



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT

delivered on 27 January 2022¹

Case C-43/21

FCC Česká republika s.r.o.

(Request for a preliminary ruling from the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic))

(Request for a preliminary ruling – Directive 2010/75/EU – Industrial emissions – Integrated pollution prevention and control – Substantial change to an installation – Extension of the duration of waste disposal at a landfill)

I. Introduction

1. How is the term ‘substantial change’ to an installation to be understood for the purposes of the Industrial Emissions Directive?² More specifically, is an extension of the duration, during which additional waste may be shipped to a landfill, to be regarded as a substantial change to the landfill if there is no change either to the maximum permitted quantity of waste or to the total capacity of the landfill? This is the question that the Court is required to answer in the present proceedings.

2. The significance of the term ‘substantial change’, which the Court has to interpret for the first time, lies in the fact that a substantial change to an installation is subject to particular requirements, including in terms of public participation and the legal protection of third parties (Article 20(2) and Articles 24 and 25 of the Industrial Emissions Directive). That interpretation can be guided by the case-law on the Environmental Impact Assessment Directive³ and by the Aarhus Convention,⁴ the latter being transposed via the provisions of the Industrial Emissions Directive concerning public participation and legal protection.

¹ Original language: German.

² Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17).

³ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), last amended by Directive 2014/52/EU (OJ 2014 L 124, p. 1).

⁴ 1998 Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 4), approved by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

II. Legal context

A. *International law – Aarhus Convention*

3. As the rules on public participation in the Industrial Emissions Directive transpose the Aarhus Convention, it is appropriate to recall its relevant provisions.

4. The purpose of the Aarhus Convention is set out in Article 1:

‘In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.’

5. Article 6 of the Aarhus Convention regulates public participation in decisions on specific activities:

‘1. Each Party:

(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in Annex I;

...

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

...

6. Each Party shall require the competent public authorities to give the public concerned access for examination ... as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure; ...

...

10. Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this Article are applied *mutatis mutandis*, and where appropriate.

...’

6. The other paragraphs of that article contain detailed rules on public participation and the assessment of the effects of the activity on the environment.

7. Annex I to the Aarhus Convention lists the activities which are subject to mandatory public participation under Article 6, paragraph 1(a). The fourth indent of point 5 of that annex lists ‘landfills receiving more than 10 tons per day or with a total capacity exceeding 25 000 tons, excluding landfills of inert waste’.

8. According to the first sentence of point 22 of Annex I to the Aarhus Convention, ‘any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in this annex, shall be subject to Article 6, paragraph 1(a) of this Convention’.

B. European Union law – Industrial Emissions Directive

9. Recital 18 of the Industrial Emissions Directive explains the term ‘substantial change’:

‘Changes to an installation may give rise to higher levels of pollution. Operators should notify the competent authority of any planned change which might affect the environment. Substantial changes to installations which may have significant negative effects on human health or the environment should not be made without a permit granted in accordance with this Directive’.

10. According to recital 27 of the Industrial Emissions Directive, the provisions on public participation and legal protection transpose the Aarhus Convention:

‘In accordance with the Aarhus Convention ..., effective public participation in decision-making is necessary to enable the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. Members of the public concerned should have access to justice in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.’

11. The subject matter of the Industrial Emissions Directive is set out in Article 1:

‘This Directive lays down rules on integrated prevention and control of pollution arising from industrial activities.

It also lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment taken as a whole.’

12. Article 3(9) of the Industrial Emissions Directive defines the term ‘substantial change’ as ‘a change in the nature or functioning, or an extension, of an installation or combustion plant, waste incineration plant or waste co-incineration plant which may have significant negative effects on human health or the environment’.

13. Article 4(1) of the Industrial Emissions Directive establishes the need for a permit:

‘Member States shall take the necessary measures to ensure that no installation ... is operated without a permit.

...’

14. According to Article 3(3) of the Industrial Emissions Directive, point 5.4 of Annex I thereto and Article 2(g) of the Landfill Directive,⁵ a landfill receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste, is an installation within the meaning of Article 4 of the Industrial Emissions Directive.

15. Article 20 of the Industrial Emissions Directive concerns changes to installations:

‘1. Member States shall take the necessary measures to ensure that the operator informs the competent authority of any planned change in the nature or functioning, or an extension of the installation which may have consequences for the environment. Where appropriate, the competent authority shall update the permit.

