Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

10 September 2015*

(Reference for a preliminary ruling — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Protection regime in respect of the Mount Hymettus area — Modification procedure — Applicability of the directive — Master plan and environmental protection programme for the greater Athens area)

In Case C-473/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Simvoulio tis Epikratias (Greece), made by decision of 19 September 2014, received at the Court on 20 October 2014, in the proceedings

Dimos Kropias Attikis

v

Ipourgos Perivallontos, Energias kai Klimatikis Allagis,

THE COURT (Ninth Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan and A. Prechal (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Dimos Kropias Attikis, by A. Papakonstantinou, dikigoros,

— the Greek Government, by A. Alefanti, V. Pelekou and S. Lekkou, acting as Agents,

— the European Commission, by G. Wilms and M. Patakia, acting as Agents,

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

* Language of the case: Greek.

Judgment

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

2 The request has been made in proceedings between the Dimos Kropias Attikis (municipality of Kropia, Attica) and the Ipourgos Perivallontos, Energias kai Klimatikis Allagis (Minister for the Environment, Energy and Climate Change) for the annulment of presidential decree No 187/2011 of 14 June 2011 on the establishment of protection measures in respect of the Mount Hymettus area and the Goudi and Ilissia metropolitan parks (*FEK* D' 187/16.06.2011, 'the contested decree').

Legal context

EU law

Directive 2001/42

3 Recitals 10 and 19 in the preamble to Directive 2001/42 state:

'(10) All plans and programmes which are prepared for a number of sectors and which set a framework for future development consent of projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [(OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5),] … are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment. When they determine the use of small areas at local level …, they should be assessed only where Member States determine that they are likely to have significant effects on the environment.

…

(19) Where the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, such as Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds [(OJ 1979 L 103, p. 1), as codified by Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 (OJ 2010 L 20, p. 7)], [Council] Directive 92/43/EEC [of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7)] …, in order to avoid duplication of the assessment, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation.'

4 As set out in Article 1 of Directive 2001/42, the objective of that directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with that directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

5 Article 2 of Directive 2001/42 provides:

‘For the purposes of this Directive:

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

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

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

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

…’

6 As set out in Article 3 of Directive 2001/42, entitled ‘Scope’:

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

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

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

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

…’

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

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

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

Directive 92/43

8 Article 6(3) of Directive 92/43 provides:

‘Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.’

9 Article 7 of that directive provides:

‘Obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.’

Greek law

Joint Ministerial Decision 107017/2006

10 Article 1 of Joint Ministerial Decision 107017/2006 of 28 August 2006 (*FEK* B’ 1225/5.9.2006) provides:

‘The objective of the present decision is to implement the provisions of Directive [2001/42], in order to ensure, within a framework of balanced development, that environmental considerations are integrated before plans or programmes are adopted, by establishing the measures, conditions and procedures necessary for the assessment of the effects that they are likely to have on the environment, thereby promoting sustainable development and a high standard of environmental protection.’

11 Article 3(1)(b) of the Joint Ministerial Decision states:

‘1. Subject to paragraph 2, a strategic environmental assessment shall be carried out before the adoption of a plan or programme or the commencement of the relevant legislative procedure for plans or programmes at national, regional, prefectural or local level likely to have significant environmental effects, and in particular:

…

(b) for all plans and programmes which apply in whole or in part to areas in the national section of the Natura 2000 European ecological network [sites of Community importance (“SCIs” or “SCI”, as appropriate) and special protection areas (“SPAs” or “SPA”, as appropriate)] and which are likely to affect those areas significantly, with the exception of management plans and action programmes directly connected with or necessary for the management and protection of such areas.

In order to establish whether the plans and programmes referred to in the foregoing paragraph … are likely to have significant effects on areas in the national section of the Natura 2000 European ecological network [SCIs and SPAs], and hence whether they must be subject to a strategic environmental assessment procedure, the environmental screening procedure under Article 5(2) shall be followed.’

