements specified elsewhere.

2. For the purpose of paragraph 1(a), emission limit values may be supplemented or replaced by equivalent parameters or technical measures ensuring an equivalent level of environmental protection.

…'

12 Article 20 of that directive, entitled 'Changes by operators to installations', provides:

'1. Member States shall take the necessary measures to ensure that the operator informs the competent authority of any planned change in the nature or functioning, or an extension of the installation which may have consequences for the environment. Where appropriate, the competent authority shall update the permit.

2. Member States shall take the necessary measures to ensure that no substantial change planned by the operator is made without a permit granted in accordance with this Directive.

The application for a permit and the decision by the competent authority shall cover those parts of the installation and those details listed in Article 12 which may be affected by the substantial change.

3. Any change in the nature or functioning or an extension of an installation shall be deemed to be substantial if the change or extension in itself reaches the capacity thresholds set out in Annex I.'

13 Article 24(1) of that directive states:

'Member States shall ensure that the public concerned are given early and effective opportunities to participate in the following procedures:

…

(b) the granting of a permit for any substantial change;

…'

14 Article 25 of that directive, entitled ‘Access to justice’, is worded as follows:

‘1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to Article 24 when one of the following conditions is met:

(a) they have a sufficient interest;

(b) they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by Member States, consistently with the objective of giving the public concerned wide access to justice.

To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of paragraph 1(a).

Such organisations shall also be deemed to have rights capable of being impaired for the purpose of paragraph 1(b).

4. Paragraphs 1, 2 and 3 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.’

Czech law

The Law on integrated prevention

15 The Zákon č. 76/2002 Sb., o integrované prevenci a omezování znečištění, o integrovaném registru znečišťování a o změně některých zákonů (zákon o integrované prevenci) (Law No 76/2002 on integrated pollution prevention and control, on an integrated pollution register,

and amending certain laws (Law on integrated prevention)), in the version in force at the time of the facts in the main proceedings, which transposes Directive 2010/75 into the Czech legal order, defines, in Paragraph 2(i) thereof, a 'substantial change' as follows:

'A change in the use, method of operation, or scope of an installation that may have significant negative effects on human health or the environment; the following shall always constitute a substantial change:

1. A change in the use, method of operation, or scope of an installation if it in and of itself reaches the limits specified in Annex 1 to this Law …'

16 Under Paragraph 7(1) of that law, the following parties are always party to the proceedings concerning the granting of an integrated permit:

'(a) the operator of the installation;

(b) the installation owner if not the same as the installation operator;

(c) the municipality in whose territory the installation is or is to be located;

…

(e) civil associations, charitable organisations, employers' associations or chambers of commerce the line of business of which is the promotion and protection of professional interests or public interests pursuant to special legislation, as well as municipalities or regions in the territory of which the installation may have an environmental impact, provided that they report to the authority as parties in writing within eight days of the day of the publication of a brief summary of data from the application pursuant to Paragraph 8.'

17 Paragraph 19a of the Law on integrated prevention regulates procedures concerning amendments to integrated permits. If a change to an installation is not substantial, the parties to the procedure are, pursuant to Paragraph 19a(4) of that law, only 'the parties' identified in Paragraph 7(1)(a) and (b) of that law, namely the installation operator and owner. Decisions concerning the granting of and any amendments to an integrated permit are made by a regional authority. In Prague, this is done by the Magistrát hlavního města Prahy (Prague City Hall). It is the Ministry of the Environment, namely the appeal authority, which is competent to decide on administrative reviews against their decisions.

Law on environmental impact assessment

18 The zákon č. 100/2001 Sb., o posuzování vlivů na životní prostředí (Law No 100/2001 on environmental impact assessment), in the version in force at the time of the facts in the main proceedings, transposes Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1).

19 Under Paragraph 3 of Law No 100/2001, in the version in force at the time of the facts in the main proceedings, for the purposes of that law:

'…

(c) the territory concerned is the territory whose environment and population could be subject to a significant effect in the event of the implementation of the project or plan;

(d) the self-governing territorial unit concerned is the self-governing territorial unit whose administrative district encompasses at least a part of the territory concerned;

…

(i) the part of public concerned

…

2. A legal entity under private law whose line of business is, pursuant to its legal deed of establishment, environmental protection or protection of public health and whose main line of business is not enterprise or another gainful activity, which was established at least three years prior to the date of the publication of information concerning the follow-up proceedings referred to in Paragraph 9b(1) or prior to the date of the adoption of a decision pursuant to Paragraph 7(6), or which is supported by the signatures of at least 200 persons.'

