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Advocate General's Opinion in Case C-575/21 | WertInvest Hotelbetrieb

Advocate General Collins: an environmental impact assessment may be required where an envisaged urban development project is located in a UNESCO World Heritage Site

That the project does not attain a certain size threshold laid down in national legislation cannot exclude the necessity to examine the need to carry out such an assessment

WertInvest Hotelbetriebs GmbH seeks to carry out a building project, the so-called 'New Haymarket project', in the historic centre of Vienna (Austria), a UNESCO World Heritage Site.

The project involves the demolition of the existing InterContinental Hotel and its replacement with several new structures, including a 19-storey tower building for hotel, commercial, conference, residential and office use, with an underground ice rink, a sports hall, a swimming pool and a car park with 275 parking spaces. It will occupy around 1.55 ha with a gross floor area of around 89 000 m². It does not reach the thresholds under Austrian law that require an environmental impact assessment to be carried out.

WertInvest Hotelbetrieb commenced an action for failure to act before the Administrative Court of Vienna to require the City Administration to issue a building permit for the project.

The Administrative Court of Vienna points out that the project is one of the most significant urban development projects in Vienna since the end of World War II. Austrian law neither sets out thresholds or criteria relating to the location or nature of urban development projects that require the carrying out of an environmental impact assessment nor contemplates an examination, on a case-by-case basis, of the need to carry out such an assessment. The Administrative Court of Vienna has doubts as to whether that legislation is compatible with EU law. It therefore submitted a series of questions to the Court of Justice on the interpretation of Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment.

In today's opinion, Advocate General Anthony M. Collins proposes that the Court of Justice find, first, that Directive 2011/92 prevents national legislation which provides that urban development projects are subject to an environmental impact assessment only when they occupy at least 15 ha and have a gross floor area in excess of 150 000 m², without taking account of their location, thereby excluding a case-by-case examination of the need to carry out environmental impact assessments of urban development projects in sites of historical, cultural or archaeological significance, such as UNESCO World Heritage Sites.

The Advocate General emphasises that a Member State which establishes criteria and/or thresholds limited to the size of projects only, without taking their nature and location into consideration, exceeds the limits of its discretion in the transposition of the Directive. The Directive creates an overarching obligation that Member States carry out impact assessments in respect of projects likely to have significant effects on the environment by virtue of their

nature, size or location. Even a small-scale project can have significant effects on the environment if it is located where the environmental factors set out in the Directive, which include cultural heritage, are sensitive to even slight alteration.

Advocate General Collins also observes that an integrated multifunctional development project, consisting of residential and commercial buildings, is an urban development project for the purposes of Directive 2011/92, including where that project consists of both the refurbishment of existing structures and the erection of new buildings.

Second, the Court is asked to find that the Directive precludes national legislation according to which, when assessing whether an environmental impact assessment is necessary due to the **cumulative effects** of an urban development project with other projects, only similar urban development projects are taken into consideration, excluding existing projects and provided the envisaged urban development project accounts for at least 25% of the relevant threshold. In the absence of pending administrative or legal proceedings, the Directive does not prevent Member States from excluding from that examination projects in respect of which the works have not begun and which are unlikely to be carried out due to the period of time, such as five years, that has passed since they received final approval.

Third, the Court is advised that where a Member State exceeds its discretion in the transposition of the Directive with respect to the determination of which projects shall be made subject to an environmental impact assessment, its **authorities have to take all of the measures necessary to ensure that projects are examined on a case-by-case basis** in order to determine if they are likely to have significant effects on the environment and, if so, to ensure they are subject to an impact assessment. **The need to protect sites of historical, cultural or archaeological significance is particularly relevant in the context of an urban development project envisaged to be constructed on a UNESCO World Heritage Site.**

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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.

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

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