

JUDGMENT OF THE COURT (Sixth Chamber)

16 September 1999 *

In Case C-435/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen, Italy, for a preliminary ruling in the proceedings pending before that court between

World Wildlife Fund (WWF) and Others

and

Autonome Provinz Bozen and Others

on the interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: P.J.G. Kapteyn, President of the Chamber, J.L. Murray and H. Ragnemalm (Rapporteur), Judges,

Advocate General: J. Mischo,

Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- the World Wildlife Fund (WWF) and Others, by W. Wielander, of the Bolzano Bar,
- Autonome Provinz Bozen, by H. Heiss and R. von Guggenberg, of the Bolzano Bar,
- Südtiroler Transportstrukturen AG, by C. Baur, of the Bolzano Bar, and S. Weber, Rechtsanwalt, Vienna,
- Airport Bolzano-Bozen AG, by P. Platter, of the Bolzano Bar,
- the Italian Government, by Professor U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, assisted by P.G. Ferri, Avvocato dello Stato,
- the Netherlands Government, by M.A. Fierstra, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

- the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, and D. Wyatt QC, and
- the Commission of the European Communities, by G. zur Hausen, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the World Wildlife Fund (WWF) and other applicants, Autonome Provinz Bozen, Südtiroler Transportstrukturen AG, Airport Bolzano-Bozen AG, the Italian Government, the United Kingdom Government and the Commission at the hearing on 18 March 1999,

after hearing the Opinion of the Advocate General at the sitting on 29 April 1999,

gives the following

Judgment

- 1 By order of 3 December 1997, received at the Court on 24 December 1997, the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen (Administrative Court, Autonomous Division for the Province of Bolzano) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) six questions on the interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40; hereinafter 'the Directive').

- 2 Those questions have been raised in proceedings brought before the national court by the applicants, who are persons claiming to live near Bolzano-St Jacob Airport and two environmental associations, to have Decision No 1230 of 27 March 1997 of the Government of the Autonomous Province of Bolzano and a letter of the Landeshauptmann (Regional Prime Minister) of 11 April 1997, which approved a project for the restructuring of that airport, set aside.
- 3 It is apparent from the order for reference that the purpose of the project is to transform an airfield, which since 1925/26 has been used for military purposes, for private flying and, during a certain period and to a limited extent, also for civil purposes, into an airport which can be used commercially, with the aim of having regular scheduled flights as well as charter and cargo flights.
- 4 The works and alterations envisaged are essentially the following: renewal of the existing runway, construction of access roads and car parks, construction of a control tower with air traffic control installations, construction of a departure building and of a hangar, the carrying out of the necessary connections and diversions and so forth, and extension of the runway from 1 040 to 1 400 metres. It is not in dispute that, at the date of the order for reference, the extension had not yet been approved because the local development plan had to be altered first.
- 5 This restructuring of Bolzano Airport was provided for in the regional development plan approved by Law No 3 of the Autonomous Province of Bolzano of 18 January 1995 (hereinafter 'Law No 3/95'), which required, in particular, that an environmental impact study be carried out. That study, which the developer, Südtiroler Transportstrukturen AG, entrusted to a team of experts, was drawn up in June 1996. In addition, various bodies, including the agency responsible for the environment, were consulted, the municipalities concerned were informed and opinions were sought.

- 6 In particular, following one of those requests for an opinion, the project was considered by the Amtsdirektorenkonferenz (Regional Directors' Conference) which issued an opinion under the procedure referred to by the national court as 'simplified environmental assessment', provided for by Articles 11, 12 and 13 of Law No 27 of the Autonomous Province of Bolzano of 7 July 1992 introducing an environmental impact assessment procedure in the version in force at the material time (B.V. Ordinary Supplement, 28 July 1992, No 31; hereinafter 'Law No 27/92'). However, it is common ground that the procedure under which the contested measures were adopted, with the exception of the extension of the runway which remained unapproved, was not that laid down by the Directive.

Legislation

The Directive

- 7 The Directive, as provided in Article 1(1) thereof, applies to the assessment of the environmental effects of public and private projects which are likely to have significant effects on the environment.

