JUDGMENT OF THE COURT (Grand Chamber)

18 October 2011 *

In Joined Cases C-128/09 to C-131/09, C-134/09 and C-135/09,

REFERENCES for a preliminary ruling under Article 234 EC from the Conseil d'État (Belgium), made by decisions of 27 and 31 March 2009, received at the Court on 6, 9 and 10 April 2009, in the proceedings

Antoine Boxus,

Willy Roua (C-128/09),

Guido Durlet and Others (C-129/09),

Paul Fastrez,

Henriette Fastrez (C-130/09),

* Language of the case: French.

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,

interveners:

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),

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot (Rapporteur), Presidents of Chambers, K. Schiemann, E. Juhász, G. Arestis, A. Borg Barthet, M. Ilešič, A. Arabadjiev, C. Toader and J.-J. Kasel, Judges,

Advocate General: E. Sharpston,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 8 June 2010,

after considering the observations submitted on behalf of:

— Mr Boxus, Mr Roua and Mr Durlet and Others, by A. Kettels, Rechtsanwältin,

— Mr and Mrs Fastrez, by T. Vandenput, avocat,

— Association des riverains et habitants des communes proches de l'aéroport BSCA (Brussels South Charleroi Airport) (ARACh), Mr Page, Mr L'Hoir and Ms Dartois, by A. Lebrun, avocat,

— the Belgian Government, by T. Materne, acting as Agent, and F. Haumont, avocat,

— the Greek Government, by G. Karipsiadis, acting as Agent,

— the Italian Government, by G. Palmieri, acting as Agent, and G. Fiengo, avvocato dello Stato,

— the European Commission, by O. Beynet and J.-B. Laignelot, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 May 2011,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Articles 6 and 9 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 (OJ 2005 L 124, p. 1) ('the Aarhus Convention'), and of Articles 1, 5 to 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 Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17) ('Directive 85/337').

2 The references have been made in the course of proceedings brought by persons living near Liège-Bierset and Brussels South Charleroi airports and the Brussels to Charleroi railway line against the Région wallonne (Walloon Region) concerning consents for works granted in respect of those installations.

Legal context

International law

3 Pursuant to Article 2(2) of the Aarhus Convention, 'public authority' as defined 'does not include bodies or institutions acting in a … legislative capacity'.

4 Article 6 of the Aarhus Convention states:

‘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;

(b) shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in Annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and

(c) may decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

(a) the proposed activity and the application on which a decision will be taken;

(b) the nature of possible decisions or the draft decision;

(c) the public authority responsible for making the decision;

(d) the envisaged procedure, including, as and when this information can be provided:

(i) the commencement of the procedure;

(ii) the opportunities for the public to participate;

(iii) the time and venue of any envisaged public hearing;

(iv) an indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

(v) an indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and

(vi) an indication of what environmental information relevant to the proposed activity is available; and

(e) the fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

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

…'

5 Article 9(2) of the Aarhus Convention states:

'Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

(a) having a sufficient interest or, alternatively,

(b) maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where so provided for under

national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(5) shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.'

European Union law

6 Article 1(2) of Directive 85/337 defines 'project' as 'the execution of construction works or of other installations or schemes' or 'other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources'. '[D]evelopment consent' is defined as 'the decision of the competent authority or authorities which entitles the developer to proceed with the project'.

7 Article 1(5) of Directive 85/337 provides:

'This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.'

8 Article 2(1) of Directive 85/337 provides:

'Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. …'

9 Article 5(4) of Directive 85/337 provides:

'Member States shall, if necessary, ensure that any authorities holding relevant information … shall make this information available to the developer.'

10 Under Article 10a of Directive 85/337:

'Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively,

(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

Member States shall determine at what stage the decisions, acts or omissions may be challenged.

What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

In order to further the effectiveness of the provisions of this Article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.'