12 Article 5(1) of Joint Ministerial Decision 107017/2006 is worded as follows:

'Each plan and programme referred to in Article 3(1)(b) and (2) shall be subject to an environmental screening procedure, so that the competent authority referred to in paragraph 3 can decide, in accordance with the specific terms of Article 3, whether the plan or programme in question is likely to have significant effects on the environment and must therefore be subject to a strategic environmental assessment …'

Town and country planning legislation in respect of the greater Athens area

13 Law No 1515/1985 on the Master plan and environmental protection programme for the greater Athens area, the provisions of which were codified by the presidential decree of 14 July 1999 on a code of general legislation in respect of town planning, established a spatial planning master plan for the greater Athens area ('Athens Master Plan' or 'AMP') and an environmental protection programme.

14 Under Article 1(1) of Law No 1515/1985, the AMP comprises all the objectives, guidelines, programmes and measures laid down in that law as being elements necessary for the organisation of the spatial and urban planning of Athens and its outer suburbs within the framework of five-year economic and social development plans.

15 Under Article 4(3) of that law, the objective of the presidential decrees adopted on the basis of that article is to supplement, give more specific expression to, clarify and modify in part the AMP and the environmental protection programme; the presidential decrees may not, however, modify the objectives and guidelines of the AMP and the environmental protection programme.

Legislation on the protection of the Mount Hymettus area

16 The Mount Hymettus area is covered by various protection schemes provided for under national law. A comprehensive protection scheme in respect of that mountain area was established for the first time by the presidential decree of 31 August 1978, which provided for two protection zones (A and B) and determined the permitted land uses in those zones.

17 In addition, in the light of its remarkable biodiversity, in particular, as regards its flora and avifauna, the site of the Mount Hymettus area was included on the SCI list pursuant to Directive 92/43, under the name 'Ymittos — Aisthitiko Dasos Kaisarianis — Limni Vouliagmenis' (GR 3000006), and as a SPA pursuant to Directive 2009/147, under the name 'Oros Ymittos' (code GR 3000015). The mountain range was also designated a special area of conservation within the meaning of Directive 92/43.

18 With a view to improving the protection of the Mount Hymettus area and of making the relevant earlier legislation consistent with the provisions of the AMP, the agency for the Master plan and environmental protection programme for the greater Athens area, an agency established by Article 5 of Law No 1515/1985, initiated the procedure for modifying the presidential decree of 31 August 1978.

19 Within the framework of that procedure, a study was carried out on the basis of which the executive committee of the agency for the Master plan and environmental protection programme for the greater Athens area developed a project on which the municipalities concerned, several ministries and the general public were subsequently consulted. Those consultations taken into account, the project was completed and led to the adopted of the contested decree.

20 As set out in Article 1 of that decree:

'The objective of the present decree is the effective protection of the Mount Hymettus area and its peripheral areas through the management and ecological conservation of habitats, flora and fauna, enhancement of its important ecological activities for the Attica basin, protection of the landscape and building control'.

21 Article 3 of the contested decree establishes five protected areas, namely Zone A, the surface area of which extends beyond that of the existing Zone A, which is declared an 'area warranting absolute protection of nature and monuments' with a view to fully protecting habitats, flora and fauna and enhancing, in an ecologically compatible manner, the particular natural, geological and historical features of the Mount Hymettus area; Zone B, which is categorised as a 'peripheral protection area' and which is an area for agriculture, education and outdoor recreation, culture and sport; Zone C, which is an archaeological sites protection area; Zone D, designating the Goudi and Ilissia metropolitan parks, which connects the mountain ecosystem to the city; and Zone E, an area allocated to special land uses, in which are permitted, inter alia, cemeteries complying with the relevant legislation in force.

22 Article 7 of the contested decree, entitled 'Transitional provisions', provides, inter alia, that quarries must be rehabilitated within a period of three years and certain installations, including existing industrial and artisanal installations, must be moved within a period of five years.

23 Article 8 of that decree provides, inter alia, that lawful existing buildings and installations allocated to housing, education, hospitals, sanatoriums, orphanages, asylums, recreation, sports, cultural events, monasteries, telephony antennae, places of worship and cemeteries the use of which is not permitted under the provisions of the decree may remain *in situ* and be the subject of repair works, but may not be extended.

