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Provisional text

JUDGMENT OF THE COURT (First Chamber)

7 November 2019 (*)

(Reference for a preliminary ruling — Environment — Assessment of the effects of certain projects on the environment — Public participation in decision-making and access to justice — Date from which the time for bringing proceedings starts to run)

In Case C-280/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Symvoulío tis Epikrateias (Council of State, Greece), made by decision of 21 March 2018, received at the Court on 24 April 2018, in the proceedings

Alain Flausch,

Andrea Bosco,

Estienne Roger Jean Pierre Albrespy,

Somateio ‘Syndesmos Iiton’,

Somateio ‘Elliniko Diktyo — Filoi tis Fysis’,

Somateio ‘Syllogos Prostatias kai Perithalpsis Agrias Zois — SPPAZ’

v

Ypourgos Perivallontos kai Energeias,

Ypourgos Oikonomikon,

Ypourgos Tourismou,

Ypourgos Naftilias kai Nisiotikis Politikis,

intervener:

105 Anonimi Touristiki kai Techniki Etaireia Ekmetallefsis Akiniton,

THE COURT (First Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, M. Safjan and L. Bay Larsen, Judges,

Advocate General: J. Kokott,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 27 March 2019,

after considering the observations submitted on behalf of:

- Mr Flausch, Mr Bosco, Mr Albrespy, Somateio ‘Syndesmos Iiton’, Somateio ‘Elliniko Diktyo — Filoi tis Fysis’ and Somateio ‘Syllogos Prostatias kai Perithalpsis Agrias Zois — SPPAZ’, by G. Dellis and A. Chasapopoulos, dikigoroi,
- 105 Anonimi Touristiki kai Techniki Etaireia Ekmetallefsis Akiniton, by G. Giannakourou and D. Valasis, dikigoroi,
- the Greek Government, by K. Georgiadis, G. Karipsiadis, A. Banos and G. Papadaki, acting as Agents,
- the European Commission, by G. Gattinara, M. Noll-Ehlers, M. Konstantinidis and M. Patakia, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 May 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 6 and 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1; ‘the EIA Directive’).

2 The request has been made in proceedings brought by Alain Flausch, Andrea Bosco, Estienne Roger Jean Pierre Albrespy, Somateio ‘Syndesmos Iiton’, Somateio ‘Elliniko Diktyo — Filoi tis Fysis’ and Somateio ‘Syllogos Prostatias kai Perithalpsis Agrias Zois — SPPAZ’ against the Ypourgos Perivallontos kai Energeias (Minister for the Environment and Energy, Greece), the Ypourgos Oikonomikon (Minister for Finance, Greece), the Ypourgos Tourismou (Minister for Tourism, Greece) and the Ypourgos Naftilias kai Nisiotikis Politikis (Minister for Maritime Affairs

and the Islands, Greece) concerning the legality of the measures authorising construction of a tourist resort on the island of Ios (Greece).

Legal context

EU law

3 Recitals 7 and 16 of the EIA Directive state:

‘(7) Development consent for public and private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out. That assessment should be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the public likely to be concerned by the project in question.

...

(16) Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.’

4 Article 1(2) of the EIA Directive provides:

‘For the purposes of this Directive, the following definitions shall apply:

...

(d) “public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

(e) “public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

...’

5 Article 2(1) of the EIA Directive 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. Those projects are defined in Article 4.’

6 As regards public participation in decision-making, Article 6(2) to (5) of the EIA Directive is worded as follows:

‘2. The public shall be informed, whether by public notices or by other appropriate means such as electronic media where available, of the following matters early in the environmental decision-

making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

- (a) the request for development consent;
- (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
- (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions or, where there is one, the draft decision;
- (e) an indication of the availability of the information gathered pursuant to Article 5;
- (f) an indication of the times and places at which, and the means by which, the relevant information will be made available;
- (g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

- (a) any information gathered pursuant to Article 5;
- (b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;
- (c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information [(OJ 2003 L 41, p. 26)], information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and for consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States.'

7 Article 9(1) of the EIA Directive provides in respect of the decision relating to the project:

'When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures ...'