20 Paragraph 9c of that law is worded as follows:

'If it reports to the administrative authority conducting the follow-up proceedings by a written submission within 30 days of the publication of information pursuant to Paragraph 9b(1), the following shall become parties to the follow-up proceedings:

(a) the self-governing territorial unit concerned; or

(b) the part of the public concerned, as specified in the second subparagraph of Paragraph 3(i).'

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

21 FCC Česká republika operates a landfill site in the borough of Praha-Ďáblice, on the basis of a permit issued in 2007 pursuant to the Law on integrated prevention. That permit has been amended on several occasions, including twice in order to extend the duration of waste disposal at the landfill. At the end of 2015, FCC Česká republika applied to the Prague city administration, namely the competent authority, for a third postponement of the planned end date of operation, fixed at 31 December 2015. By a decision of 29 December of the same year, that administrative authority granted the request and postponed the date of discontinuation of waste disposal at the landfill to 31 December 2017.

22 The borough of Praha-Ďáblice and Spolek pro Ďáblice, an environmental protection association, lodged an administrative appeal against that decision with the Ministry of the Environment, which dismissed the appeal as inadmissible on the ground that the applicants were not parties to the procedure for amending the integrated permit.

23 The applicants appealed against the decision of the Ministry of the Environment to the Městský soud v Praze (Prague City Court, Czech Republic), which annulled it on the ground that the extension of the permit for waste disposal at the landfill was a 'substantial change' within the meaning of Paragraph 2(i) of the Law on integrated prevention, which gave rise to the right to public participation in accordance with Directive 2010/75.

24 FCC Česká republika lodged an appeal against the judgment of the Městský soud v Praze (Prague City Court) before the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic), the referring court. FCC Česká republika submits that, with a view to the case-law of the Court of Justice as cited by the Městský soud v Praze (Prague City Court), the mere extension of the duration of waste disposal at a landfill by two years cannot in and of itself be qualified as 'substantial change' within the meaning of Paragraph 2(i) of the Law on integrated prevention if it does not involve works or interventions which alter the physical aspect of the site.

25 According to FCC Česká republika, the extension of the permit changed neither the dimensions of the landfill nor the total waste storage capacity. It was for the purpose of filling the landfill to the permitted capacity that FCC Česká republika submitted an application for the extension of the duration of waste disposal at the landfill. Lastly, if the extension of the permit was to have an environmental impact, it would not, according to FCC Česká republika, constitute a 'substantial change' within the meaning of Paragraph 2(i) of the Law on integrated prevention.

26 The referring court notes that the Court of Justice has not yet ruled on the interpretation of the concept of 'substantial change' within the meaning of Directive 2010/75.

27 Even though neither the maximum permitted dimensions nor the total capacity of the landfill is changing in the case in the main proceedings, the referring court notes that waste will, however, be brought in for an additional two years due to the extension of the duration of waste disposal at the landfill. The referring court also notes that the objective of Directive 2010/75 is, pursuant to recital 12 and Article 1, to ensure a high level of protection of the environment as a whole. The referring court therefore sees no obstacle to the extension of the operation of an installation constituting a 'substantial change' in so far as that extension is likely to have a negative effect on human health or the environment, as required by Article 3(9) of that directive.

28 In those circumstances, the Nejvyšší správní soud (Supreme Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Should Article 3(9) of Directive 2010/75 … be interpreted such that a "substantial change" of a plant includes an extension of the duration of waste disposal at a landfill without the maximum approved dimensions of the landfill or its total potential capacity changing at the same time?'

Consideration of the question referred

29 By its question, the referring court asks whether Article 3(9) of Directive 2010/75 must be interpreted as meaning that the mere extension of the duration of waste disposal at a landfill, without any change in the maximum approved dimensions of the installation or its total capacity, constitutes a 'substantial change' within the meaning of that provision.

30 It should be noted, as a preliminary point, that landfills intended to receive more than 10 tonnes of waste per day or with a capacity exceeding 25 000 tonnes are among the activities listed in Annex I to Directive 2010/75 which, falling within the scope of Chapter II of that directive pursuant to Article 10 thereof, are subject to a permit in accordance with Article 4 thereof. The same applies to any 'substantial change' to the installation pursuant to Article 20(2) of that directive.

