

Case C-2/07

Paul Abraham and Others

v

Région wallonne and Others

(Reference for a preliminary ruling
from the Cour de cassation (Belgium))

(Directive 85/337/EEC — Assessment of the effects of projects on the
environment — Airport with a runway more than 2 100 metres in length)

Opinion of Advocate General Kokott delivered on 29 November 2007	I - 1200
Judgment of the Court (Second Chamber), 28 February 2008	I - 1223

Summary of the Judgment

- 1. Environment — Assessment of the effects of certain projects on the environment
— Directive 85/337
(Council Directive 85/337, Art.1(2))*

2. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337*
(Council Directive 85/337, Annexes I, point 7, and II, point 12)
3. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337*
(Council Directive 85/337, Annexe II, point 12)

1. Although an agreement signed between the public authority, a company in charge of the development and promotion of an airport and an air freight company which provides for certain modifications to the infrastructure of that airport in order to enable it to be used 24 hours per day and 365 days per year is not a project within the meaning of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, it is for the national court to determine, on the basis of the applicable national legislation, whether such an agreement constitutes a development consent within the meaning of Article 1(2) of that directive. It is necessary, in that context, to consider whether that consent forms part of a procedure carried out in several stages involving a principal decision and implementing decisions and whether account is to be taken of the cumulative effect of several projects whose impact on the environment must be assessed globally.

(see para. 28, operative part 1)
2. In its original version, point 12 of Annex II to Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, which refers to ‘modifications to development projects included in Annex I’, read in conjunction with point 7 of Annex I, which encompasses the ‘construction ... of airports with a basic runway length of 2 100 m or more’, also

encompasses works to modify the infrastructure of an existing airport, without extension of the runway, where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. That is the case in particular for works aimed at significantly increasing the activity of the airport and air traffic. It is for the national court to establish that the competent authorities correctly assessed whether the works at issue in the main proceedings were to be subject to an environmental impact assessment.

The scope of Directive 85/337 is wide and its purpose very broad. It would be contrary to the very objective of that directive to exclude works to improve or extend the infrastructure of an existing airport from the scope of Annex II on the ground that Annex I of that directive covers the ‘construction of airports’ and not ‘airports’ as such. Such an interpretation would allow all works to modify a pre-existing airport, regardless of

their extent, to fall outside the obligations resulting from Directive 85/337 and would, in that regard, thus deprive Annex II of that directive of all effect.

(see paras 32, 33, 40, operative part 2)

3. As regards a project covered by point 12 of Annex II to Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, the competent authorities have an obligation to take account of the projected increase in the activity of an airport in determining the environmental effect of modifications made to its infrastructure with a view to accommodating that increase in activity.

(see para. 46, operative part 3)