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

24 The Simvoulio tis Epikratias (Greek Council of State) states that, in the light of the arguments put forward by the Dimos Kropias, it has to determine whether the contested decree falls to be annulled on the ground that it concerns a plan or programme covered by Directive 2001/42 that ought to have been subject to the 'prior environmental screening' procedure and/or to the 'strategic environmental assessment' procedure as referred to in Joint Ministerial Decision 107017/2006, which is intended to transpose that directive.

25 That court considers that plans and programmes intended to give more specific expression to or implement an existing higher-level plan under which overall planning was effected — in the present case, the Master plan constituted by the AMP, which, since the coming into force of Joint Ministerial Decision 107017/2006, is itself subject to the abovementioned strategic environmental assessment procedure — are not covered by those procedures. It is irrelevant that the AMP was not the subject of such a strategic environmental assessment because of the fact that, when it was adopted, that ministerial decision had not yet come into force.

26 The referring court considers that it is apparent from paragraph 42 of the judgment in *Inter-Environnement Bruxelles and Others* (C-567/10, EU:C:2012:159) that an 'environmental assessment' within the meaning of Article 3 of Directive 2001/42 is not required if the measure falls within a hierarchy of town and country planning measures, as long as those measures lay down sufficiently precise rules governing land use, they have themselves been the subject of an assessment of their environmental effects and it may reasonably be considered that the interests which Directive 2001/42 is designed to protect have been taken into account sufficiently within that framework.

27 It observes that the position of the majority of its members is that the AMP established by Law No 1515/1985, which is an existing plan of higher ranking than the contested decree, lays down sufficiently precise rules governing land use, so that an 'environmental assessment', within the meaning of Directive 2001/42, was not required prior to the adoption of that decree, which gives more specific expression to and implements that master plan.

28 It observes that the basis for that view lies, inter alia, in the fact that Article 4(3) of Law No 1515/1985 provides that decrees adopted on the basis of that article, such as the contested decree, may only supplement, give more specific expression to, clarify and modify the AMP and the environmental protection programme; they may not modify their objectives and guidelines, nor may they provide for new works or new activities which are not part of the planning of the AMP or which have the slightest adverse effect on the environment. The contested decree is intended to regulate even more strictly the current regime for the protection of the Mount Hymettus area as regards land use and the monitoring thereof in compliance with the AMP.

29 The referring court adds that according to the minority opinion expressed within that court, the contested decree could not be adopted without the 'environmental assessment' provided for in Article 3 of Directive 2001/42. The minority opinion is that Law No 1515/1985 does not lay down any rule as regards land use and therefore certainly no precise rule of that kind, since that law contains only general provisions setting out objectives and guidelines.

30 According to that minority opinion, a plan such as that provided for in the contested decree, even if it merely gives more specific expression to the AMP, is — under the very terms of Article 3(2)(a) of Directive 2001/42 — clearly subject to an environmental assessment.

31 The referring court considers that if, like the majority of the referring court's members, the Court of Justice were to hold that the plan established by the contested decree did not have to form the subject-matter of an 'environmental assessment' as provided for in Directive 2001/42, since it gives more specific expression to the AMP, which constitutes a hierarchically superior measure, then the question would nevertheless arise, secondly, whether that assessment was in fact required in so far as the AMP itself was adopted without such an assessment having been carried out.

32 The referring court states that according to the majority opinion of that court, that question falls to be answered in the negative, essentially on the ground that, having regard to the date on which it was adopted, Law No 1515/1985, which contains the AMP, did not fall within the temporal scope of Directive 2001/42 or the legislation intended to transpose that directive into Greek law.

33 However, a minority of the members of the referring court considers that that majority opinion cannot be accepted because it would unduly restrict the effectiveness of Directive 2001/42 and be contrary to paragraph 42 of the judgment in *Inter-Environnement Bruxelles and Others* (C-567/10, EU:C:2012:159). Furthermore, the question of the retroactive application of Directive 2001/42 would not arise because, in the present case, the question raised is not whether the initial plan was subject to an 'environmental assessment' within the meaning of that directive, but merely whether the legislation giving more specific expression to that plan has to be subjected to such an assessment so far as concerns its newly adopted provisions.

34 The referring court considers that if the Court of Justice were to answer that question in the negative, then the question would arise, thirdly, whether the adoption of the contested decree was in any event subject to an environmental assessment under Article 3(2)(b) of Directive 2001/42, since Zone A, as defined by that decree, encompasses almost all of the site of the Mount Hymettus area as protected as a SCI and SPA.

