

Reference for a preliminary ruling from the Conseil d'Etat (Belgium) lodged on 9 April 2009 — Association des Riverains et Habitants des Communes Proches de l'Aéroport B.S.C.A. (Brussels South Charleroi Airport) ASBL — A.R.A.Ch, Léon L'Hoir, Nadine Dartois v Région wallonne

(Case C-135/09)

(2009/C 153/42)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicants: Association des Riverains et Habitants des Communes Proches de l'Aéroport B.S.C.A. (Brussels South Charleroi Airport) ASBL — A.R.A.Ch, Léon L'Hoir, Nadine Dartois

Defendant: Région wallonne

Questions referred

1. Can Article 1(5) of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ⁽¹⁾ be interpreted as excluding from its application legislation — such as the Decree of the Walloon Region on certain consents for which there are overriding reasons in the general interest of 17 July 2008 — which merely states that 'overriding reasons in the general interest have been established' for the grant of town planning consents, environmental consents and combined town planning and environmental consents relating to the acts and works listed therein and which 'ratifies' consents in respect of which it is stated that 'overriding reasons in the general interest have been established'?
2. (a) Do Articles 1, 5, 6, 7, 8 and 10a of Directive 85/337/EEC, as amended by Council Directive No 97/11/EC ⁽²⁾ and Directive No 2003/35/EC ⁽³⁾ of the European Parliament and of the Council, preclude a legal regime in which the right to implement a project subject to an environmental impact assessment is conferred by a legislative act against which no review procedure is available before a court of law or another independent and impartial body established by law which makes it possible to challenge, both in terms of the substance and the procedure followed, the decision granting the right to implement the project?
- (b) Must Article 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 by the European Community by Council Decision 2005/370/EC of 17 February 2005, be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able

to challenge the legality, in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment, of decisions, acts or omissions subject to the provisions of Article 6?

- (c) In the light 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 by the European Community by Council Decision 2005/370/EC ⁽⁴⁾ of 17 February 2005, must Article 10a of Directive 85/337/EEC, as amended by Directive 2003/35/EC, be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality of decisions, acts or omissions in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment?

⁽¹⁾ 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).

⁽²⁾ Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5).

⁽³⁾ 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 with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC — Statement by the Commission (OJ 2003 L 156, p. 17).

⁽⁴⁾ Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 1).

Reference for a preliminary ruling from the Tribunale Ordinario di Palermo (Italy) lodged on 15 April 2009 — Todaro Nunziatina & C. snc v Assessorato del Lavoro e della Previdenza Sociale

(Case C-138/09)

(2009/C 153/43)

Language of the case: Italian

Referring court

Tribunale Ordinario di Palermo

Parties to the main proceedings

Applicant: Todaro Nunziatina & C. snc

Defendant: Assessorato del Lavoro e della Previdenza Sociale