

Case C-142/07

Ecologistas en Acción-CODA

v

Ayuntamiento de Madrid

(Reference for a preliminary ruling
from the Juzgado de lo Contencioso-Administrativo No 22 de Madrid)

(Directives 85/337/EEC and 97/11/EC — Assessment of the effects
of projects on the environment — Refurbishment and improvement
works on urban roads — Whether subject to assessment)

Opinion of Advocate General Kokott delivered on 30 April 2008 I - 6100
Judgment of the Court (Third Chamber), 25 July 2008 I - 6117

Summary of the Judgment

1. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337*
(Council Directive 85/337, as amended by Directive 97/11, Arts 2(1) and 4(2))
2. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337*
(Council Directive 85/337, as amended by Directive 97/11, Art. 2(1), and Annexes I, point 7(b) and (c), and II, points 10(e) and 13, first indent)

1. If, like Article 4(2) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, the same provision of that directive, as amended by Directive 97/11, confers on Member States a measure of discretion in order to determine whether a project falling in the categories listed in Annex II thereto must be made subject to an environmental impact assessment, the limits of that discretion are to be found in the obligation set out in Article 2(1) of that directive 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. In applying their discretion, the Member States must take account of each of those criteria in order to determine whether projects are likely to have an effect on the environment.

In that regard, in the same way as Directive 85/337, the amended directive adopts an overall assessment of the effects of projects or the alteration thereof on the environment. It would be simplistic and contrary to that approach to take account, when assessing the environmental impact of a project or of its modification, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable

to result from the use and exploitation of the end product of those works.

(see paras 38, 39)

2. Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11 must be interpreted as meaning that it provides for environmental impact assessment of refurbishment and improvement projects for urban roads, either where they are projects covered by point 7(b) or (c) of Annex I to the directive, or where they are projects covered by point 10(e) of Annex II or the first indent of point 13 thereof, which are likely, by virtue of their nature, size or location and, if appropriate, having regard to their interaction with other projects, to have significant effects on the environment.

Since the scope of Directive 85/337 and that of the amended directive is very wide, it would, therefore, be contrary to the very purpose of the amended directive to allow any urban road project to fall outside its scope solely on the ground that the directive does not expressly mention among the projects listed in Annexes I and II those concerning that kind of road. Furthermore, the concepts in those annexes are Community law concepts which must be interpreted

independently and it is conceivable that the types of road which are mentioned therein are sited both in and outside built-up areas.

In addition, the fact that point 7(b) and (c) of Annex I to that directive refers to projects for the 'construction' of the types of road mentioned does not mean that projects for refurbishment and improvement of an existing road are excluded from the scope of the amended directive. A project for refurbishment of a road which would be equivalent, by its size and the manner in which it is carried out, to construction may be regarded as a construction project for the purposes of that annex.

Lastly, the purpose of the amended directive cannot be circumvented by the splitting of projects and the failure to take account of the cumulative effect of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the amended directive.

(see paras 28, 29, 36, 44, 46, operative part)