35 More specifically, the question would arise whether, in the light of the provisions of Article 3(2)(b) of Directive 2001/42 in conjunction with Article 6(3) of Directive 92/43, the contested decree constitutes a management plan that is closely connected with and necessary for the protection of the site in question, in which case an environmental assessment was not required.

36 According to the majority opinion expressed within the referring court, that question would fall to be answered in the negative since although the contested decree is intended to protect the Mount Hymettus area and lays down rules more favourable to the environment, it nevertheless preserves, in all the zones [established therein], existing activities and land uses the environmental effects of which have never been assessed and, furthermore, permits existing lawful installations, such as radio-television antennae, schools, retirement homes and cemeteries, to be maintained.

37 That view is disputed, however, by some members of the referring court, who consider that the contested decree constitutes a management plan that is closely connected with and necessary for the protection of the site in question inasmuch as the classification of the site of the Mount Hymettus area in Zone A means absolute protection, not permitting any land use with the exception of installations that are compatible with or deemed necessary for the purposes of protecting the area, such as fire protection works, fire hydrants, forestry management works, the creation of trails and cycling paths and minor works to shore up stream beds.

38 Lastly, the referring court considers that if the Court of Justice were to conclude that, so far as Zone A is concerned, the contested decree constitutes a management plan that is closely connected with and necessary for the protection of the site of the Mount Hymettus area, the question would arise whether that decree could be annulled only in part, that is, only to the extent that certain parts of the site protected as a SCI or a SPA are included in Zones B, D and E, as referred to in that decree, for which an environmental assessment was required but was not carried out.

39 A majority within the referring court considers that that question falls to be answered in the affirmative.

40 That view is not shared by a minority of the members of that court, who are of the opinion that where it is intended to regulate land uses or permitted activities over a large area that is considered to form a whole, such as the site of the Mount Hymettus area, the data must be assessed in a unitary manner and the environmental assessment cannot be fragmentary.

41 In those circumstances, the Simvoulio tis Epikratias decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is a master plan for a metropolitan urban-planning area which sets out general objectives, guidelines and programmes for organising the spatial and urban planning of the broader metropolitan area, in particular establishing as individual general objectives the protection of the mountainous areas surrounding the metropolitan area and the containment of urban sprawl, a plan which allows the competent administrative authority not to subject a plan — which is subsequently adopted by means of a decree pursuant to the law containing the aforementioned initial master plan and which defines protection zones in one of the aforementioned mountainous areas and the related permitted land uses and activities, in order to give more specific expression to and implement the objectives for the protection of mountainous areas and the containment of urban sprawl — to the … environmental assessment procedure … within the meaning of Article 3 [of Directive 2001/42], as interpreted [in paragraph 42 of] the judgment [in] *Inter-Environnement Bruxelles and Others*[, C-567/10, EU:C:2012:159]?

(2) If the answer to the [first] question is in the affirmative: where, [because of the date of its adoption], no … environmental assessment [as referred to in] … Directive 2001/42… was carried out in respect of that [master] plan, must that assessment be carried out [at the time of the adoption of] the measure [giving more specific expression to the abovementioned plan, where that measure was adopted after the coming into force of the directive]?

(3) If the answer to the second question is in the negative: where a decree contains rules relating to protection measures and to permitted activities and land uses in an area included in the national part of the NATURA [2000] network as a SCI, [special area of conservation] and SPA … and those rules admittedly establish a regime of absolute nature protection, permitting only fire protection installations, forest management and hiking paths, but it is not apparent from the preparatory acts for the introduction of those rules that the conservation objectives of those areas — namely the specific environmental characteristics on account of which they were selected for inclusion in the NATURA [2000] network — were taken into account, while moreover uses that are no longer permitted are also still maintained within the area in question on the basis of those rules solely due to the fact that they were compatible with the previous protection regime, is that decree a management plan, within the meaning of Article 6(3) of Directive 92/43 … the adoption of which [does not need to be preceded by an] environmental assessment, in accordance with that article … in conjunction with Article 3(2)(b) of … Directive 2001/42 …?

