

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 18 October 2011 (reference for a preliminary ruling from the Conseil d'État — Belgium) — Antoine Boxus, Willy Roua (C-128/09), Guido Durllet and Others (C-129/09), Paul Fastrez, Henriette Fastrez (C-130/09), Philippe Daras (C-131/09), Association des riverains et habitants des communes proches de l'aéroport BSCA (Brussels South Charleroi Airport) (ARACH) (C-134/09 and C-135/09), Bernard Page (C-134/09), Léon L'Hoir, Nadine Dartois (C-135/09) v Région wallonne

(Case C-128/09 to C-131/09, C-134/09 and C-135/09) ⁽¹⁾

(Assessment of the effects of projects on the environment — Directive 85/337/EEC — Scope — Concept of 'specific act of national legislation' — Aarhus Convention — Access to justice in environmental matters — Extent of the right to a review procedure in respect of a legislative act)

(2011/C 362/02)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Antoine Boxus, Willy Roua (C-128/09), Guido Durllet and Others (C-129/09), Paul Fastrez, Henriette Fastrez (C-130/09), Philippe Daras (C-131/09), Association des riverains et habitants des communes proches de l'aéroport BSCA (Brussels South Charleroi Airport) (ARACH) (C-134/09 and C-135/09), Bernard Page (C-134/09), Léon L'Hoir, Nadine Dartois (C-135/09)

Defendant: Région wallonne

In the presence of: Société régionale wallonne du transport (SRWT) (C-128/09 and C-129/09), Infrabel SA (C-130/09 and C-131/09), Société wallonne des aéroports (SOWEAR) (C-135/09)

Re:

Reference for a preliminary ruling — Conseil d'État (Belgium) — Interpretation of Articles 1, 5, 6, 7, 8 and 10a 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), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17) — Interpretation of Articles 6 and 9 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved, on behalf of the European Community, by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) — Recognition, as specific national legislative acts, of certain consents 'ratified' by decree in respect of which there are overriding reasons in the general interest? — Absence of complete right of action against a decision to authorise projects capable of having significant effects on the environment — Whether the existence of such a right is optional or obligatory — Infrastructure works relating to the extension of the Liège-Bierset Airport runway

Operative part of the judgment

1. Article 1(5) 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, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, must be interpreted as meaning that only projects the details of which have been adopted by a specific legislative act, in such a way that the objectives of that directive have been achieved by the legislative process, are excluded from the directive's scope. It is for the national court to verify that those two conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates. In that regard, a legislative act which does no more than simply 'ratify' a pre-existing administrative act, by merely referring to overriding reasons in the general interest without a substantive legislative process enabling those conditions to be fulfilled having first been commenced, cannot be regarded as a specific legislative act for the purposes of that provision and is therefore not sufficient to exclude a project from the scope of Directive 85/337, as amended by Directive 2003/35;

2. Article 9(2) of the Convention on access to information, public participation in decision making and access to justice in environmental matters, concluded on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, and Article 10a of Directive 85/337, as amended by Directive 2003/35, must be interpreted as meaning that:

— when a project falling within the scope of those provisions is adopted by a legislative act, the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive must be capable of being submitted, under the national procedural rules, to a court of law or an independent and impartial body established by law;

— if no review procedure of the nature and scope set out above were available in respect of such an act, any national court before which an action falling within its jurisdiction is brought would have the task of carrying out the review described in the previous indent and, as the case may be, drawing the necessary conclusions by disapplying that legislative act.

(¹) OJ C 153, 4.7.2009.

Judgment of the Court (First Chamber) of 20 October 2011 — European Commission v Federal Republic of Germany

(Case C-284/09) (¹)

(Failure of a Member State to fulfil obligations — Free movement of capital — Article 56 EC and Article 40 of the Agreement on the European Economic Area — Taxation of dividends — Dividends distributed to companies established in national territory and to companies established in another Member State or a State of the European Economic Area — Different treatment)

(2011/C 362/03)

Language of the case: German

Parties

Applicant: European Commission (represented by: R. Lyal and B.-R. Killmann, acting as Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and C. Blaschke, acting as Agents, and Professor A. Kube)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Article 56 EC and Article 40 of the EEA Agreement — National legislation fully exempting from withholding tax the dividends paid by subsidiaries to parent companies established in national territory, whereas, with regard to parent companies established in another Member

State or State of the European Economic Area, that legislation makes that total exemption subject to the condition that the minimum threshold for the parent company's shareholdings in the share capital of the subsidiary set out in Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) is reached

Operative part of the judgment

The Court:

1. Declares that, by taxing dividends distributed to companies established in other Member States, where the threshold for a parent company's holding in the capital of its subsidiary laid down in Article 3(1)(a) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive 2003/123/EC of 22 December 2003, is not reached, more heavily in economic terms than dividends distributed to companies established in its territory, the Federal Republic of Germany has failed to fulfil its obligations under Article 56(1) EC;
2. Declares that, by taxing dividends distributed to companies established in Iceland and Norway more heavily in economic terms than dividends distributed to companies established in its territory, the Federal Republic of Germany has failed to fulfil its obligations under Article 40 of the Agreement on the European Economic Area of 2 May 1992;

3. Orders the Federal Republic of Germany to pay the costs.

(¹) OJ C 256, 24.10.2009.

Judgment of the Court (First Chamber) of 20 October 2011 (reference for a preliminary ruling from the Tribunale ordinario di Bari — Italy) — Interedil Srl, in liquidation v Fallimento Interedil Srl, Intesa Gestione Crediti SpA

(Case C-396/09) (¹)

(Reference for a preliminary ruling — Whether a lower court has the power to refer a question to the Court for a preliminary ruling — Regulation (EC) No 1346/2000 — Insolvency proceedings — International jurisdiction — The centre of a debtor's main interests — Transfer of a registered office to another Member State — Concept of establishment)

(2011/C 362/04)

Language of the case: Italian

Referring court

Tribunale ordinario di Bari