2. Member States shall take the necessary measures to ensure that no substantial change planned by the operator is made without a permit granted in accordance with this Directive.

The application for a permit and the decision by the competent authority shall cover those parts of the installation and those details listed in Article 12 which may be affected by the substantial change.

3. Any change in the nature or functioning or an extension of an installation shall be deemed to be substantial if the change or extension in itself reaches the capacity thresholds set out in Annex I.’

16. Article 24(1)(b) of the Industrial Emissions Directive requires the public concerned to be given early and effective opportunities to participate in the procedure for the granting of a permit for any substantial change. Article 25 allows the public concerned to demand a review of the substantive and procedural legality of a permit.

III. The facts and the request for a preliminary ruling

17. FCC Česká republika is a Czech company which operates a landfill in the borough of Ďáblice in Prague further to a permit granted under the Industrial Emissions Directive.

18. The integrated operating permit for the landfill was granted in 2007 and subsequently amended several times. In particular, the duration of waste disposal was extended twice. At the end of 2015, FCC applied to the Magistrát hlavního města Prahy (Prague City Hall) for a 13th amendment to the integrated permit as, although the original planned capacity of the landfill had not yet been utilised, its current permit required waste disposal at the landfill to stop at the end of 2015. On 29 December 2015, Prague City Hall extended the duration of waste disposal at the landfill by two years. The decision did not change the total capacity of the landfill or its maximum dimensions.⁶

⁵ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1), as amended by Council Directive 2011/97/EU of 5 December 2011 amending Directive 1999/31/EC as regards specific criteria for the storage of metallic mercury considered as waste (OJ 2011 L 328, p. 49).

⁶ The contested permit appears to be accessible online at <https://ippc.mzp.cz/ippc/ippc.nsf/xsp/.ibmmodres/domino/OpenAttachment/ippc/ippc.nsf/215B32AAF47F72E0C1257F32002C2B15/Files/zmena%20IP.pdf>. Further information on the permits granted for the landfill is available at [https://www.mzp.cz/ippc/ippc4.nsf/\\$\\$OpenDominoDocument.xsp?documentId=4D88556E61533616C1257B82004CE066&action=openDocument](https://www.mzp.cz/ippc/ippc4.nsf/$$OpenDominoDocument.xsp?documentId=4D88556E61533616C1257B82004CE066&action=openDocument). According to the Commission, the duration of waste disposal at the landfill has been extended by two years at least once more since that date. However, the final change to the landfill identified as a substantial change was decided in 2009.

19. The borough of the City of Prague, in which the landfill is located, and an association, whose main mission is to protect nature and the landscape and ensure the participation of citizens in that protection, lodged a complaint against the decision of Prague City Hall. However, the defendant, the Ministerstvo životního prostředí (Ministry of the Environment, Czech Republic), dismissed the complaint as inadmissible, due to the fact that the complainants had not participated in the procedure to amend the integrated permit.

20. The two complainants then lodged an action challenging the defendant's decision. The Městský soud v Praze (Prague City Court, Czech Republic) admitted the action, annulled the decision by Prague City Hall and referred the case back to it for re-examination. It held that the key issue for the purpose of assessing the complainants' participation is whether the amendment to the integrated permit approved a 'substantial change' to the installation operated by FCC. That would then determine who can participate in the procedure.

21. The Městský soud v Praze (Prague City Court) inferred that the scope of a project may be defined temporally and that an extension of the term of operation of a plant must be seen as a change in the scope of the project; that, if the operation of a plant was originally permitted for a certain period only, its effects on the environment after its permitted time of operation has ended would not have been assessed, as its continued impact would not have been countenanced; and that an extension of the time of operation means an extension of the impact on the environment.

22. FCC lodged an appeal on a point of law against the judgment of the Městský soud v Praze (Prague City Court) with the Nejvyšší správní soud (Supreme Administrative Court, Czech Republic).

23. The Nejvyšší správní soud (Supreme Administrative Court) has therefore referred the following question to the Court of Justice:

'Should Article 3(9) of the Industrial Emissions Directive be interpreted such that a "substantial change" to a plant includes an extension of the duration of waste disposal at a landfill without the maximum approved dimensions of the landfill or its total potential capacity changing at the same time?'

