Reports of Cases

Case C-160/17

Raoul Thybaut and Others
v
Région wallonne

(Request for a preliminary ruling from the Conseil d'État (Belgium))

(Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Article 2(a) — Concept of 'plans and programmes' — Article 3 — Assessment of the effects of certain plans and programmes on the environment — Urban land consolidation area — Possibility of derogating from town planning requirements — Modification of the 'plans and programmes')

Summary — Judgment of the Court (Second Chamber), 7 June 2018

Environment — Assessment of the effects of certain plans and programmes on the environment — Directive 2001/42 — Plans and programmes — Definition — Urban land consolidation area adopted by an order determining a geographical area for an urban development plan and allowing derogation from certain planning requirements — Included

(European Parliament and Council Directive 2001/42, Arts 2(a) and 3(1) and (2)(a))

Article 2(a), Article 3(1) and Article 3(2)(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment must be interpreted as meaning that an order adopting an urban land consolidation area, the sole purpose of which is to determine a geographical area within which an urban development plan may be carried out with the objective of renovating and developing urban functions and requiring the creation, modification, removal or overhang of roads and public spaces in carrying out that plan, in respect of which it will be permissible to derogate from certain planning requirements, comes, because of that possibility of derogation, within the concept of 'plans and programmes' likely to have significant effects on the environment within the meaning of that directive, thereby necessitating an environmental assessment.

In the first place, Article 2(a) of the SEA Directive defines the 'plans and programmes' to which it refers as being those which satisfy two cumulative conditions, namely, first, that they have been subject to preparation and/or adoption by an authority at national, regional or local level or prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and, secondly, that they are required by legislative, regulatory or administrative provisions.

In the second place, Article 3(2)(a) of the SEA Directive provides that a systematic environmental assessment is to be carried out for all plans and programmes which, first, are prepared for certain sectors and, second, set the framework for future development consent of projects listed in Annexes I and II to the EIA Directive (see, to that effect, judgment of 17 June 2010, *Terre wallonne and Inter-Environnement Wallonie*, C-105/09 and C-110/09, EU:C:2010:355, paragraph 43).

As regards the first of those conditions, it is clear from the wording of Article 3(2)(a) of the SEA Directive that that provision covers, inter alia, the sector of 'town and country planning or land use'.

As to whether an instrument, such as the contested instrument, sets the framework for future development consent of projects, it should be noted that the Court has previously held that the notion of 'plans and programmes' relates to any measure which establishes, by defining rules and procedures for scrutiny applicable to the sector concerned, a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment (judgment of 27 October 2016, *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 49 and the case-law cited).

In that regard, the concept of 'a significant body of criteria and detailed rules' must be understood qualitatively and not quantitatively. It is necessary to avoid strategies which may be designed to circumvent the obligations laid down in the SEA Directive by splitting measures, thereby reducing the practical effect of that directive (see, to that effect, judgment of 27 October 2016, *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 48 and the case-law cited).

It follows that, although such an instrument does not, and cannot, lay down positive requirements, the possibility which it lays down of allowing a derogation from the planning rules in force to be obtained more easily amends the legal process and consequently brings the consolidation area at issue in the main proceedings within the scope of Article 2(a) and Article 3(2)(a) of the SEA Directive.

(see paras 42, 46, 47, 54, 55, 58, 67, operative part)