(4) [I]f the answer to the third question is in the affirmative: when a spatial planning measure has been adopted that relates to a wider single geographical area, and requires, in principle, under Article 3(2)(b) of Directive 2001/42 … in conjunction with Article 6(3) of Directive 92/43 …, the carrying out of a[n] … environmental assessment, which did not take place, and if it is found that the carrying out of a[n] … environmental assessment was required only for certain sections of this area — on account of the rules finally imposed in relation to the land uses and activities permitted in those sections, which do not constitute mere management plans — whereas such an assessment was not required for most of the geographical area because the rules adopted, in so far as they relate to these sections, in practice constitute a management plan, for which, in accordance with Article 3(2)(b) of Directive 2001/42 … in conjunction with Article 6(3) of Directive 92/43 …, there is no obligation to carry out such an assessment, is it possible, for the purposes of Directive 2001/42 …, to find that this body of rules is partially invalid and, therefore, to annul it only in respect of the sections of the [geographical] area which, because of the rules finally imposed, require the carrying out of a[n] … environmental assessment, with the further consequence, after the partial annulment of the measure in question, that [the] … environmental assessment takes place only in relation to this part and not the overall area?'

Consideration of the questions referred

The first and second questions

42 By its first two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 2(a) and 3(2)(a) of Directive 2001/42 must be interpreted as meaning that the adoption of a measure containing a plan or programme relating to town and country planning and land use falling within the scope of Directive 2001/42 that modifies an existing plan or programme may be exempted from the obligation to carry out an environmental assessment under Article 3 of that directive on the ground that that measure is intended to give more specific expression to and implement a master plan established by a hierarchically superior measure that has not itself been the subject of such an environmental assessment.

43 It follows from paragraph 42 of the judgment in *Inter-Environnement Bruxelles and Others* (C-567/10, EU:C:2012:159) that, in principle, the objectives of Directive 2001/42 and the need to preserve its effectiveness do not preclude a measure that repeals, in its entirety or in part, a plan or programme covered by that directive from being regarded as excluded from the scope of that directive if the measure repealed falls within a hierarchy of town and country planning measures, as long as those measures lay down sufficiently precise rules governing land use, they have themselves been the subject of an assessment of their environmental effects and it may reasonably be considered that the interests which Directive 2001/42 is designed to protect have been taken into account sufficiently within that framework.

44 However, by contrast with repealing measures, Directive 2001/42, and in particular Article 2(a) thereof, expressly includes within its scope measures modifying plans and programmes, such as the contested decree in this instance, as indeed the Court noted in paragraph 36 of the judgment in *Inter-Environnement Bruxelles and Others* (C-567/10, EU:C:2012:159).

45 Since the main proceedings concern a measure modifying plans and programmes that is expressly included within the scope of Directive 2001/42, it therefore cannot be maintained that, having regard to the objectives of Directive 2001/42 and to the need to preserve its effectiveness, that measure may nevertheless be excluded from the scope of that directive.

46 Furthermore, it is common ground that the plans and programmes that the contested decree contains in principle fall within the scope of Article 3(2)(a) of Directive 2001/42 since they concern, in essence, town and country planning and land use.

47 Moreover, it follows from a reading of that provision in conjunction with Article 3(1) of Directive 2001/42 that the directive must be interpreted as meaning that the obligation to make a particular plan or programme subject to an environmental assessment is conditional on the plan or programme being likely to have significant environmental effects or, in other words, to have a significant effect on the site concerned. The examination to be carried out in order to determine whether that condition is satisfied is necessarily limited to the question of whether it can be excluded, on the basis of objective information, that that plan or project will have a significant effect on the site concerned (see, by analogy, judgment in *Sillogos Ellinon Poleodomon kai Khorotakton*, C-177/11, EU:C:2012:378).

48 In any event, the limitation of the scope of Directive 2001/42 to which the Court referred in paragraph 42 of the judgment in *Inter-Environnement Bruxelles and Others* (C-567/10, EU:C:2012:159) concerns a situation that is fundamentally different to that at issue in the main proceedings.

49 That limitation concerned repealing measures and cannot be extended to include measures modifying plans and programmes such as those at issue in the main proceedings.