8 Regarding review procedures, Article 11 of the EIA Directive states:

‘1. 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.

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

3. 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. ...’

Greek law

9 Article 1(1) of Law 4014/2011 concerning environmental consent for works and activities, environmental regulation of structures erected without planning permission and other provisions within the competence of the Ministry of the Environment, Energy and Climate Change (FEK A’ 209) divides public-sector and private-sector projects into two categories (A and B) according to their environmental impact. The first category (A) comprises works and activities which are likely to have significant effects on the environment and for which an environmental impact assessment (‘EIA’) is necessary in order for specific conditions and restrictions intended to protect the environment to be imposed. The second category (B) comprises projects that have less serious environmental effects.

10 Articles 3, 4 and 19 of Law 4014/2011 govern public participation. Under Article 12 of that law, various authorisations are brought together in a decision approving the environmental conditions (‘the DAEC’).

11 Article 30(9) of Law 4014/2011 contains a transitional provision under which the existing provisions concerning consultation of the interested parties and the public participation procedure in the context of an environmental consent are to remain in force until an electronic environmental register is introduced. Under those provisions, that procedure is initiated by posting in the offices of the administrative authority of the region concerned, and by publishing in the local press, an announcement of information relating to the project and an invitation to all interested persons to examine and comment on the EIA.

12 Under Article 19a of Law 4014/2011, the DAEC must be published on the internet in the month following its adoption. If that time limit is not complied with, the approval is void. The posting of the DAEC on that special site is equivalent to publicity imposed by law and gives rise to the presumption that every interested person has knowledge thereof enabling him to bring an action for annulment or pursue any other legal remedy.

13 By virtue of Article 46 of Presidential Decree 18/1989 codifying statutory provisions for the Council of State (FEK A' 8), applications for annulment are to be made, unless otherwise provided, within 60 days (90 days for non-residents) of the day after notification of the contested measure or publication thereof where the latter is required by law, or, otherwise, of the date on which the applicant obtained full knowledge of the measure. For the purposes of that provision, as interpreted by settled case-law, where the law requires an individual administrative measure to be published in accordance with specific detailed rules, the time limit laid down for bringing an action for annulment of that measure starts to run, so far as concerns the persons covered, from notification of the act or the date on which they became aware of its content and, so far as concerns interested third parties, from the publication of that act.

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

14 The dispute in the main proceedings arose in relation to a project for the creation of a tourist resort on the island of Ios. That island, which is in the Cyclades and falls under the South Aegean administrative region (Greece), has a surface area of roughly 100 km² and a permanent population of roughly 2 000 residents.

15 The contested project involves the construction of a hotel, a spa, other accommodation, ancillary works such as a desalination plant, port facilities, artificial beaches, a bridge linking an islet to land, a road network and other infrastructure. It extends over a plot with an area of roughly 27 ha, of which more than 18 ha are built upon. It takes up an area of coast, foreshore and sea.

16 In accordance with the Greek legislation applicable to works falling within the category of the project at issue in the main proceedings, namely category A, an EIA was carried out.

17 On 2 August 2013, a notice inviting any interested person to participate in the EIA was published in the Syros local newspaper (*Koini Gnomi*) and posted in the offices of the South Aegean region, located on the island of Syros (Greece), 55 nautical miles away from Ios. It was also on Syros that the EIA file was kept and consultation was to take place.

18 It is apparent from the documents before the Court that the link between Ios and Syros is not daily, the journey takes several hours because a high speed vessel does not operate on the route and the cost is not negligible.

19 On 8 August 2014, the Minister for the Environment and Energy and the Minister for Tourism adopted the DAEC approving the project for the creation of the tourist resort on the island of Ios and the environmental conditions that are applicable to it.

20 That decision was posted, on 11 August 2014, on the notice portal *Diavgeia* and, on 8 September 2014, on the website www.aepo.ypeka.gr of the Ministry of the Environment ('the Ministry of the Environment's website') envisaged in Article 19a of Law 4014/2011.