24. The Czech Republic and the European Commission submitted written observations. The Court did not consider it necessary to hold a hearing.

IV. Legal appraisal

25. The question referred for a preliminary ruling seeks to clarify whether an extension of the duration of waste disposal at a landfill, without the maximum approved dimensions of the landfill or its total potential capacity changing at the same time, is a substantial change to that installation within the meaning of the Industrial Emissions Directive.

26. It follows from the request for a preliminary ruling that the landfill site at issue was originally authorised under the Industrial Emissions Directive. Therefore, and on the basis of the information available online,⁷ it must be assumed that the landfill is large enough to fall within the scope of the directive, that is to say, it has the capacity to receive more than 10 tonnes of waste per day or a total capacity exceeding 25 000 tonnes.

27. If the extension of the duration of waste disposal at the landfill at issue is a substantial change, it requires a permit pursuant to Article 20(2) of the Industrial Emissions Directive. In that case, the administrative procedure must include public participation (Article 24), and the members of the public concerned may demand judicial review of the permit (Article 25). The operator, on the other hand, need only notify the competent authority of other changes that may have consequences for the environment (Article 20(1)).

28. As the authorising authority assumed in the case in the main proceedings that there was no substantial change, no public participation took place. If that assumption was correct, it would appear that the applicants cannot challenge the contested permit under Czech law; moreover, the request for a preliminary ruling does not contain any evidence of more extensive rights of action under EU law. The referring court therefore needs to know whether the contested permit concerned a substantial change.

29. In order to answer that question, I shall start by examining the definition of substantial change in Article 3(9) of the Industrial Emissions Directive (Section A) and then turn to the Aarhus Convention (Section B). I shall then narrow down the interpretation made thus in the light of the circumstances of the present case (Section C).

A. Article 3(9) of the Industrial Emissions Directive

30. Article 3(9) of the Industrial Emissions Directive defines a substantial change as a change in the nature or functioning, or an extension, of an installation which may have significant negative effects on human health or the environment.

31. It is true that the referring court raises the question of whether it is possible, for the purpose of interpreting the Industrial Emissions Directive, to apply the case-law on the Environmental Impact Assessment Directive establishing that a new environmental impact assessment is not required for the renewal of an existing permit in the absence of any works or interventions involving alterations to the physical aspect of the site.⁸ However, that case-law is based on the definition of a project in Article 1(2)(a) of the Environmental Impact Assessment Directive,⁹ which is more restrictive than the definition of a substantial change in the Industrial Emissions Directive.

32. According to Article 1(2)(a) of the Environmental Impact Assessment Directive, the term ‘project’ includes the execution of construction works or of other installations and other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources. It therefore expressly refers to works or interventions.

⁷ Cited in footnote 6; see also points 54 to 57 below.

⁸ Judgments of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others* (C-275/09, EU:C:2011:154, paragraph 24), and of 19 April 2012, *Pro-Braine and Others* (C-121/11, EU:C:2012:225, paragraph 32).

⁹ Judgments of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others* (C-275/09, EU:C:2011:154, paragraph 20 et seq.), and of 19 April 2012, *Pro-Braine and Others* (C-121/11, EU:C:2012:225, paragraph 31).

33. By contrast, the definition of substantial change in Article 3(9) of the Industrial Emissions Directive uses more abstract terms, namely a change in the nature or functioning, or an extension, of an installation. Those concepts are open to broader interpretation.

34. Consequently, the case-law on the Environmental Impact Assessment Directive should not be applied directly.

35. Nevertheless, merely extending the duration of additional waste disposal at a landfill, without the maximum permissible dimensions of the landfill or its total potential capacity changing at the same time, does not alter the functioning or nature of the landfill.

36. Nor does the extension expand the site or the planned dimensions of the landfill. However, it does allow an increase in the volume of waste actually disposed of, probably by approximately 50 000 tonnes of additional waste,¹⁰ which could not be disposed of there without the extension.

37. In any event, that extension is an extension in time of the operation of the landfill.¹¹ Although such a temporal change does not reflect the key meaning of the word ‘extension’, which is probably closer to the term ‘enlargement’, and not only in the German language version,¹² the meaning of the term does not necessarily prevent the extension of a permit from being seen as an extension in time of the operation of an installation.

