

JUDGMENT OF THE COURT (Fourth Chamber)

22 March 2012 (\*)

(Directive 2001/42/EC – Assessment of the effects of certain plans and programmes on the environment – Concept of plans and programmes ‘which are required by legislative, regulatory or administrative provisions’ – Applicability of the directive to a procedure for the total or partial repeal of a land use plan)

In Case C-567/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Cour constitutionnelle (Belgium), made by decision of 25 November 2010, received at the Court on 3 December 2010, in the proceedings

**Inter-Environnement Bruxelles ASBL,**

**Pétitions-Patrimoine ASBL,**

**Atelier de Recherche et d’Action Urbaines ASBL**

v

**Région de Bruxelles-Capitale,**

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Prechal, L. Bay Larsen, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 27 October 2011,

after considering the observations submitted on behalf of:

- Inter-Environnement Brussels ASBL, Pétitions-Patrimoine ASBL and Atelier de Recherche et d’Action Urbaines ASBL, by J. Sambon, avocat,
- the Belgian Government, by T. Materne, acting as Agent, and J. Sautois, avocate,
- the Czech Government, by M. Smolek and D. Hadroušek, acting as Agents,
- the United Kingdom Government, by H. Walker, acting as Agent,
- the European Commission, by P. Oliver and A. Marghelis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 November 2011,

gives the following

## Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 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 (OJ 2001 L 197, p. 30).
- 2 The reference has been made in proceedings brought by Inter-Environnement Bruxelles ASBL, Pétitions-Patrimoine ASBL and Atelier de Recherche et d'Action Urbaines ASBL, which are non-profit-making organisations governed by Belgian law, against Région de Bruxelles-Capitale (the Brussels-Capital Region) for annulment of certain provisions of the Order of 14 May 2009 amending the Order of 13 May 2004 ratifying the Brussels Town and Country Planning Code (ordonnance du 14 mai 2009 modifiant l'ordonnance du 13 mai 2004 portant ratification du code bruxellois de l'aménagement du territoire; *Moniteur belge* of 27 May 2009, p. 38913; 'the 2009 Order').

### Legal context

#### *European Union law*

#### Directive 2001/42

- 3 The aims of Directive 2001/42 are apparent in particular from Article 1, which states:  
  
'The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.'
- 4 The term 'plans and programmes' is defined in Article 2(a) of Directive 2001/42 as follows:  
  
'For the purposes of this Directive:  
  
(a) "plans and programmes" shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:  
  
– which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and  
  
– which are required by legislative, regulatory or administrative provisions'.
- 5 Article 3, which defines the directive's scope, states:  
  
'1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.'

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

- (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or
- (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.

4. Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive.

...'

6 Article 5(1) of the directive provides:

'Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.'

7 Annex I to the directive, which sets out the 'Information referred to in Article 5(1)', with a view to the preparation of environmental reports, reads as follows:

'The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

...

- (b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;

...'

*National law*

- 8 Article 13 of the Brussels Town and Country Planning Code (code bruxellois de l'aménagement du territoire), as amended by the 2009 Order ('the CoBAT'), which refers to the various categories of plans envisaged for the Brussels-Capital Region, states:

'Development of the Region ... shall be devised and planning of its territory shall be set by the following plans:

1. the regional development plan;
2. the regional land use plan;
3. municipal development plans;
4. the specific land use plan.'

- 9 So far as concerns the adoption of specific land use plans, Article 40 of the CoBAT states:

'Each municipality in the Region shall adopt specific land use plans, either on its own initiative or within the time-limit which is imposed upon it by the Government.'

- 10 As regards the repeal of these plans, Article 58 of the CoBAT provides:

'The municipal council may, either on its own initiative or following an application made in accordance with the provisions of Article 51, decide to repeal a specific land use plan in relation to all or part of the plan's area.

The Government may, in the circumstances referred to in Article 54 and by reasoned decree, decide upon the total or partial repeal of a specific land use plan.

In that event, it shall request the municipal council to proceed with the repeal in accordance with this section and shall lay down the time-limits within which the municipal council must submit to it for approval the decision to repeal the specific land use plan, to launch a public consultation and to send the complete file for approval of the repeal decision in accordance with Article 61.