National law

11 Articles 6, 7, 9 and 14 of the Decree of the Walloon Parliament of 17 July 2008 on certain consents for which there are overriding reasons in the general interest (decrét du Parlement wallon du 17 juillet 2008 relatif à quelques permis pour lesquels il existe des motifs impérieux d'intérêt général) (*Moniteur belge* of 25 July 2008, p. 38900) provide:

'Article 6. The following consent, for which overriding reasons in the general interest have been established, is hereby ratified:

— as regards the acts and development works relating to the infrastructure and reception buildings of regional airports, the Ministerial Order of 13 September 2006 granting planning consent to Société régionale wallonne des Transports for extension of the runway of Liège-Bierset Airport.

Article 7. The following consent, for which overriding reasons in the general interest have been established, is hereby ratified:

— as regards the acts and development works relating to the infrastructure and reception buildings of regional airports, the planning consent of 16 September 2003 issued by the designated official of the Charleroi Directorate General for Town and Country Planning, Housing and Heritage to SOWAER SA for the implementation of works to vault the Tintia stream and alteration of the ground relief in the north-eastern part of the airport area.

…

Article 9. The following consent, for which overriding reasons in the general interest have been established, is hereby ratified:

— as regards the acts and development works relating to the infrastructure and reception buildings of regional airports, the Ministerial Order of 27 July 2005 relating to the environmental consent issued to SOWAER SA to operate Brussels South Charleroi Airport.

…

Article 14. The following consent, for which overriding reasons in the general interest have been established, is hereby ratified:

— as regards the regional express network and the associated structures, access ways and service ways, the Ministerial Order of 9 February 2006 relating to the combined consent issued to SNCB (Belgian National Railways) for the construction and operation of the third and fourth tracks on Infrabel line 124 from Brussels to Charleroi in the municipalities of Waterloo, Braine-l'Alleud and Nivelles.'

12 It is clear, in essence, from the file that the Conseil d'État (Council of State) has jurisdiction to rule on actions for annulment brought against administrative acts and regulations of the administrative authorities and against the administrative acts of the legislative assemblies or their organs.

13 On the other hand, it does not have jurisdiction to hear actions brought against acts of a legislative nature.

14 The ratification by decree of the Walloon Parliament of building consents and authorisations to carry out works gives such acts legislative status. Consequently, the Conseil d'État ceases to have jurisdiction to hear actions for annulment brought against the acts which have been ratified; they can henceforth be challenged only before the Cour constitutionnelle (Constitutional Court), before which, however, only certain grounds may be pleaded.

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 The Conseil d'État has before it six actions by which persons living near Liège-Bierset and Brussels South Charleroi airports and near the Brussels to Charleroi railway line have challenged a series of consents and authorisations adopted by the competent administrative authorities concerning the carrying out of works or the operation of installations in connection with those airports and transport links to them.

16 While those actions were pending before the Conseil d'État, the Decree of the Walloon Parliament of 17 July 2008, which is a legislative act adopted by the Walloon Parliament and approved by the government of the Walloon Region, 'ratified' those consents and authorisations, that is to say, it validated them on the basis of 'overriding reasons in the general interest'.

17 Several actions for annulment of that decree were brought before the Cour constitutionnelle.

18 In the proceedings before the referring court, the applicants argued that, since an act of a legislative nature has replaced the contested administrative acts and that legislative act can be challenged only before the Cour constitutionnelle, the effect of the adoption of the abovementioned decree of 17 July 2008 is to deprive the Conseil d'État of jurisdiction and to deprive them of their interest in the annulment of the administrative acts. In addition, the action for annulment before the Cour constitutionnelle does not, in the applicants' submission, comply with Article 9 of the Aarhus Convention and with Article 10a of Directive 85/337 inasmuch as the Cour constitutionnelle has only a limited power of review, in respect of the constitutionality of legislative acts and therefore the infringement of fundamental rights, and not a full power of review of the substance, with regard to compliance with all the provisions of national environmental law, and of the applicable procedural rules.

19 It was in that context that the Conseil d'État decided to stay the proceedings, to refer various questions to the Cour constitutionnelle for a preliminary ruling on the constitutionality of the Decree of the Walloon Parliament of 17 July 2008 and to refer to the Court of Justice for a preliminary ruling the following questions, which partly overlap with the questions referred to the Cour constitutionnelle and are identical in each of the cases before the referring court:

'(1) Can Article 1(5) of Directive 85/337 … be interpreted as excluding from its application legislation – such as the Decree of the Walloon [Parliament] … of 17 July 2008 – which merely states that "overriding reasons in the general interest have been established" for the grant of planning consents, environmental consents and combined 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) Do Articles 1, 5, 6, 7, 8 and 10a of Directive 85/337 … 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?