21 Before the referring court, the applicants in the main proceedings, that is to say, three natural persons who own properties on the island of Ios but reside in Belgium, Italy and France, respectively, and three associations, challenged the DAEC of 8 August 2014 by an action not brought until 19 February 2016.

22 They maintain that they did not become aware of the DAEC of 8 August 2014 until 22 December 2015, the date on which they were able to observe the commencement of works to develop the site.

23 105 Anonimi Touristiki kai Techniki Etaireia Ekmetallefsis Akiniton, the company holding the approvals and consents relating to the project, intervened in the proceedings and pleaded that the action was out of time.

24 It was in those circumstances that the Simvoulío tis Epikrateias (Council of State, Greece) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Can Articles 6 and 11 of Directive [2011/92], read in combination with the provisions of Article 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that provisions of national law as set out in paragraphs 8, 9 and 10 [of the order for reference], in which it is laid down that procedures preceding the adoption of decisions approving environmental conditions for projects and activities with a significant environmental impact (publication of environmental impact studies, public information and participation in the consultation process) are to be conducted and monitored primarily by the wider administrative unit (region) and not by the municipality concerned, are compatible with those articles?’

(2) Can Articles 6 and 11 of Directive [2011/92], read in combination with the provisions of Article 47 of the [Charter of Fundamental Rights], be interpreted as meaning that a system of provisions of national law as set out in the abovementioned paragraphs, which ultimately provides that publication of decisions approving the environmental conditions for projects and activities with a significant environmental impact, by means of posting them on a special website, creates a presumption of full knowledge on the part of every interested party for the purpose of exercising the legal remedy available under current legislation (application for annulment before the Symvoulío tis Epikrateias [Council of State]) within a period of sixty (60) days, is compatible with those articles, bearing in mind the legislative provisions governing publication of environmental impact studies and public information and participation during the procedure to approve the environmental conditions for those projects and activities, which provisions place the wider administrative unit (region), rather than the municipality concerned, at the centre of those procedures?’

Consideration of the questions referred

The first question

25 By its first question, the referring court asks, in essence, whether Article 6 of the EIA Directive must be interpreted as meaning that a Member State may carry out the procedures for public participation in decision-making that relate to a project at the level of the headquarters of the competent regional administrative authority, and not at the level of the municipal unit within which the site of the project falls.

26 It should be pointed out, in that regard, that Article 6(5) of the EIA Directive expressly leaves to the Member States the task of determining the detailed arrangements both for informing the public and for consulting the public concerned.

27 That being so, in the absence of EU rules concerning the procedural arrangements pursuant to which the Member States must comply with their obligations regarding information and public participation in decision-making in environmental matters, it is, under settled case-law, for the domestic legal system of each Member State to determine those arrangements in accordance with the principle of procedural autonomy, provided, however, that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order

(principle of effectiveness) (see, by analogy, judgment of 20 October 2016, *Danqua*, C-429/15, EU:C:2016:789, paragraph 29).

28 It is appropriate at the outset to dispel any doubt as to compliance with the condition relating to the principle of equivalence in a situation where an environmental consent is applied for such as the situation at issue in the main proceedings. Subject to the checks which are a matter for the referring court, it is not apparent from the documents before the Court, and nor has it been contended, that similar situations are governed by national procedural arrangements more favourable than those which are laid down for implementation of the EIA Directive and have been applied in the main proceedings.

29 As regards the principle of effectiveness, on the other hand, the referring court wonders about three aspects of the procedure at issue in the main proceedings.

30 It mentions, first, the way in which the public was informed of the project's existence and of the consultation that was to take place on it.

31 In that regard, it should be pointed out that, under Article 6(4) of the EIA Directive, the opportunities that the public concerned is granted to participate early in the environmental decision-making procedure must be effective.

32 Consequently, as the Advocate General has observed in point 53 of her Opinion, any communication on the matter is not in itself sufficient. The competent authorities must ensure that the information channels used may reasonably be regarded as appropriate for reaching the members of the public concerned, in order to give them adequate opportunity to be kept informed of the activities proposed, the decision-making process and their opportunities to participate early in the procedure.

33 It is for the referring court to determine whether such requirements were complied with in the procedure prior to the main proceedings.