If the municipal council has declined the Government's request or has failed to comply with the time-limits imposed upon it, the Government may substitute itself for the municipal council in order to repeal the specific land use plan, in accordance with the procedure provided for in this section.'

- 11 In addition, Article 59 of the CoBAT provides:

'The municipal council shall adopt a draft decision to repeal a specific land use plan, accompanied by a plan of the area affected in the case of partial repeal and by a report setting out the reasons for repealing the specific land use plan rather than modifying it, and shall make it the subject of a public consultation. In the circumstances referred to in the last paragraph of Article 58, the aforementioned report shall be drawn up by the Government.

The public consultation shall be announced both by posters and by a notice placed in the *Moniteur belge* and in at least three French-language newspapers and three Dutch-language newspapers distributed in the Region, in accordance with the detailed rules laid down by the Government.

The public consultation shall last for 30 days. Objections and observations shall be sent to the municipal council within that time-limit and be annexed to the end-of-consultation report. The latter shall be drawn up by the municipal council within 15 days of the end of the public consultation period.'

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

- 12 As is apparent from the order for reference, in their action for annulment of certain provisions of the 2009 Order the applicants in the main proceedings have raised before the Cour constitutionnelle (Constitutional Court) a single plea, alleging that Articles 58 and 59 of the CoBAT are incompatible with Directive 2001/42 in that they do not require an environmental report to be drawn up for the total or partial repeal of a specific land use plan.
- 13 With regard to the repeal procedure, the applicants in the main proceedings have submitted before the national court that, even though, formally, Article 2(a) of Directive 2001/42 relates only to the adoption and modification of land development plans, that directive must, in order to preserve its effectiveness, be interpreted as also applying to the repeal of those plans. In the present instance, repeal of a specific land use plan modifies the context in which planning permissions are issued and is liable to amend the framework for consents issued for future projects.
- 14 Furthermore, the applicants in the main proceedings have stated that 'plans and programmes' within the meaning of Article 2(a) of Directive 2001/42 are, generally, those provided for by national legislative or regulatory provisions and not only those whose adoption is compulsory under those provisions. They submit that it would not be consistent with the objective and practical effect of the directive to exclude from its scope a repealing measure whose adoption, although optional, has taken place.
- 15 According to the Brussels-Capital Region, on the other hand, after its repeal a land development plan no longer sets, as such, the legal framework for consent of projects in respect of the area concerned. In particular, following its repeal, a specific land use plan can no longer be classified as a plan prepared for town and country planning within the meaning of Directive 2001/42. Furthermore, according to Article 2(a) the directive is not applicable to repealing measures, which are in principle optional.
- 16 The national court states that the provisions which relate to the procedure for preparing specific land use plans – and which require public consultation, the consultation of various authorities and bodies and the preparation of an environmental report – do not apply to the procedure for the repeal of those plans.
- 17 While noting that Article 2(a) of Directive 2001/42 does not refer to the repeal of plans, the national court points out that it is nevertheless clear from Article 3(2)(a) of the directive that an environmental assessment must be carried out not only for national measures which determine the town and country planning rules but also for those which set the framework for future development consent of projects. Accordingly, a measure of the Government of the Brussels-Capital Region which falls within a body of development plans should also be subject to that procedure where the measure's sole aim is repeal of the plans.
- 18 In addition, the national court observes that it is apparent from the *travaux préparatoires* for Directive 2001/42 that the second indent of Article 2(a) provides for

application of the directive only to plans and programmes which are required by legislative, regulatory or administrative provisions. In the present instance, Article 40 of the CoBAT seems to require the adoption of a specific land use plan for each municipality of the Brussels-Capital Region. However, there is a difference of view in this regard between the parties to the main proceedings. The national court adds that in certain cases the municipal authority may refuse to prepare a specific land use plan.

- 19 Given these differences of interpretation of Directive 2001/42 that were noted, the Cour constitutionnelle decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- ‘(1) Must the definition of ‘plans and programmes’ in Article 2(a) of Directive 2001/42 ... be interpreted as excluding from the scope of that directive a procedure for the total or partial repeal of a plan such as that applicable to a specific land use plan, provided for in Articles 58 to 63 of the [CoBAT]?’
- (2) Must the word ‘required’ in Article 2(a) of that directive be understood as excluding from the definition of ‘plans and programmes’ plans which are provided for by legislative provisions but the adoption of which is not compulsory, such as the specific land use plans referred to in Article 40 of the [CoBAT]?’