- 8 Article 1(2) defines 'project' as:

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

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

- 9 Article 1(4) and (5) respectively provide that the Directive does not cover ‘projects serving national defence purposes’ and that it is not to apply ‘to projects the details of which are adopted by a specific act of national legislation, since the objectives of [the] Directive, including that of supplying information, are achieved through the legislative process’.
- 10 Article 2(1) of the Directive provides: ‘Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to an assessment with regard to their effects. These projects are defined in Article 4.’
- 11 Article 4 distinguishes between two types of projects.
- 12 Article 4(1) provides that, subject to Article 2(3), projects of the classes listed in Annex I are to be made subject to an assessment in accordance with Articles 5 to 10. The projects covered by Article 4(1) include the ‘construction of... airports with a basic runway length of 2 100 m or more’, referred to in point 7 of Annex I.
- 13 So far as concerns other types of projects, Article 4(2) states:

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

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

- 14 As for the projects caught by Article 4(2), point 10(d) of Annex II refers to 'Construction of... airfields (projects not listed in Annex I)' and point 12 of Annex II refers to modifications to development projects in Annex I.
- 15 Articles 5 to 9 of the Directive, to which Article 4 refers, essentially provide as follows: Article 5 specifies the minimum information to be provided by the developer, Article 6 imposes, in particular, an obligation on the developer to inform the authorities and the public, Article 8 requires the competent authorities to take into consideration the information gathered in the course of the assessment procedure and Article 9 imposes a duty on the competent authorities to inform the public of the decision adopted and any conditions attached to it.

Law No 27/92

- 16 Law No 27/92 contains two annexes, Annex I and Annex II, which list various projects and, in conjunction with the main body of the Law, lay down the conditions in which those projects are subject to the environmental impact assessment procedure.
- 17 As regards airports, paragraph 11(e) of Annex II to Law No 27/92 makes all projects for the new construction of airports subject to such assessment.

- 18 On the other hand, the extension or alteration of existing airports, like all other projects comprising extensions or alterations, falls within Article 2(2) of Law No 27/92, which requires an environmental impact assessment for projects exceeding the thresholds referred to in Annex II by more than 20% and for projects required to be assessed under Annex I of that Law.
- 19 Annex II of Law No 27/92 does not set a threshold for airport projects while, under Annex I, an assessment is required only for airports with a runway length of 2 100 metres or more.

Proceedings before the national court

- 20 The applicants in the main proceedings have challenged before the national court the legality of the contested measures on the ground that the procedure followed for approving the project is not in conformity with the requirements of the Directive. According to them, since the project is likely, by virtue of its nature, size and location, to have significant effects on the environment, it falls within Article 2(1) of the Directive and should have been made subject to the assessment procedure under Article 4(2) thereof in conjunction with Annex II and not to a mere 'environmental impact study' followed by an examination of the project by the Amtsdirektorenkonferenz, which do not meet the Directive requirements.
- 21 According to the respondents in the main proceedings, on the other hand, the Directive is inapplicable to the project at issue for three fundamental reasons.
- 22 First, it is merely a small-scale project to improve an airport, which does not have a significant effect on the environment because it is designed to improve air traffic

and remedy the environmental harm caused by that traffic; furthermore, the extension of the runway from 1 040 to 1 400 metres remained unapproved.

- 23 Next, the project is not subject to environmental impact assessment under the Directive because, as is apparent from the provisions of Law No 27/92, it falls within the projects included in Annex II to the Directive which, in accordance with Article 4(2) thereof, are to be made subject to the assessment procedure under Articles 5 to 10 where Member States consider that their characteristics so require; it follows that Law No 27/92, which was adopted within the limits of the discretion allowed to the Member States by Article 4(2) of the Directive, is in conformity with the latter provision.
- 24 Finally, since the project serves both civil and military purposes and Law No 3/95, approving the regional development plan, makes provision for it, the exceptions respectively set out in Article 1(4) and (5) of the Directive apply.
- 25 The applicants in the main proceedings have challenged those arguments. They contend that, by allowing the national authorities not to subject to an impact assessment a project likely to have significant effects on the environment, Law No 27/92 is not in conformity with the Directive and should be disapplied in favour of the relevant provisions of the latter.
- 26 In its order for reference, the national court found that, inasmuch as the project at issue related to an airport with a runway shorter than 2 100 metres, it fell within the projects set out in Annex II to the Directive and was covered by Article 4(2);

also, by virtue of Article 2(2) of Law No 27/92, the extension or restructuring of airports with a runway shorter than 2 100 metres was not made subject to an environmental impact assessment by that Law since no threshold was set for airport projects. Nevertheless, the project at issue, by reason of its nature and size, and probably also by reason of its location in a hollow in the immediate vicinity of an industrial and a residential area, could have a significant effect on the environment.