38. That interpretation of the term ‘extension’ is justified by the purpose of the Industrial Emissions Directive. The purpose of the directive, as laid down in Article 1 thereof, is to achieve integrated prevention and control of pollution by putting in place measures designed to prevent or reduce the emissions, of the activities listed in Annex I to that directive, into the air, water and land in order to achieve a high level of protection of the environment.¹³ Thus, since the purpose of the Industrial Emissions Directive is defined broadly,¹⁴ the term ‘substantial change’ may not be interpreted narrowly. On the contrary, the objective of a high level of protection of the environment must be the determining factor.

39. This also follows from recital 18 of the Industrial Emissions Directive, which describes substantial changes as changes which may have significant negative effects on human health or the environment. There is no mention of changes in the functioning or nature of the installation or of its extension. These other reference points for a change included in the definition in Article 3(9) of the Industrial Emissions Directive are therefore to be understood not restrictively, but broadly, as a comprehensive explanation of possible changes.

40. Any limitation on the meaning of substantial change must be sought primarily in the potential additional effects of the activity on the environment. Thus, the only changes that are not substantial are changes that cannot have additional significant negative effects on human health

¹⁰ Page 4 of the contested decision, cited in footnote 6.

¹¹ See my Opinion in *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2018:972, point 101).

¹² The English and French versions each use the term ‘extension’.

¹³ Judgments of 22 January 2009, *Association nationale pour la protection des eaux et rivières and Association OABA* (C-473/07, EU:C:2009:30, paragraphs 25 and 40); of 26 May 2011, *Stichting Natuur en Milieu and Others* (C-165/09 to C-167/09, EU:C:2011:348, paragraph 72); of 15 December 2011, *Møller* (C-585/10, EU:C:2011:847, paragraph 29); and of 15 January 2013, *Križan and Others* (C-416/10, EU:C:2013:8, paragraph 108).

¹⁴ Judgments of 22 January 2009, *Association nationale pour la protection des eaux et rivières and Association OABA* (C-473/07, EU:C:2009:30, paragraph 27), and of 15 December 2011, *Møller* (C-585/10, EU:C:2011:847, paragraph 31).

or the environment compared to the pre-existing situation, whereas changes that can have additional significant effects require greater attention in order to guarantee a high level of protection.

41. My interim conclusion, therefore, is that a simple extension of the duration of disposal of waste in a landfill, without the maximum permissible dimensions of the landfill or its total potential capacity changing at the same time, in the sense that the operation of the installation is extended in time, may be a substantial change under Article 3(9) of the Industrial Emissions Directive if it can have additional significant negative effects on human health or the environment.

B. Aarhus Convention

42. That interpretation is also consistent with the Aarhus Convention. As stated in Article 1 thereof, its objective is to guarantee public participation in decision-making. Article 6 of the convention lays down certain rules on public participation for that purpose. The fourth indent of point 5 of Annex I to the Aarhus Convention applies those rules to landfills receiving more than 10 tonnes per day or with a total capacity exceeding 25 000 tonnes.

43. As, according to recital 27 of the Industrial Emissions Directive, the directive seeks to transpose the provisions of the Aarhus Convention on public participation and the concept of substantial change determines the scope of public participation, regard must be had to the convention when interpreting that concept.¹⁵

44. Article 6, paragraph 10, of the Aarhus Convention requires each party to ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in Article 6, the rules on public participation are applied *mutatis mutandis*, and where appropriate.

45. The decision-making practice of the Aarhus Convention Compliance Committee,¹⁶ endorsed by the parties, including the European Union, provides important guidance on the interpretation of that provision.

46. The Compliance Committee considers that the permitted duration of an activity is clearly an operating condition for that activity, and an important one at that. Accordingly, any change to that duration, be it a reduction or an extension, is a reconsideration or update of that activity's operating conditions within the meaning of Article 6, paragraph 10, of the Aarhus Convention.¹⁷

¹⁵ See, to that effect, judgment of 15 January 2013, *Križan and Others* (C-416/10, EU:C:2013:8, paragraph 77). See also, with regard to the Environmental Impact Assessment Directive, judgments of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 41), and of 16 April 2015, *Gruber* (C-570/13, EU:C:2015:231, paragraph 34).

