



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 34/13

Luxembourg, 21 March 2013

Judgment in Case C-244/12
Salzburger Flughafen GmbH v Umweltsenat

Austrian legislation is contrary to EU law in that, when an airport is modified, it provides for an environmental assessment only for projects likely to increase the number of air traffic movements by at least 20 000 per year

Member States are required to make all projects which could have significant effects on the environment subject to such an assessment

Projects likely to have significant effects on the environment must, in accordance with Council Directive 85/337/EEC¹, be made subject to an assessment of their impact. However, the Member States retain their discretion as regards carrying out an environmental assessment of a change or extension to a project already authorised. Their decision in that regard must nonetheless be based on a case-by-case examination or on thresholds or criteria which they have established.

The Austrian legislation which transposes the directive provides that, with the exception of certain modifications to the runway, only modifications to airports which are likely to increase the number of air traffic movements by at least 20 000 per year must be made subject to an environmental assessment.

In 2002, the undertaking Salzburger Flughafen, which operates Salzburg airport, applied for a permit to build an additional terminal. Its application was granted and that project was completed without having been subject to an environmental assessment. In 2004, the undertaking made new applications to expand the airport area in order to build, inter alia, hangars, warehouses and parking areas.

Subsequently, the Umweltsenat (Environmental Tribunal) examined those projects concerning the need to make them subject to an environmental assessment. The Umweltsenat found that both the construction of a new terminal and the expansion of the airport, looked at together, required an environmental impact assessment. Although neither of the two projects caused the threshold established by the Austrian legislation to be exceeded, their cumulative effects were, nevertheless, likely to have significant effects on the environment.

Salzburger Flughafen appealed against the decision of the Umweltsenat before the Verwaltungsgerichtshof (Supreme Administrative Court, Austria). That court asks the Court of Justice whether the directive precludes the Austrian legislation, which does not require an environment impact assessment for large projects comprising several stages of work, none of which causes an increase of at least 20 000 air traffic movements per year.

In its judgment delivered today, the Court states, first of all, that the Member States have a discretion as regards establishing the thresholds or criteria necessary to ascertain whether the modification or extension of a project already authorised must be made subject to an environmental impact assessment. However, that discretion is limited by the **obligation on Member States to make projects likely to have significant effects on the environment subject to an impact assessment.**

¹ 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 Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5).

In that regard, the Court points out that the criteria and thresholds referred to are designed to facilitate examination of the actual characteristics of a project modifying or extending another project already authorised, in order to determine whether the first project is subject to the requirement to carry out an assessment. However, the purpose of those criteria and thresholds is not to exempt in advance from that obligation certain whole classes of projects. Thus, a Member State which establishes criteria or thresholds at a level such that, in practice, an entire class of projects would be exempted in advance from the requirement of an impact assessment would exceed the limits of its discretion under the directive.

Next, the Court holds that **the threshold examined is incompatible with the general obligation laid down in the directive for the purposes of correct identification of projects likely to have significant effects on the environment.** The establishment of such a high threshold means that changes to the infrastructure of small or medium-sized airports can never, in practice, give rise to an environmental impact assessment, despite the fact that it cannot be excluded that such works may have significant effects on the environment.

Furthermore, by establishing such a threshold, the Austrian legislation takes into consideration only the quantitative aspect of the consequences of a project, without taking account of the other selection criteria laid down in the directive, such as the population density of the area affected by the project. The airport whose infrastructure is affected by the changes at issue is located near to the city of Salzburg.

The Court also notes that, in accordance with the case-law, it can be necessary to take account of the cumulative effect of a number of projects in order to avoid a circumvention of the objective of the EU legislation by the splitting of projects which, taken together, are likely to have significant effects on the environment. It is for the referring court to examine, in the light of that case-law, whether and to what extent the effects on the environment of both the earlier project for the construction of an additional terminal and the later project for the expansion of the airport area must be assessed as a whole.

Finally, the Court answers that, when a Member State has established a threshold, as in the present case, which is likely to exempt entire classes of projects from an environmental assessment, the national authorities are obliged to ensure that it is determined, in each individual case, whether such an assessment must be undertaken and if so, to undertake that assessment.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355