- 27 Having regard to its findings of fact and the conclusions which it drew therefrom, to the arguments of the parties and to the relevant Community and national legislation, the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen, was uncertain as to the interpretation of the Directive. It therefore decided to stay proceedings and to submit the following questions for a preliminary ruling:

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

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

- (b) that the margin of discretion enjoyed by the Member States is limited by the obligation laid down in Article 2(1) of the Directive to subject to an environmental assessment in any event those projects likely to have

significant effects on the environment, by virtue *inter alia* of their nature, size or location?

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

- (2) Is Article 4(2) of the Directive, in conjunction with Article 2(1), to be interpreted as meaning that the obligation to carry out an environmental assessment also applies to the extension and restructuring of the projects in Annex II if significant effects on the environment are likely, or do Articles 4(2) and 2(1) allow environmentally significant projects comprising restructuring to be excluded, expressly or *impliedly* (for example, by rules which are not applicable to airports), from environmental assessment from the outset?

- (3) To what extent does Article 2(1) of the Directive, also in conjunction with Article 2(2), allow the Member States to introduce (or use) alternative

assessment procedures to that of an ordinary environmental assessment and if a positive answer is given to this question:

- (a) what essential requirements or minimum requirements must such an assessment satisfy in order to accord with the objectives of the Directive and, in particular,
 - (b) is the participation of the public within the meaning of Article 6 of the Directive an essential requirement of an environmental assessment?
- (4) May Article 1(5) of Directive 85/337 be interpreted as also covering projects which, while provided for in a legislative provision which sets out a programme, are approved under a separate administrative procedure?

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

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

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

- (6) If the Directive has been incorrectly transposed, is Article 4(2) thereof, in conjunction with Article 2(1), vertically directly effective (self-executing) in the sense that the authorities of the Member State are required to subject the projects at issue to an environmental assessment?’

Preliminary issues

- 28 In their observations to the Court, the applicants in the main proceedings state that the national court, by a further order determining their ancillary application for interim measures, suspended the project at issue on the ground that no environmental impact assessment had been carried out; that order was contested in an action brought by the respondents and quashed by the Consiglio di Stato (Council of State) by judgment No 1411/97 of 29 August 1997, with the result that the works at issue have been pursued since then. The applicants ask the Court to rule, first, on the question whether the suspension of operation of the contested measure on which, according to them, the national court had validly decided in the present case, should have been upheld by the Consiglio di Stato and, second, should the Court consider that an environmental impact assessment was necessary, on the practical consequences of its own decision.
- 29 In response to those requests it is sufficient to state that the national court has not submitted any question in that regard and that there is therefore no need to consider them (see Case 5/72 *Grassi v Italian Finance Administration* [1972] ECR 443, paragraph 4, and Case C-196/89 *Nespoli and Crippa* [1990] ECR I-3647, paragraph 23).

- 30 One of the respondents in the main proceedings, Airport Bolzano-Bozen AG, disputes a number of facts set out by the national court in its order for reference. Relying on national law, it also challenges the jurisdiction of that court to adjudicate on the merits of the case, on the ground that its jurisdiction is limited to questions of law.
- 31 So far as concerns the contesting of certain facts by Airport Bolzano-Bozen AG, it should be remembered that Article 177 of the Treaty is based on a clear separation of functions between the national courts and the Court of Justice, so that, when ruling on the interpretation or validity of Community provisions, the latter is empowered to do so only on the basis of the facts which the national court puts before it (see Case C-30/93 *AC-ATEL Electronics Vertriebs v Hauptzollamt München-Mitte* [1994] ECR I-2305, paragraph 16, and Case C-326/96 *Levez v T.H. Jennings (Harlow Pools)* [1998] ECR I-7835, paragraph 25).
- 32 It is not for the Court of Justice but for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver (see Case 17/81 *Pabst & Richarz v Hauptzollamt Oldenburg* [1982] ECR 1331, paragraph 12, *AC-ATEL Electronics Vertriebs*, cited above, paragraph 17, and *Levez*, cited above, paragraph 26).
- 33 As regards the challenge to the jurisdiction of the referring court made on the basis of national law, it is not for the Court of Justice, in view of the distribution of functions between itself and the national courts, to determine whether the decision whereby a matter is brought before it has been taken in accordance with the rules of national law governing the organisation of the courts and their procedure (see Joined Cases C-332/92, C-333/92 and C-335/92 *Eurico Italia and Others v Ente Nazionale Risi* [1994] ECR I-711, paragraph 13).