¹⁶ 'The Compliance Committee'; see, in that regard, my Opinion in *Edwards and Pallikaropoulos* (C-260/11, EU:C:2012:645, point 8), and the Opinions of Advocate General Cruz Villalón in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:422, point 101); of Advocate General Jääskinen in joined cases *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* (C-401/12 P to C-403/12 P, EU:C:2014:310, point 114), and in joined cases *Council and Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe* (C-404/12 P and C-405/12 P, EU:C:2014:309, point 23); and of Advocate General Bobek in *Folk* (C-529/15, EU:C:2017:1, point 86), and in *Stichting Varkens in Nood and Others* (C-826/18, EU:C:2020:514, point 77).

¹⁷ Findings and recommendations of the Compliance Committee of 4 October 2018, *Stichting Greenpeace Netherlands v Netherlands (Borssele nuclear power plant)*, ACCC/C/2014/104, ECE/MP.PP/C.1/2019/3, point 65; of 19 August 2019, *Cummins v Ireland (Trammon quarry)*, ACCC/C/2013/107, ECE/MP.PP/C.1/2019/9, point 79; and of 26 July 2021, *OEKOBUEIRO and Others v Czech Republic (Dukovany nuclear power plant)*, ACCC/C/2016/143, ECE/MP.PP/C.1/2021/28, point 97.

47. Although Article 6, paragraph 10, of the Aarhus Convention only requires the rules on public participation to be applied *mutatis mutandis* and where appropriate, the Compliance Committee considers that derogations from Article 6 are appropriate only where a change to the permitted duration is for a minimal time only and obviously would have insignificant or no effects on the environment.¹⁸

48. Although, at first glance, that statement goes further than my interpretation of Article 3(9) of the Industrial Emissions Directive, the potential effects on the environment are certainly a key criterion also for the Compliance Committee.¹⁹

C. Assessment of potential significant effects on the environment

49. However, in order to answer the question referred for a preliminary ruling, additional significant effects on the environment as a result of the permit at issue still have to be assessed, as those effects will enable a distinction to be drawn between substantial and non-substantial changes to the installation.

50. As noted by the Czech Republic, the effects on the environment of a landfill are caused, on the one hand, by the storage of waste. In particular, if the landfill has design defects, the waste can affect groundwater or can contaminate other land if it is not properly covered. Also, types of waste improperly stored together can give rise to harmful chemical reactions or biological processes that have negative effects on the environment. However, those negative effects do not change on account of an extension of the use as long as the area and capacity of the landfill and the measures needed to prevent certain negative effects on the environment remain the same. Therefore, from that perspective, a mere extension of the permit does not entail additional effects on the environment.

51. On the other hand, as the Commission points out, even the shipment of waste to a landfill and any processing operations on site generate additional effects on the environment. One need only consider the traffic and the fact that a completely covered, state-of-the-art, closed landfill site probably produces fewer emissions into the air, especially nuisance odours or dust, than a landfill that is still being filled with waste. An extension of the duration for disposing of additional waste would increase such operational effects on the environment, in time at least. They would be covered by the definition of pollution in Article 3(2) of the Industrial Emissions Directive.

52. The question is how to determine whether those additional effects on the environment qualify as a substantial change to the landfill.

¹⁸ Findings and recommendations of the Compliance Committee of 4 October 2018, *Stichting Greenpeace Netherlands v Netherlands (Borssele nuclear power plant)*, ACCC/C/2014/104, ECE/MP.PP/C.1/2019/3, point 71; of 19 August 2019, *Cummins v Ireland (Trammon quarry)*, ACCC/C/2013/107, ECE/MP.PP/C.1/2019/9, point 83; and of 26 July 2021, *OEKOBUEIRO and Others v Czech Republic (Dukovany nuclear power plant)*, ACCC/C/2016/143, ECE/MP.PP/C.1/2021/28, point 104.

¹⁹ See the references in footnote 18 and the findings and recommendations of the Compliance Committee of 12 May 2011, *Global 2000 [Friends of the Earth Austria] v Slovakia (Mochovce nuclear power plant)*, ACCC/C/2009/41, ECE/MP.PP/2011/11/Add.3, point 57, and of 4 October 2018, *Fons de Defensa Ambiental v Spain (Uniland Cementera)*, ACCC/C/2013/99, ECE/MP.PP/C.1/2017/17, point 85.

