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Judgment of the Court in Case C-575/21 | WertInvest Hotelbetrieb

The requirement to carry out an environmental impact assessment for an urban development project cannot be dependent exclusively on the size of that project

EU law precludes thresholds set at a level such that, in practice, all or almost all of the projects of a certain type would be exempt in advance from the requirement for such an assessment

The undertaking WertInvest Hotelbetrieb applied to the city of Vienna (Austria) for a building permit for the 'Heumarkt Neu' project. That project is located in the central area of the UNESCO World Heritage Site known as 'Historic Centre of Vienna'. It consists of redeveloping the site in question by demolishing the existing InterContinental Hotel and constructing several new buildings providing hotel, commercial, conference, events, residential or office premises. It also includes the construction of an underground skating rink (replacing the existing one), an underground sports hall with a swimming pool and an underground car park. The project occupies an area of approximately 1.55 ha and a gross floor area of 89 000 m².

In view of the failure of the city to take a decision on that application, WertInvest Hotelbetrieb brought an action for failure to act before the Administrative Court, Vienna, by which it asks that court to grant the building permit applied for. It submits that, having regard to the thresholds and criteria laid down by Austrian law, the project is not subject to the requirement for an environmental impact assessment. That question had remained unresolved in the context of another dispute, since WertInvest Hotelbetrieb had withdrawn the application addressed to the government of the Province of Vienna in that regard.

The Administrative Court, Vienna, which takes the view that it must first rule on whether or not such an assessment must be carried out, has doubts as to whether the Austrian legislation is compatible with Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment. Those doubts arise in particular from the fact that Austrian Law makes the performance of an environmental impact assessment for 'urban development projects' (such as those at issue) conditional on the attainment of thresholds for land take of at least 15 ha and for gross floor area of more than 150 000 m². The Administrative Court, Vienna, has therefore referred questions to the Court of Justice in this connection.

By today's judgment, the Court replies that the Directive **precludes national legislation which makes the carrying out of an environmental impact assessment of certain 'urban development projects'**, such as those at issue, **conditional on the attainment of thresholds of land take of at least 15 ha and gross floor area of more than 150 000 m².**

If a Member State uses thresholds to assess the need for an environmental impact assessment, **it is necessary to take account of factors such as the location** of projects, for example, by setting a number of thresholds corresponding to varying project sizes, by reference to the nature or location of the projects. **If the project**, such as

that at issue, **is located in the central are of a UNESCO World Heritage Site, the criterion in relation to the location of project is particularly relevant.**

In an urban environment in which space is limited, thresholds of land take of at least 15 ha and a gross floor area of more than 150 000 m² are so high that, in practice, the majority of urban development projects are exempt in advance from the requirement for an environmental impact assessment. It is ultimately for the Administrative Court, Vienna, to assess whether all, or almost all, of the projects concerned are exempt in advance from that requirement. That would not, as a rule, be compatible with the Directive.

Furthermore, **the Directive precludes the grant, before or during the execution of a required environmental impact assessment or before the completion of a case-by-case assessment of the environmental effects intended to clarify the need for an environmental impact assessment, of building permits for individual construction measures which form part of larger urban development projects.**

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 judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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