(3) Must Article 9 of the Aarhus Convention … 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?

(4) In the light of the Aarhus Convention …, must Article 10a of Directive 85/337 … 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?'

20 By order of the President of the Court of 19 May 2009, Cases C-128/09 to C-131/09, C-134/09 and C-135/09 were joined for the purposes of the written and oral procedure and of the judgment.

Consideration of the questions referred

Admissibility

21 The Belgian Government claims that the references for a preliminary ruling are inadmissible. It asserts that those references do not set out sufficiently the factual and legislative context and the grounds which led the referring court to submit questions to the Court and, in addition, that the questions referred are hypothetical.

22 In that regard, it must be recalled that it is for the national court before which the dispute has been brought, which alone has direct knowledge of the facts giving rise to the dispute and must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need

for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court of Justice is bound, in principle, to give a ruling (see, inter alia, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59).

23 However, it is clear from the settled case-law of the Court that the need to provide an interpretation of European Union law which will be of use to the national court makes it necessary for the national court to define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (see, inter alia, Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6).

24 The information provided in orders for reference serves not only to enable the Court to give helpful answers but also to enable the governments of the Member States and the other interested parties to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union. It is the Court's duty to ensure that the opportunity to submit observations is safeguarded, having regard to the fact that, by virtue of that provision, only the orders for reference are notified to the interested parties, accompanied by a translation in the official language or languages of each Member State (See Joined Cases 141/81 to 143/81 *Holdijk and Others* [1982] ECR 1299, paragraph 6).

25 In the present instance, contrary to what the Belgian Government asserts, the factual and legislative context, as set out in the orders for reference, provides the grounds which led the referring court to submit questions to the Court and also the details enabling the governments of the Member States and the other interested parties to submit observations pursuant to Article 23 of the Statute of the Court of Justice and allowing the Court to give a helpful answer to the referring court.

26 That legal and factual context is sufficient to clarify the questions asked by the referring court, which concern the compatibility with the right of access to justice, guaranteed both by the Aarhus Convention and by Directive 85/337, of an act with legislative status whose adoption has the consequence that the referring court can no longer hear cases already brought before it.

27 The content of the observations submitted to the Court in the present cases shows, in any event, that the information on the factual and legal context was sufficient to enable the parties to the main proceedings and the other interested parties to state their views effectively on the questions referred.

28 Furthermore, the fact that adoption of the Decree of the Walloon Parliament of 17 July 2008 has the effect, under national law, of depriving the referring court of its jurisdiction to rule on the administrative acts at issue in the main proceedings does not, contrary to the Belgian Government's submissions, render the questions referred hypothetical. Those questions are intended to determine in advance whether, in the light of the relevant provisions of the Aarhus Convention and European Union law, that decree was capable of depriving the Conseil d'État of its jurisdiction to decide the cases in the main proceedings.

29 Finally, as regards the argument alleging that the Conseil d'État does not explain the reasons why it did not wait, before referring question to the Court, until the Cour constitutionnelle had ruled on other questions which it had referred to that court in the same cases, it is sufficient to recall that, as has been stated in paragraph 25 of the present judgment, the orders for reference provide the grounds which led the Conseil d'État to submit questions to the Court.

30 The Belgian Government puts forward, in the alternative, other objections of inadmissibility alleging that the meaning and effect of the provisions whose interpretation is sought are entirely unambiguous, that certain questions are irrelevant and, finally, that the Court has already ruled on the scope of Article 1(5) of Directive 85/337.

31 It must be recalled in that regard that a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of European Union law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the provision of European Union law in question has already been interpreted by the Court or that the correct application of European Union law is so obvious as to leave no scope for any reasonable doubt (see, in particular, Case 283/81 *Cilfit and Others* [1982] ECR 3415, paragraph 21).