1. Capacity thresholds

53. First, it has to be noted in that regard that Article 20(3) of the Industrial Emissions Directive defines which changes always qualify as substantial changes. This covers a change which of itself reaches the capacity thresholds set out in Annex I thereof. Point 22 of Annex I to the Aarhus Convention contains a similar rule. It must necessarily be assumed that such changes have significant effects on the environment.

54. For landfills, based on point 5.4 of Annex I to the Industrial Emissions Directive, the daily capacity would have to increase by at least 10 tonnes or the total capacity would have to increase by at least 25 000 tonnes in order to satisfy the requirement of Article 20(3).²⁰

55. The effects of the delivery and disposal of waste over a prolonged period would appear to be irrelevant based on that criterion, as the permit at issue alters neither the dimensions nor the total capacity of the landfill. The Czech Republic therefore argues that the requirements of Article 20(3) of the Industrial Emissions Directive are not fulfilled.

56. However, there would be no further disposal of waste without the permit at issue. Consequently, the Commission proposes that the decision on the extension of disposal should be assessed based on the residual capacity of the landfill included in the original permit, as it was only possible to exhaust that residual capacity based on the extension decision.

57. It would appear that the landfill still had space for about 50 000 tonnes of waste at the time of the extension,²¹ which is significantly higher than the capacity threshold of 25 000 tonnes laid down for landfills in point 5.4 of Annex I to the Industrial Emissions Directive. If that information is correct, which it is for the national court to verify, a substantial change would have to be admitted in keeping with the Commission's view.

2. Relevant decision-making practice and case-law

58. That consideration is consistent with the Compliance Committee's decision-making practice²² and would also appear at first sight to be supported by the Court's case-law on the Environmental Impact Assessment Directive.

59. However, the judgment of the Court relied on by the Commission²³ is less sound than it would appear. The renewal of consent for a gas terminal examined in that case was in fact a prerequisite to the execution of construction works, as the previous consent was never used.

60. A similar situation was addressed in the judgment in *Wells*,²⁴ on which the Court relied in the aforesaid judgment. That case concerned a quarry which had been closed long since and which could not have been used again without the contested permit.

²⁰ The same capacity thresholds are laid down in the fourth indent of point 5 of Annex I to the Aarhus Convention for the purposes of point 22 of that annex.

²¹ Page 4 of the contested decision, cited in footnote 6.

²² Findings and recommendations of the Compliance Committee of 26 July 2021, *OEKOBUEIRO and Others v Czech Republic (Dukovany nuclear power plant)*, ACCC/C/2016/143, ECE/MP.PP/C.1/2021/28, point 99. See also my Opinion in *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2018:972, point 91 et seq.).

²³ Judgment of 9 September 2020, *Friends of the Irish Environment* (C-254/19, EU:C:2020:680, paragraphs 43 to 47).

²⁴ Judgment of 7 January 2004, *Wells* (C-201/02, EU:C:2004:12, paragraphs 45 and 46).

61. Both of those cases are therefore marked by the fact that the permits at issue allowed fundamentally new, previously non-existent, effects on the environment.

62. By contrast, the Court did not require an environmental impact assessment with public participation for the purpose of renewing permits to use existing infrastructure in the absence of further works, such as the permit to operate an airport²⁵ or a landfill.²⁶

63. Consequently, it would appear that the Court sees no need for an environmental impact assessment where the effects on the environment persist largely unchanged. The Court clearly considered the overall increase over time caused by the persistence of the effects on the environment to be irrelevant.

64. If this appraisal of the case-law on the Environmental Impact Assessment Directive is applied to the Industrial Emissions Directive, it is doubtful that the mere possibility of utilising the remaining residual capacity of a previously authorised, operational landfill can substantiate the application of Article 20(3) of the Industrial Emissions Directive.

3. *Scope of the initial permit*

65. The Court's case-law on the Environmental Impact Assessment Directive can be explained based on assumptions as to the scope of the original permit, which will ultimately also suggest the interpretation to be given to Article 3(9) of the Industrial Emissions Directive.