31 Where an authorisation is required, first, Article 24(1)(a) of Directive 2010/75 requires Member States to ensure that the public concerned are given the early and effective opportunity to participate in the procedure for granting that permit and, second, Article 25 of that directive grants members of that public the right to bring judicial review proceedings, inter alia, against that permit, if they have a sufficient interest in doing so.

32 Under Article 3(9) of Directive 2010/75, a 'substantial change' to the installation is 'a change in the nature or functioning, or an extension, of an installation or combustion plant, waste incineration plant or waste co-incineration plant which may have significant negative effects on human health or the environment'.

33 It is apparent from the wording of Article 3(9) that a change must be classified as 'substantial' on two conditions, the first relating to the content of the change and the second to its potential consequences.

34 Those two criteria are cumulative. A change in the nature or functioning, or an extension, of an installation is not 'substantial' within the meaning of Article 3(9) of Directive 2010/75 if it is not likely to have significant negative effects on human health or the environment. Conversely, it is not sufficient for a change to be able to have significant negative effects on human health or the environment for it to be 'substantial' within the meaning of that directive. If that were the case, the EU legislature would not have specified that a substantial change must consist of a change in the nature or functioning, or an extension, of an installation.

35 As for the first condition relating to the content of the substantial change, Article 3(9) of Directive 2010/75 defines it, alternatively, as 'a change in the nature or functioning, or an extension, of an installation'.

36 In that regard, it must be noted, in the first place, that the mere extension of the duration of waste disposal at a landfill does not, in itself, change the perimeter of the installation or the storage capacity as provided for in the initial permit, and does not therefore constitute an 'extension' of the installation. The referring court was also careful to clarify that the extension of the duration of waste disposal at the landfill at issue in the main proceedings is provided for without the maximum approved dimensions of the landfill or its total capacity changing at the same time.

37 It should be added that that provision defines 'substantial change' as 'change … of an installation'. That wording is all the more significant in that Directive 2010/75 is intended to regulate 'industrial activities giving rise to pollution', as is apparent, in particular, from the definition of its scope in Article 2 of that directive and from the title of Annex I to that directive, which lists the activities subject to a permit under Chapter II thereof. The mere extension of the duration of waste disposal at the landfill does not constitute a change of the installation, be it in its nature or in its functioning.

38 In the second place, as the Advocate General noted in point 35 of her Opinion, the mere extension of the duration of waste disposal at a landfill changes neither the functioning nor the nature of the landfill.

39 That reading is supported by the context of Article 3(9) of Directive 2010/75.

40 In that regard, it must be observed that no provision of Directive 2010/75 mentions the duration of the landfill's operation as a feature of the installation's functioning which must necessarily be included in the permit.

41 Since Directive 2010/75 does not require the initial permit to specify the duration of operation of the landfill, it cannot be interpreted as requiring the mere extension of its operation to be the subject of a new permit.

42 It follows from the foregoing that the mere extension of the duration of waste disposal at a landfill does not constitute either a change in the nature or functioning, or an extension of an installation, within the meaning of Article 3(9) of Directive 2010/75. Consequently, such an extension does not satisfy the first of the two cumulative conditions, recalled in paragraphs 32 and 33 of the present judgment, for classification as a 'substantial change' under that provision.

43 Accordingly, there is no need to examine whether the second condition of a 'substantial change', namely that that change may give rise to significant negative effects on human health or the environment, is satisfied.

44 It follows that that extension does not constitute a 'substantial change' within the meaning of Article 3(9) of Directive 2010/75. Therefore, the first subparagraph of Article 20(2) of that directive does not require the Member States to oblige the operator of a landfill to apply for a new permit where that operator intends to merely extend the duration of waste disposal of the landfill within the limits of the total storage capacity for which a permit has already been given.

45 In the light of the foregoing observations, the answer to the question referred is that Article 3(9) of Directive 2010/75 must be interpreted as meaning that the mere extension of the duration of waste disposal at a landfill, without any change in the maximum approved dimensions of the installation or its total capacity, does not constitute a 'substantial change' within the meaning of that provision.

Costs

46 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:

Article 3(9) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) must be interpreted as meaning that the mere extension of the duration of waste disposal at a landfill, without any change in the maximum approved dimensions of the installation or its

total capacity, does not constitute a 'substantial change' within the meaning of that provision.

[Signatures]