The first and second questions

- 34 By its first and second questions, which should be considered together, the national court essentially raises two issues.
- 35 The first is whether Articles 4(2) and 2(1) of the Directive are to be interpreted as conferring on a Member State the power to exclude, from the outset and in their entirety, from the environmental impact assessment procedure established by the Directive certain classes of projects falling within Annex II to the Directive, including modifications to those projects, such as projects for the restructuring of an airport whose runway is shorter than 2 100 metres, even if they have significant effects on the environment.
- 36 In that regard, the second subparagraph of Article 4(2) of the Directive confers on Member States a measure of discretion to specify certain types of projects which will be subject to an assessment or to establish the criteria or thresholds applicable. However, the limits of that discretion are to be found in the obligation set out in Article 2(1) that projects likely, by virtue *inter alia* of their nature, size or location, to have significant effects on the environment are to be subject to an impact assessment (see Case C-72/95 *Kraaijeveld and Others v Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403, paragraph 50, and Case C-301/95 *Commission v Germany* [1998] ECR I-6135, paragraph 45).
- 37 Thus, ruling on legislation of a Member State under which certain entire classes of projects listed in Annex II to the Directive were excluded from the assessment obligation, the Court held, in Case C-133/94 *Commission v Belgium* [1996] ECR I-2323, at paragraph 42, that the criteria and/or thresholds mentioned in Article 4(2) of the Directive are designed to facilitate examination of the actual characteristics of any given project in order to determine whether it is subject to the requirement to carry out an assessment, and not to exempt in advance from that obligation certain whole classes of projects listed in Annex II which may be envisaged on the territory of a Member State.

- 38 The Court also held in paragraph 53 of its judgment in *Kraaijeveld*, cited above, that a Member State which established criteria or thresholds at a level such that, in practice, an entire class of projects would be exempted in advance from the requirement of an impact assessment would exceed the limits of its discretion under Articles 2(1) and 4(2) of the Directive unless all projects excluded could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment.
- 39 As regards modifications to such projects, the Court found in paragraph 40 of its judgment in *Kraaijeveld* that the mere fact that the Directive did not expressly refer to modifications to projects included in Annex II, as opposed to modifications to projects included in Annex I, did not justify the conclusion that they were not covered by the Directive.
- 40 Thus, observing that the scope of the Directive was wide and its purpose very broad, the Court held that the Directive covered 'modifications to development projects' even in relation to projects falling within Annex II, on the ground that its purpose would be undermined if 'modifications to development projects' were so construed as to enable certain works to escape the requirement of an impact assessment when, by reason of their nature, size or location, they were likely to have significant effects on the environment (*Kraaijeveld*, paragraph 39).
- 41 The second issue raised by the national court is whether, taking into account the fact that an airport is the only airport in the region in which it is located that can be restructured, Articles 4(2) and 2(1) of the Directive nevertheless confer on a Member State the power to exclude from the assessment procedure established by the Directive a specific project such as that in issue in the main proceedings as not being likely to have significant effects on the environment, either under national legislation, in the present case Law No 27/92, or on the basis of an individual examination of the project.

- 42 The second subparagraph of Article 4(2) of the Directive provides that ‘... Member States may *inter alia* specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment in accordance with Articles 5 to 10’. That provision thus mentions, by way of indication, methods to which the Member States may have recourse when determining which of the projects falling within Annex II are to be subject to an assessment within the meaning of the Directive.
- 43 Consequently, the Directive confers a measure of discretion on the Member States and does not therefore prevent them from using other methods to specify the projects requiring an environmental impact assessment under the Directive. So the Directive in no way excludes the method consisting in the designation, on the basis of an individual examination of each project concerned or pursuant to national legislation, of a particular project falling within Annex II to the Directive as not being subject to the procedure for assessing its environmental effects.
- 44 However, the fact that the Member State has the discretion referred to in the previous paragraph is not in itself sufficient to exclude a given project from the assessment procedure under the Directive. If that were not the case, the discretion accorded to the Member States by Article 4(2) of the Directive could be used by them to take a particular project outside the assessment obligation when, by virtue of its nature, size or location, it could have significant environmental effects.
- 45 Consequently, whatever the method adopted by a Member State to determine whether or not a specific project needs to be assessed, be it by legislative designation or following an individual examination of the project, the method adopted must not undermine the objective of the Directive, which is that no project likely to have significant effects on the environment, within the meaning

of the Directive, should be exempt from assessment, unless the specific project excluded could, on the basis of a comprehensive assessment, be regarded as not being likely to have such effects.