66. After all, if certain effects on the environment have already been the subject of an environmental impact assessment in connection with the permit, there is in principle no need to repeat that assessment where the permit is subsequently extended.²⁷ If, on the other hand, the assessment required was not carried out for an earlier permit, it may be necessary to rectify that omission for a subsequent permit, irrespective of whether or not an environmental impact assessment is required for that subsequent permit, considered in isolation.²⁸

67. There is also evidence of this in the Compliance Committee's decision-making practice. After all, the Compliance Committee has also relied on whether the public was informed of possible future extensions of the permit at the time of its original participation and therefore had the opportunity to comment on the associated effects on the environment.²⁹

68. Where an operating permit is extended, the distinction between a simple change and a substantial change within the meaning of Article 3(9) of the Industrial Emissions Directive therefore depends on whether that longer duration can give rise to significant negative effects on the environment which were not covered by the initial permit and therefore require a new assessment.

²⁵ Judgment of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others* (C-275/09, EU:C:2011:154, paragraph 24).

²⁶ Judgment of 19 April 2012, *Pro-Braine and Others* (C-121/11, EU:C:2012:225, paragraph 32).

²⁷ See judgments of 22 September 2011, *Valčiukienė and Others* (C-295/10, EU:C:2011:608, paragraphs 61 and 62), and of 10 September 2015, *Dimos Kropias Attikis* (C-473/14, EU:C:2015:582, paragraph 58), both regarding 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 (OJ 2001 L 197, p. 30).

²⁸ Judgment of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others* (C-275/09, EU:C:2011:154, paragraph 37).

²⁹ Findings and recommendations of the Compliance Committee of 19 August 2019, *Cummins v Ireland (Trammon quarry)*, ACCC/C/2013/107, ECE/MP.PP/C.1/2019/9, point 85.

69. In the present case, the Czech Republic and FCC argue in the main proceedings that the facility to grant the contested extension of the waste disposal permit was included in the permit for the landfill from the outset. That is because the duration of waste disposal was predicated on the total planned capacity, not the expiry date of the permit.

70. That contention is also supported by the fact that dispensing with an extension would apparently trigger the need for further changes in practice. The closure plan required under Article 7(g) of the Landfill Directive might need to be amended, as it presupposes that the landfill is completely full. It might even be necessary to backfill it with material other than waste in order to prevent negative effects on the environment.

71. Cases involving an extension of a permit granted for a specific limited period would have to be assessed differently. Thus, it is conceivable that the initial permit was based on a specified maximum operating time.³⁰ The same would have to apply for the purpose of maintaining a provisional or temporary solution. Even an extension of an old permit that did not require public participation at the time, the full effects of which were originally as yet unknown or the compatibility of which with current standards is questionable, would probably have to be regarded in principle as a substantial change.

72. To summarise, additional effects on the environment are characterised by the fact that they were not taken into account in an earlier permit for the activity and in the public participation carried out for that activity.

73. Ultimately, however, it is for the national court to appraise those specific circumstances.

V. Conclusion

74. In summary, I therefore propose that the Court answer the question referred for a preliminary ruling as follows:

Article 3(9) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions is to be interpreted as meaning that a ‘substantial change’ to an installation includes an extension of the duration of waste disposal at a landfill without the maximum approved dimensions of the landfill or its total potential capacity changing at the same time, if the extension of the permit can give rise to additional significant effects on the environment. Additional effects on the environment are effects that were not taken into account in an earlier permit for the activity and in the public participation carried out for that activity.

³⁰ See findings and recommendations of the Compliance Committee of 4 October 2018, *Stichting Greenpeace Netherlands v Netherlands (Borssele nuclear power plant)*, ACCC/C/2014/104, ECE/MP.PP/C.1/2019/3, points 65, 66 and 71, and of 26 July 2021, *OEKOBUEIRO and Others v Czech Republic (Dukovany nuclear power plant)*, ACCC/C/2016/143, ECE/MP.PP/C.1/2021/28, point 104. See also findings and recommendations of the Compliance Committee of 19 August 2019, *Cummins v Ireland (Trammon Quarry)*, ACCC/C/2013/107, ECE/MP.PP/C.1/2019/9, point 79.