32 However, it follows from settled case-law that national courts and tribunals remain, in any event, entirely at liberty to bring a matter before the Court of Justice if they consider it appropriate to do so (see, in particular, *Cilfit and Others*, paragraph 15) and the fact that the provisions whose interpretation is sought have already been interpreted by the Court or can be regarded as leaving no scope for any reasonable doubt does not deprive the Court of jurisdiction to give a ruling (see, to that effect, in particular, Case C-260/07 *Pedro IV Servicios* [2009] ECR I-2437, paragraph 31).

33 Finally, it does not appear, in the light of the orders for reference, that the questions referred are irrelevant to the resolution of the disputes pending before the Conseil d'État. As has been stated in paragraph 28 of the present judgment, those questions are intended to determine in advance whether, in the light of the relevant provisions of the Aarhus Convention and European Union law, the Decree of the Walloon Parliament of 17 July 2008 was capable of depriving the Conseil d'État of its jurisdiction to decide the cases in the main proceedings.

34 It follows that the references for a preliminary ruling are admissible.

The first question

35 By its first question the referring court asks, in essence, whether Article 1(5) of Directive 85/337 must be interpreted as meaning that an act, such as the Decree of the Walloon Parliament of 17 July 2008, which 'ratifies', by giving them legislative status, planning, environmental or works consents previously granted by the administrative authorities, in respect of which it is declared that 'overriding reasons in the general interest have been established', is excluded from the ambit of the directive.

36 It follows from that provision that, where the objectives of Directive 85/337, including that of supplying information, are achieved through a legislative process, the directive does not apply to the project in question (see Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 51).

37 The provision lays down two conditions for the exclusion of a project from the ambit of Directive 85/337. The first requires the details of the project to be adopted by a specific legislative act. Under the second, the objectives of the directive, including that of supplying information, must be achieved through the legislative process (see Case C-435/97 *WWF and Others* [1999] ECR I-5613, paragraph 57).

38 The first condition entails, first of all, adoption of the project by a specific legislative act. It should be pointed out in this regard that the terms 'project' and 'consent' are defined in Article 1(2) of Directive 85/337. Thus, a legislative act adopting a project

must, if it is to come within the ambit of Article 1(5) of the directive, be specific and display the same characteristics as a consent of that kind. It must in particular grant the developer the right to carry out the project (see *WWF and Others*, paragraph 58).

39 The project must also be adopted in detail, that is to say, in a sufficiently precise and definitive manner, so that the legislative act adopting the project must include, like a development consent, following their consideration by the legislature, all the elements of the project relevant to the environmental impact assessment (see *WWF and Others*, paragraph 59). The legislative act must therefore demonstrate that the objectives of Directive 85/337 have been achieved as regards the project in question (see *Linster*, paragraph 56).

40 It follows that the details of a project cannot be considered to be adopted by a legislative act, for the purposes of Article 1(5) of Directive 85/337, if that act does not include the elements necessary to assess the environmental impact of the project or if the adoption of other measures is needed in order for the developer to be entitled to proceed with the project (see *WWF and Others*, paragraph 62, and *Linster*, paragraph 57).

41 As regards the second condition, it is clear from Article 2(1) of Directive 85/337 that the fundamental objective of the directive is to ensure that projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to an assessment with regard to their environmental effects before consent is given (see *Linster*, paragraph 52).

42 In addition, the sixth recital in the preamble to Directive 85/337 states that the assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question (see *WWF and Others*, paragraph 61, and *Linster*, paragraph 53).

43 Consequently, the legislature must have sufficient information at its disposal at the time when the project is adopted. It is apparent from Article 5(3) of Directive 85/337 and Annex IV thereto that 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 (see *Linster*, paragraph 55).

44 Having regard to the characteristics of procedures for the approval of a plan in more than one phase, Directive 85/337 does not preclude a single project from being approved by two acts of national law which are considered, as a whole, to be a development consent within the meaning of Article 1(2) thereof (see, to that effect, Case C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, paragraph 102). Consequently, the legislature can, when adopting the final act authorising a project, take advantage of the information gathered during a prior administrative procedure.