### **Consideration of the questions referred**

#### *Introductory remarks*

- 20 First of all, as is apparent from Article 1 of Directive 2001/42, the fundamental objective of that directive is to require, where plans and programmes are likely to have significant effects on the environment, that an environmental assessment be carried out in their regard at the time they are prepared and before they are adopted (Joined Cases C-105/09 and C-110/09 *Terre wallonne and Inter-Environnement Wallonie* [2010] ECR I-5611, paragraph 32).
- 21 Where such an environmental assessment is required by Directive 2001/42, the directive lays down minimum rules concerning the preparation of the environmental report, the carrying out of the consultation process, the taking into account of the results of the environmental assessment and the communication of information on the decision adopted at the end of the assessment (*Terre wallonne and Inter-Environnement Wallonie*, paragraph 33).
- 22 Article 2 of Directive 2001/42, which defines terms referred to in the directive, provides that the directive is to apply to plans and programmes which are required by legislative, regulatory or administrative provisions, and which are subject to preparation and/or adoption by an authority at national, regional or local level for adoption, through a legislative procedure, by Parliament or Government, as well as to any modifications to such plans and programmes.
- 23 The national court asks the Court to interpret Article 2(a) of the directive as regards both the concept of a repealing measure (first question) and the concept of plans and programmes ‘which are required by legislative, regulatory or administrative provisions’ (second question).

#### *Question 2*

- 24 By its second question, which it is appropriate to consider first since it concerns the very concept of plans and programmes, the national court asks the Court whether the condition set out in Article 2(a) of Directive 2001/42 that the plans and programmes envisaged in that provision are those ‘which are required by legislative, regulatory or administrative provisions’ must be interpreted as being intended to apply to plans and programmes, such as the land development plans at issue in the main proceedings, which are provided for by national legislation but whose adoption by the competent authority would not be compulsory.
- 25 According to the applicants in the main proceedings, a mere literal interpretation of that provision, which would exclude from the scope of Directive 2001/42 plans and programmes that are only provided for by legislative, regulatory or administrative provisions, would entail the dual risk of not requiring the assessment procedure for land development plans which normally have major effects on the territory concerned and of not ensuring uniform application of the directive in the Member States’ various legal orders, given the differences existing in the formulation of the relevant national rules.
- 26 The Belgian, Czech and United Kingdom Governments submit, on the other hand, that it is apparent not only from the wording of Article 2(a) of Directive 2001/42 but also from the directive’s *travaux préparatoires* that the European Union legislature did not intend to make administrative and legislative measures that are not required by rules of law subject to the environmental impact assessment procedure established by the directive.
- 27 The European Commission considers that, where an authority is subject to a legal obligation to prepare or adopt a plan or programme, the test of being ‘required’ within the meaning of Article 2(a) of Directive 2001/42 is met. That is *prima facie* so, in its view, in the case of the plans that must be adopted by the Brussels-Capital Region.
- 28 It must be stated that an interpretation which would result in excluding from the scope of Directive 2001/42 all plans and programmes, *inter alia* those concerning the development of land, whose adoption is, in the various national legal systems, regulated by rules of law, solely because their adoption is not compulsory in all circumstances, cannot be upheld.
- 29 The interpretation of Article 2(a) of Directive 2001/42 that is relied upon by the abovementioned governments would have the consequence of restricting considerably the scope of the scrutiny, established by the directive, of the environmental effects of plans and programmes concerning town and country planning of the Member States.
- 30 Consequently, such an interpretation of Article 2(a) of Directive 2001/42, by appreciably restricting the directive’s scope, would compromise, in part, the practical effect of the directive, having regard to its objective, which consists in providing for a high level of protection of the environment (see, to this effect, Case C-295/10 *Valčiukienė and Others* [2011] ECR I-0000, paragraph 42). That interpretation would thus run counter to the directive’s aim of establishing a procedure for scrutinising measures likely to have significant effects on the environment, which define the criteria and the detailed rules for the development of land and normally concern a multiplicity of projects whose implementation is subject to compliance with the rules and procedures provided for by those measures.
- 31 It follows that plans and programmes whose adoption is regulated by national legislative or regulatory provisions, which determine the competent authorities for adopting them and the procedure for preparing them, must be regarded as ‘required’

within the meaning, and for the application, of Directive 2001/42 and, accordingly, be subject to an assessment of their environmental effects in the circumstances which it lays down.

