

Operative part of the judgment

1. Article 3(1) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases must be interpreted as meaning that a 'database' within the meaning of Article 1(2) of that directive is protected by the copyright laid down by that directive provided that the selection or arrangement of the data which it contains amounts to an original expression of the creative freedom of its author, which is a matter for the national court to determine.

As a consequence:

- the intellectual effort and skill of creating that data are not relevant in order to assess the eligibility of that database for protection by that right;
 - it is irrelevant, for that purpose, whether or not the selection or arrangement of that data includes the addition of important significance to that data, and
 - the significant labour and skill required for setting up that database cannot as such justify such a protection if they do not express any originality in the selection or arrangement of the data which that database contains.
2. Directive 96/9 must be interpreted as meaning that, subject to the transitional provision contained in Article 14(2) of that directive, it precludes national legislation which grants databases, as defined in Article 1(2) of the directive, copyright protection under conditions which are different to those set out in Article 3(1) of the directive.

(¹) OJ C 89, 19.3.2011.

Judgment of the Court (Grand Chamber) of 28 February 2012 (reference for a preliminary ruling from the Conseil d'État — Belgium) — Inter-Environnement Wallonie ASBL, Terre wallonne ASBL v Région wallonne

(Case C-41/11) (¹)

(Protection of the environment — Directive 2001/42/EC — Articles 2 and 3 — Assessment of the effects of certain plans and programmes on the environment — Protection of waters against pollution caused by nitrates from agricultural sources — Plan or programme — No prior environmental assessment — Annulment of a plan or programme — Possibility of maintaining the effects of the plan or programme — Conditions)

(2012/C 118/09)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Inter-Environnement Wallonie ASBL, Terre wallonne ASBL

Defendant: Région wallonne

Re:

Reference for a preliminary ruling — Conseil d'État (Belgium) — Assessment of the effects of certain plans and programmes on the environment — Protection of waters against pollution caused by nitrates from agricultural sources — Annulment of a national rule found to be contrary to Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30) — Possibility of maintaining, for a short period, the effects of that rule

Operative part of the judgment

Where a national court has before it, on the basis of its national law, an action for annulment of a national measure constituting a 'plan' or 'programme' within the meaning of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and it finds that the 'plan' or 'programme' was adopted in breach of the obligation laid down by that directive to carry out a prior environmental assessment, that court is obliged to take all the general or particular measures provided for by its national law in order to remedy the failure to carry out such an assessment, including the possible suspension or annulment of the contested 'plan' or 'programme'. However, in view of the specific circumstances of the main proceedings, the referring court can exceptionally be authorised to make use of its national provision empowering it to maintain certain effects of an annulled national measure in so far as:

- that national measure is a measure which correctly transposes Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources;
- the adoption and entry into force of the new national measure containing the action programme within the meaning of Article 5 of that directive do not enable the adverse effects on the environment resulting from the annulment of the contested measure to be avoided;
- annulment of the contested measure would result in a legal vacuum in relation to the transposition of Directive 91/676 which would be more harmful to the environment, in the sense that the annulment would result in a lower level of protection of waters against pollution caused by nitrates from agricultural sources and would thereby run specifically counter to the fundamental objective of that directive; and
- the effects of such a measure are exceptionally maintained only for the period of time which is strictly necessary to adopt the measures enabling the irregularity which has been established to be remedied.

(¹) OJ C 113, 9.4.2011.