- 46 It should be added, with regard to the exclusion of the project at issue in the main proceedings from the assessment procedure under Law No 27/92, that, even if that project concerns the only airport in the province which can be restructured and it has actually been specified by the legislature, the latter cannot in any event exempt the project from the assessment obligation unless, on the date when Law No 27/92 was adopted, it was able to assess precisely the overall environmental impact which all the works entailed by the project were likely to have.
- 47 As for the exclusion of the project on the basis of an individual examination carried out by the national authorities, the file shows that the contested measures were preceded by an environmental impact study carried out by a team of experts, that information was communicated to the municipalities concerned and that the public was informed by press notices. In addition, the environmental agency and the Amtsdirektorenkonferenz were consulted.
- 48 It is for the national court to review whether, on the basis of the individual examination carried out by the competent authorities which resulted in the exclusion of the specific project at issue in the main proceedings from the assessment procedure established by the Directive, those authorities correctly assessed, in accordance with the Directive, the significance of the effects of that project on the environment.
- 49 In view of the foregoing considerations, the answer to the first and second questions must be that Articles 4(2) and 2(1) of the Directive are to be interpreted as not conferring on a Member State the power either to exclude, from the outset and in their entirety, from the environmental impact assessment procedure established by the Directive certain classes of projects falling within Annex II to the Directive, including modifications to those projects, or to exempt from such a procedure a specific project, such as the project of restructuring an airport with a

runway shorter than 2 100 metres, either under national legislation or on the basis of an individual examination of that project, unless those classes of projects in their entirety or the specific project could be regarded, on the basis of a comprehensive assessment, as not being likely to have significant effects on the environment. It is for the national court to review whether, on the basis of the individual examination carried out by the national authorities which resulted in the exclusion of the specific project at issue from the assessment procedure established by the Directive, those authorities correctly assessed, in accordance with the Directive, the significance of the effects of that project on the environment.

The third question

50 By its third question, the national court asks essentially whether, in the case of a project requiring assessment under the Directive, Article 2(1) and (2) thereof are to be interpreted as allowing a Member State to use an assessment procedure other than the procedure introduced by the Directive and whether, where that alternative procedure is incorporated in a national procedure which exists or is to be established within the meaning of Article 2(2), it must satisfy the requirements of Articles 3 and 5 to 10 of the Directive, including public participation as provided for in Article 6.

51 In its order for reference the national court explains that it has doubts as to whether the consent procedure laid down in Articles 11, 12 and 13 of Law No 27/92 is appropriate for fully identifying the effects of the project on the environment. It states that neither noise nor the effects on the atmosphere were investigated, as Article 3 of the Directive requires, and that the public did not participate in that procedure, contrary to Article 6 of the Directive.

- 52 In that regard, Article 2(2) of the Directive provides: 'The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of [the] Directive.' It is therefore clear from that provision that the Directive does not prevent the assessment procedure which it introduces from being incorporated in a national procedure which exists or is to be established, provided that the aims of the Directive are met.
- 53 However, where a project requires assessment within the meaning of the Directive, a Member State cannot, without undermining the Directive's objective, use an alternative procedure, even one incorporated in a national procedure which exists or is to be established, to exempt that project from the requirements laid down in Articles 3 and 5 to 10 of the Directive.
- 54 The answer to third question must therefore be that, in the case of a project requiring assessment under the Directive, Article 2(1) and (2) thereof are to be interpreted as allowing a Member State to use an assessment procedure other than the procedure introduced by the Directive where that alternative procedure is incorporated in a national procedure which exists or is to be established within the meaning of Article 2(2). However, an alternative procedure of that kind must satisfy the requirements of Articles 3 and 5 to 10 of the Directive, including public participation as provided for in Article 6.