45 However, the existence of such an administrative procedure cannot have the effect of enabling a project to be regarded as a project the details of which are adopted by a specific legislative act in accordance with Article 1(5) of Directive 85/337 if that legislative act does not fulfil the two conditions set out in paragraph 37 of the present judgment. Thus, 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 which 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 ambit of Directive 85/337.

46 In particular, a legislative act adopted without the members of the legislative body having had available to them the information mentioned in paragraph 43 of the present judgment cannot fall within the ambit of Article 1(5) of Directive 85/337.

47 It is for the national court to determine whether those conditions have been satisfied. For that purpose, it must take 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.

48 The answer to the first question therefore is that Article 1(5) of Directive 85/337 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 ambit. 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 opened, 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 ambit of Directive 85/337.

The second, third and fourth questions

49 By its second, third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 9 of the Aarhus Convention and Article 10a of Directive 85/337 must be interpreted as precluding the right to implement a project which falls within their ambit from being granted by a legislative act against which, under national law, no review procedure is available before a court of law or another independent and impartial body established by law that enables that act to be challenged as to the substance and the procedure.

50 It follows from Article 2(2) of the Aarhus Convention, read together with Articles 6 and 9 thereof, and from Article 1(5) of Directive 85/337 that neither the Convention nor the directive applies to projects adopted by a legislative act satisfying the conditions set out in paragraph 37 of the present judgment.

51 For other projects, that is to say, those adopted either by an act which is not legislative in nature or by a legislative act which does not fulfil those conditions, it follows from the very terms of Article 9(2) of the Aarhus Convention and Article 10a of Directive 85/337 that the Member States must provide for a review procedure before a court of law or another independent and impartial body established by law for challenging the substantive or procedural legality of decisions, acts or omissions subject, respectively, to Article 6 of the Aarhus Convention or Directive 85/337.

52 By virtue of their procedural autonomy, the Member States have discretion in implementing Article 9(2) of the Aarhus Convention and Article 10a of Directive 85/337, subject to observance of the principles of equivalence and effectiveness. It is for them, in particular, to determine, in so far as the abovementioned provisions are complied

with, which court of law or which independent and impartial body established by law is to have jurisdiction in respect of the review procedure referred to in those provisions and what procedural rules are applicable.

53 However, Article 9 of the Aarhus Convention and Article 10a of Directive 85/337 would lose all effectiveness if the mere fact that a project is adopted by a legislative act which does not fulfil the conditions set out in paragraph 37 of the present judgment were to make it immune to any review procedure for challenging its substantive or procedural legality within the meaning of those provisions.

54 The requirements flowing from Article 9 of the Aarhus Convention and Article 10a of Directive 85/337 presuppose in this regard that, when a project falling within the ambit of Article 6 of the Aarhus Convention or of Directive 85/337 is adopted by a legislative act, the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive and set out in paragraph 37 of the present judgment must be amenable to review, under the national procedural rules, by a court of law or an independent and impartial body established by law.

55 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 paragraph and, as the case may be, drawing the necessary conclusions by disapplying that legislative act.

56 In the present instance, if the referring court finds that the Decree of the Walloon Parliament of 17 July 2008 does not satisfy the conditions laid down in Article 1(5) of Directive 85/337 and recalled in paragraph 37 of the present judgment, and if it turns out that, under the applicable national rules, no court of law or independent and impartial body established by law has jurisdiction to review the substantive or procedural validity of that decree, the decree must then be regarded as incompatible with the requirements flowing from Article 9 of the Aarhus Convention and Article 10a of Directive 85/337. The referring court must then disapply it.

57 The answer to the second, third and fourth questions therefore is that Article 9(2) of the Aarhus Convention and Article 10a of Directive 85/337 must be interpreted as meaning that:

— when a project falling within the ambit of those provisions is adopted by a legislative act, it must be possible for the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive to be 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.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

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 ambit of that directive. 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 relating to the general interest without a substantive legislative process enabling those conditions to be fulfilled having first been opened, 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 ambit 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 ambit of those provisions is adopted by a legislative act, it must be possible for the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive to be 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.**

[Signatures]