50 Given the objective of Directive 2001/42, which consists in providing for a high level of protection of the environment, the provisions which delimit the directive's scope, in particular those setting out the definitions of the measures envisaged by the directive, must be interpreted broadly (judgment in *Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraph 37). Any exceptions to or limitations of those provisions must, consequently, be interpreted strictly.

51 Moreover, measures modifying plans and programmes necessarily result in a modification of the legal reference framework and are therefore likely to have effects on the environment, in some circumstances, significant ones, which have not yet been the subject of an 'environmental assessment' within the meaning of Directive 2001/42 (see, to that effect, judgment in *Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraph 39).

52 The mere fact that the modifications made by the contested decree may be intended to give more specific expression to and implement a master plan contained in a measure which, in terms of the legislation, is hierarchically superior cannot justify such measures being adopted without being subject to such an assessment.

53 Indeed, an interpretation to that effect would be incompatible with the objectives of Directive 2001/42 and would undermine its effectiveness, since it would mean that a potentially broad category of measures modifying plans and programmes likely to give rise to significant environmental effects is, on principle, excluded from the scope of that directive even though those measures are expressly covered by the terms of Articles 2(a) and 3(2)(a) of that directive.

54 That is particularly true as regards a measure such as the contested decree, since it is common ground that the modifications made by it are substantive in nature and that the master plan at issue in the main proceedings, namely the AMP relating to the greater Athens area, even if it could be regarded as laying down sufficiently precise rules governing land use, has not in any event been the subject of an environmental assessment within the meaning of Directive 2001/42.

55 The rationale for the limitation of the scope of Directive 2001/42 to which the Court referred in paragraph 42 of the judgment in *Inter-Environnement Bruxelles and Others* (C-567/10, EU:C:2012:159) is to avoid the same plan being subject to several environmental assessments covering all the requirements of that directive.

56 The fact that Directive 2001/42 had not yet come into force when that master plan was adopted is irrelevant in the light of the fact that that directive applies without exception to any modifying measure adopted while the directive was in force.

57 Moreover, what is even more important in the main proceedings is the fact that the plan that the contested decree is specifically intended to modify, namely the plan established by the presidential decree of 31 August 1978, evidently was not the subject of an environmental assessment analogous to that required under Directive 2001/42.

58 Lastly, even if the plans and programmes that the contested decree modifies have already been subject to an assessment of their environmental effects under Directive 85/337 or 'any other Community law requirements' as provided for in Article 11(1) of Directive 2001/42 — a point which it is not possible to establish from the documents before the Court — it is, in any event, for the referring court to determine whether such an assessment may be regarded as being the result of a coordinated or joint procedure within the meaning of Article 11(2) of Directive 2001/42 and whether it already complies with all the requirements of Directive 2001/42, in which case there would no longer be an obligation to carry out a new assessment for the purposes of that directive (judgment in *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 62).

59 Having regard to all the foregoing considerations, the answer to the first two questions is that Articles 2(a) and 3(2)(a) of Directive 2001/42 must be interpreted as meaning that the adoption of a measure containing a plan or programme relating to town and country planning and land use falling within the scope of Directive 2001/42 that modifies an existing plan or programme may not be exempted from the obligation to carry out an environmental assessment under that directive on the ground that that measure is intended to give more specific expression to and implement a master plan established by a hierarchically superior measure that has not itself been the subject of such an environmental assessment.

The third and fourth questions

60 In the light of the answer given to the first two questions, it should be observed that, as to whether Article 3(2)(b) of Directive 2001/42 also requires an environmental assessment in respect of the plans and programmes laid down in the contested decree, the third and fourth questions required an answer only if the Court held that those plans and programmes do not have to be the subject of such an assessment under Article 3(2)(a) of that directive.

61 In those circumstances, there is no need to answer the third and fourth questions.

Costs

62 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 (Ninth Chamber) hereby rules:

Articles 2(a) and 3(2)(a) 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 must be interpreted as meaning that the adoption of a measure containing a plan or programme relating to town and country planning and land use falling within the scope of Directive 2001/42 that modifies an existing plan or programme may not be exempted from the obligation to carry out an environmental assessment under that directive on the ground that that measure is intended to give more specific expression to and implement a master plan established by a hierarchically superior measure that has not itself been the subject of such an environmental assessment.

[Signatures]