The fourth question

- 55 By its fourth question, the national court asks essentially whether Article 1(5) of the Directive is to be interpreted as also applying to a project, such as that at issue in the main proceedings, which, while provided for by a legislative provision setting out a programme, has received development consent under a separate administrative procedure and, if so, what requirements such a provision and the

process under which it has been adopted must satisfy in order that the objectives of the Directive, including that of supplying information, can be regarded as achieved.

- 56 Article 1(5) provides that the Directive is not to apply 'to projects the details of which are adopted by a specific act of national legislation, since the objectives of [the] Directive, including that of supplying information, are achieved through the legislative process'.
- 57 That provision accordingly exempts projects envisaged by the Directive from the assessment procedure subject to two conditions. The first requires the details of the project to be adopted by a specific legislative act; under the second, the objectives of the Directive, including that of supplying information, must be achieved through the legislative process.
- 58 With regard to the first condition, it is to be observed that Article 1(2) of the Directive refers not to legislative acts but to development consent, which it defines as 'the decision of the competent authority or authorities which entitles the developer to proceed with the project'. Therefore, if it is a legislative act, instead of a decision of the competent authorities, which grants the developer the right to carry out the project, that act must be specific and display the same characteristics as the development consent specified in Article 1(2) of the Directive.
- 59 Consequently, in order for a legislative act to display the same characteristics as development consent, as defined by Article 1 of the Directive, the act must lay down the project in detail, that is to say in a sufficiently precise and definitive manner so as to include, like development consent, following their consideration by the legislature, all the elements of the project relevant to the environmental impact assessment.

- 60 It is only by complying with such requirements that the objectives referred to in the second condition laid down by Article 1(5) can be achieved through the legislative process. If the specific legislative act by which a particular project is adopted, and therefore authorised, does not include the elements of the specific project which may be relevant to the assessment of its impact on the environment, the objectives of the Directive would be undermined, because a project could be granted consent without prior assessment of its environmental effects even though they might be significant.
- 61 That interpretation is borne out by the sixth recital in the preamble to the Directive, which states that development consent for public and private projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of those projects, and that this assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project.
- 62 It follows that the details of a project cannot be considered to be adopted by a Law, for the purposes of Article 1(5) of the Directive, if the Law does not include the elements necessary to assess the environmental impact of the project but, on the contrary, requires a study to be carried out for that purpose, which must be drawn up subsequently, and if the adoption of other measures are needed in order for the developer to be entitled to proceed with the project.
- 63 The answer to the fourth question must therefore be that Article 1(5) of the Directive is to be interpreted as not applying to a project, such as that at issue in the main proceedings, which, while provided for by a legislative provision setting out a programme, has received development consent under a separate administrative procedure. The requirements which such a provision and the process under which it has been adopted must satisfy in order that the objectives of the Directive, including that of supplying information, can be regarded as achieved

consist in the adoption of the project by a specific legislative act which includes all the elements which may be relevant to the assessment of the impact of the project on the environment.

The fifth question

- 64 By its fifth question, the national court asks whether Article 1(4) of the Directive is to be interpreted as meaning that an airport which may simultaneously serve both civil and military purposes, but whose main use is commercial, falls within the scope of the Directive.
- 65 The Directive, as stated in Article 1(4), does not cover 'projects serving national defence purposes'. That provision thus excludes from the Directive's scope and, therefore, from the assessment procedure for which it provides, projects intended to safeguard national defence. Such an exclusion introduces an exception to the general rule laid down by the Directive that environmental effects are to be assessed in advance and it must accordingly be interpreted restrictively. Only projects which mainly serve national defence purposes may therefore be excluded from the assessment obligation.
- 66 It follows that the Directive covers projects, such as that at issue in the main proceedings which, as the file shows, has the principal objective of restructuring an airport in order for it to be capable of commercial use, even though it may also be used for military purposes.
- 67 Accordingly, the answer to the fifth question must be that Article 1(4) of the Directive is to be interpreted as meaning that an airport which may simultaneously serve both civil and military purposes, but whose main use is commercial, falls within the scope of the Directive.

