



Reports of Cases

Case C-348/15

Stadt Wiener Neustadt
v
Niederösterreichische Landesregierung

(Request for a preliminary ruling from the Verwaltungsgerichtshof)

(Reference for a preliminary ruling — Assessment of the effects of certain public and private projects on the environment — Directive 85/337/EEC — Directive 2011/92/EU — Scope — Concept of ‘specific act of national legislation’ — No environmental impact assessment — Definitive authorisation — Legislative regularisation a posteriori of the lack of environmental impact assessment — Principle of cooperation — Article 4 TEU)

Summary — Judgment of the Court (First Chamber), 17 November 2016

1. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Scope — Project adopted by a national legislative act — Precluded — Conditions — Determination by the national court*

(Council Directive 85/337, as amended by Directive 97/11, Art. 1(2) and (5))

2. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — National legislation assimilating the effects of an a posteriori regularisation consent to those of a planning consent granted prior to the works being carried out — Not permissible*

(Council Directive 85/337, as amended by Directive 97/11, Art. 2(1))

3. *EU law — Direct effect — National rules of procedure — Conditions under which applicable — Respect for the principles of equivalence and effectiveness — Absence of rules, in EU law, regarding the time-limits for actions against authorisations issued in breach of the duty to make a prior environmental impact assessment — Setting of a reasonable time-limit for bringing an action by the Member State concerned — Lawfulness*

(Council Directive 85/337, as amended by Directive 97/11, Art. 2(1))

4. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Scope — Project adopted on the basis of a decision taken in breach of the duty to assess its effects on the environment but nonetheless regarded as complying with national law — Included — National legislation providing for a posteriori regularisation of the authorisation decision — Not permissible*

(Council Directive 85/337, as amended by Directive 97/11, Art. (5))

5. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Competent authorities obliged to carry out the assessment before they issue authorisation — Assessment omitted — Obligation on the authorities to remedy that omission — Scope — National legislation preventing an action for a remedy being brought notwithstanding the fact that the time-limit provided under national law had not expired — Not permissible*

(Art. 4(3), TEU; Council Directive 85/337, as amended by Directive 97/11, Art. 2(1))

1. Article 1(5) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11, makes the exclusion of a project from the scope of that directive subject to two conditions. Firstly, the details of the project must be adopted by a specific act of legislation. Secondly, the objectives of the directive, including that of supplying information, must be achieved through the legislative process.

The first condition means that the legislative act displays the same characteristics as a consent within the meaning of Article 1(2) of Directive 85/337. It must, in particular, grant the developer the right to carry out the project and must include, like a development consent, following their consideration by the legislature, all the elements of the project relevant to the environmental impact assessment. The legislative act must therefore demonstrate that the objectives of Directive 85/337 have been achieved as regards the project in question. That is not the case where the act does not include the elements necessary to assess the environmental impact of the project.

The second condition means that the objectives of Directive 85/337 are to be achieved through the legislative process. It follows that the legislature must have sufficient information at its disposal at the time when the project is adopted. In that regard, the minimum information to be supplied by the developer is to include a description of the project comprising information on the site, design and size of the project, a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects, and the data required to identify and assess the main effects which the project is likely to have on the environment.

It is for the national court to ascertain whether those 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.

(paras 26-31)

2. See the text of the decision.

(see paras 36, 37)

3. See the text of the decision.

(see paras 40-42)

4. Article 1(5) of 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 covers a project subject to a legislative provision under which a project which has been the subject of a decision taken in breach of the obligation to assess its effects on the environment, in respect of which the time limit for an action for annulment has expired, must be regarded as lawfully authorised. EU law precludes such a legislative provision insofar as it provides that a prior environmental impact assessment must be deemed to have been carried out for such a project.

A national provision under which projects in respect of which the consent can no longer be subject to direct challenge before the courts, because of the expiry of the time limit for bringing proceedings laid down in national legislation, are purely and simply deemed to be lawfully authorised as regards the obligation to assess their effects on the environment is not compatible with that directive. Directive 85/337 already precludes, as such, a provision of that nature, if only because that provision has the legal effect of relieving the competent authorities of the obligation to have regard to the fact that a project within the meaning of that directive has been carried out without its effects on the environment having been assessed and to ensure that such an assessment is made, where works or physical interventions connected with that project require subsequent consent.

(see paras 43, 44, 49, operative part)

5. The Member States are required to make good any harm caused by the failure to carry out an environmental impact assessment. To that end, the competent authorities are obliged to take all general or particular measures for remedying the failure to carry out such an assessment.

In that regard, although the conditions for such an action for a remedy, in particular those concerning whether the unlawfulness in its entirety must be regarded as wrongful and those concerning the conditions for establishing a causal link, in the absence of any provision of EU law, stem from national law and although such an action may, as is clear from the settled case-law of the Court, be restricted to a certain period, provided that the principles of equivalence and effectiveness are observed, the fact remains that that action must, by virtue of the principle of effectiveness, be able to be carried out on reasonable conditions. It follows from the foregoing that, if a national provision prevents, on expiry of a given time limit, any action for a remedy of a breach of the obligation to assess effects on the environment set out in Article 2(1) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11, while the time limit for bringing proceedings placed on the action for a remedy has not expired, it would be incompatible with EU for that reason.

(see paras 45-48)