- 32 It follows from the foregoing that the answer to the second question is that the concept of plans and programmes 'which are required by legislative, regulatory or administrative provisions', appearing in Article 2(a) of Directive 2001/42, must be interpreted as also concerning specific land development plans, such as the one covered by the national legislation at issue in the main proceedings.

#### *Question 1*

- 33 By its first question, the Cour constitutionnelle asks whether the total or partial repeal of a plan or programme falling within Directive 2001/42 must be subject to an environmental assessment within the meaning of Article 3 of that directive.
- 34 The applicants in the main proceedings and the Commission point out that the repeal of a land use plan gives rise to substantive and legal effects, so that it must be regarded as a modification of that plan falling within the scope of Directive 2001/42.
- 35 The Belgian and Czech Governments submit, by contrast, that Directive 2001/42 does not apply to the repeal of a plan because, first, the directive refers only to modifying measures and, second, repeal does not involve any definition of the legal framework within which the land development projects that are to be carried out fall. The United Kingdom Government endorses those observations only so far as concerns measures entailing total repeal.
- 36 It is to be noted first of all, as the national court has, that Directive 2001/42 refers expressly not to repealing measures but only to measures modifying plans and programmes.
- 37 However, given the objective of Directive 2001/42, which consists in providing for a high level of protection of the environment, the provisions which delimit the directive's scope, in particular those setting out the definitions of the measures envisaged by the directive, must be interpreted broadly.
- 38 In this regard, it is possible that the partial or total repeal of a plan or programme is likely to have significant effects on the environment, since it may involve a modification of the planning envisaged in the territories concerned.
- 39 Thus, a repealing measure may give rise to significant effects on the environment because, as has been observed by the Commission and by the Advocate General in points 40 and 41 of her Opinion, such a measure necessarily entails a modification of the legal reference framework and consequently alters the environmental effects which had, as the case may be, been assessed under the procedure prescribed by Directive 2001/42.
- 40 It is to be recalled that, when the Member States draw up an environmental report within the meaning of Article 5(1) of Directive 2001/42, they must take into consideration, in particular, information concerning 'the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme' within the meaning of point (b) of Annex I to the directive. Therefore, inasmuch as the repeal of a plan or programme may modify the state of the environment as examined at the time of adoption of the measure which is to be

repealed, it must be taken into consideration with a view to scrutiny of the subsequent effects that it might have on the environment.

- 41 It follows that, in light of the characteristics and the effects of the measures repealing that plan or programme, to regard those measures as excluded from the scope of Directive 2001/42 would be contrary to the objectives pursued by the European Union legislature and such as to compromise, in part, the practical effect of the directive.
- 42 On the other hand, it must be made clear that, in principle, that is not the case if the repealed measure falls within a hierarchy of town and country planning measures, as long as those measures lay down sufficiently precise rules governing land use, they have themselves been the subject of an assessment of their environmental effects and it may reasonably be considered that the interests which Directive 2001/42 is designed to protect have been taken into account sufficiently within that framework.
- 43 It follows from the foregoing considerations that the answer to the first question is that Article 2(a) of Directive 2001/42 must be interpreted as meaning that a procedure for the total or partial repeal of a land use plan, such as the procedure laid down in Articles 58 to 63 of the CoBAT, falls in principle within the scope of that directive, so that it is subject to the rules relating to the assessment of effects on the environment that are laid down by the directive.

### **Costs**

- 44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Fourth Chamber) hereby rules:

- 1. The concept of plans and programmes ‘which are required by legislative, regulatory or administrative provisions’, appearing in Article 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 also concerning specific land development plans, such as the one covered by the national legislation at issue in the main proceedings.**
- 2. Article 2(a) of Directive 2001/42 must be interpreted as meaning that a procedure for the total or partial repeal of a land use plan, such as the procedure laid down in Articles 58 to 63 of the Brussels Town and Country Planning Code, as amended by the Order of 14 May 2009, falls in principle within the scope of that directive, so that it is subject to the rules relating to the assessment of effects on the environment that are laid down by the directive.**

[Signatures]