The sixth question

- 68 By its sixth question, the national court is essentially asking whether Articles 4(2) and 2(1) of the Directive are to be interpreted as meaning that, where the discretion conferred by those provisions has been exceeded by the legislative or administrative authorities of a Member State, individuals may rely on those provisions before a court of that Member State against the national authorities and thus obtain from the latter the setting aside of the national rules or measures incompatible with those provisions. In such a case, the national court is asking whether it is for the authorities of the Member State to take, according to their relevant powers, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.
- 69 As regards the right of individuals to rely on a directive and of the national court to take it into consideration, the Court has already held that it would be incompatible with the binding effect conferred on directives by Article 189 of the EC Treaty (now Article 249 EC) for the possibility for those concerned to rely on the obligation which directives impose to be excluded in principle. Particularly where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the effectiveness of such an act would be diminished if individuals were prevented from relying on it in legal proceedings and if national courts were prevented from taking it into consideration as a matter of Community law in determining whether the national legislature, in exercising its choice as to the form and methods for implementing the directive, had kept within the limits of its discretion set out in the directive (Case 51/76 *Verbond van Nederlandse Ondernemingen v Inspecteur der Invoerrechten en Accijnzen* [1977] ECR 113, paragraphs 22, 23 and 24, and *Kraaijeveld*, cited above, paragraph 56).
- 70 Consequently, if that discretion has been exceeded and the national provisions must therefore be set aside on that account, it is for the authorities of the Member State, according to their relevant powers, to take all the general or particular measures necessary to ensure that projects are examined in order to determine

whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment (see *Kraaijeveld*, paragraph 61).

- 71 The answer to the sixth question must therefore be that Articles 4(2) and 2(1) of the Directive are to be interpreted as meaning that, where the discretion conferred by those provisions has been exceeded by the legislative or administrative authorities of a Member State, individuals may rely on those provisions before a court of that Member State against the national authorities and thus obtain from the latter the setting aside of the national rules or measures incompatible with those provisions. In such a case, it is for the authorities of the Member State to take, according to their relevant powers, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.

Costs

- 72 The costs incurred by the Italian, Netherlands and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Verwaltungsgericht, Autonome Sektion für die Provinz Bozen, by order of 3 December 1997, hereby rules:

1. Articles 4(2) and 2(1) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment are to be interpreted as not conferring on a Member State the power either to exclude, from the outset and in their entirety, from the environmental impact assessment procedure established by the Directive certain classes of projects falling within Annex II to the Directive, including modifications to those projects, or to exempt from such a procedure a specific project, such as the project of restructuring an airport with a runway shorter than 2 100 metres, either under national legislation or on the basis of an individual examination of that project, unless those classes of projects in their entirety or the specific project could be regarded, on the basis of a comprehensive assessment, as not being likely to have significant effects on the environment. It is for the national court to review whether, on the basis of the individual examination carried out by the national authorities which resulted in the exclusion of the specific project at issue from the assessment procedure established by the Directive, those authorities correctly assessed, in accordance with the Directive, the significance of the effects of that project on the environment.
2. In the case of a project requiring assessment under Directive 85/337, Article 2(1) and (2) thereof are to be interpreted as allowing a Member State to use an assessment procedure other than the procedure introduced by the Directive where that alternative procedure is incorporated in a national procedure which exists or is to be established within the meaning of Article 2(2) of the Directive. However, an alternative procedure of that kind

must satisfy the requirements of Articles 3 and 5 to 10 of the Directive, including public participation as provided for in Article 6.

3. Article 1(5) of Directive 85/337 is to be interpreted as not applying to a project, such as that at issue in the main proceedings, which, while provided for by a legislative provision setting out a programme, has received development consent under a separate administrative procedure. The requirements which such a provision and the process under which it has been adopted must satisfy in order that the objectives of the Directive, including that of supplying information, can be regarded as achieved consist in the adoption of the project by a specific legislative act which includes all the elements which may be relevant to the assessment of the impact of the project on the environment.

4. Article 1(4) of Directive 85/337 is to be interpreted as meaning that an airport which may simultaneously serve both civil and military purposes, but whose main use is commercial, falls within the scope of the Directive.

5. Articles 4(2) and 2(1) of Directive 85/337 are to be interpreted as meaning that, where the discretion conferred by those provisions has been exceeded by the legislative or administrative authorities of a Member State, individuals may rely on those provisions before a court of that Member State against the national authorities and thus obtain from the latter the setting aside of the national rules or measures incompatible with those provisions. In such a case, it is for the authorities of the Member State to take, according to their relevant powers, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to

have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.

Kapteyn

Murray

Ragnemalm

Delivered in open court in Luxembourg on 16 September 1999.

R. Grass

P.J.G. Kapteyn

Registrar

President of the Sixth Chamber