34 However, in order to provide it with a useful answer, it may be pointed out that, inasmuch as, on the date on which the invitation to participate in an EIA was made public, most of the interested persons resided or owned a property on the island of Ios, the posting of a notice in the regional administrative headquarters, located on the island of Syros, even accompanied by publication in a local newspaper of the island of Syros, would not appear to have been liable to contribute sufficiently to informing the public concerned.

35 An assessment to the contrary would be possible only if it were found that the local newspaper in question had at the time a very wide circulation and readership on the island of Ios. Otherwise, methods of communication such as those adopted in the main proceedings could be regarded as sufficient only in the absence of other more suitable means of communication which could have been applied by the competent authorities without thereby requiring disproportionate effort, such as posting notices in the most frequented places on the island of Ios or at the very place where the project was to be carried out.

36 As the Court does not have specific information regarding the manner in which the local newspaper of the island of Ios is circulated, it is for the referring court to establish whether, in the light of the considerations set out in the previous paragraph, the informing of the public concerned was adequate in the case of the procedure at issue.

37 The referring court expresses reservations, second, in respect of the place where the file containing the information relating to the project at issue in the main proceedings was made available to the public.

38 In that regard, the conditions for access to the participation procedure file must be such as to enable the public concerned to exercise its rights effectively, which entails accessibility to the file under easy conditions.

39 Any difficulties encountered by the public concerned in this regard may, however, be justified by the existence of a disproportionate administrative burden for the competent authority.

40 While it is for the referring court to determine whether those requirements were complied with in the procedure that led to the main proceedings, it should be observed that, as the Advocate General has noted in points 71 and 72 of her Opinion, that appraisal will have to take account of the effort required of the public concerned for crossing between the island of Ios and the island of Syros, and of the possibilities that were open to the competent authorities for enabling, with proportionate effort, the file to be made available on the island of Ios.

41 The referring court's doubts relate, third and finally, to the way in which the consultation was conducted on the island of Syros.

42 It should be noted that, under Article 6(5) of the EIA Directive, the detailed arrangements for consulting the public concerned are to be determined by the Member States, that provision mentioning only, by way of example, consultation 'by written submissions or by way of a public inquiry'.

43 It is for the referring court to establish whether the principle of effectiveness was, in that regard, complied with in the procedure at issue in the main proceedings, by assessing compliance with requirements analogous to those referred to in paragraphs 38 and 39 above.

44 Accordingly, the answer to the first question is that Article 6 of the EIA Directive must be interpreted as precluding a Member State from carrying out the procedures for public participation in decision-making that relate to a project at the level of the headquarters of the competent regional administrative authority, and not at the level of the municipal unit within which the site of the project falls, where the specific arrangements implemented do not ensure that the rights of the public concerned are actually complied with, a matter which is for the national court to establish.

The second question

45 By its second question, the referring court asks in essence whether, in the light of the answer given to the first question, Articles 9 and 11 of the EIA Directive must be interpreted as precluding legislation, such as that at issue in the main proceedings, which provides that the announcement of the approval of a project on a specific website sets running a period of 60 days for bringing proceedings.

46 First of all, it should be pointed out that Article 11 of the EIA Directive, to which this question relates in part, has been interpreted as meaning that its scope is limited to the aspects of a dispute which concern the right of the public concerned to participate in decision-making in accordance with the detailed rules laid down by that directive. On the other hand, challenges based on any other rules set out in that directive and, a fortiori, on any other legislation, whether of the European Union or the Member States, do not fall within that article (see, to that effect, judgment of

15 March 2018, *North East Pylon Pressure Campaign and Sheehy*, C-470/16, EU:C:2018:185, paragraphs 36 and 39).

47 That said, Article 11 of the EIA Directive is applicable in a situation such as that at issue in the main proceedings, even if the challenge concerns only the decision granting consent and not questions of public participation in decision-making.

48 Article 11(2) of the EIA Directive provides that the Member States are to determine at what stage the decisions, acts or omissions envisaged in Article 11(1) of the directive may be challenged.

49 It is apparent from a reply of the Greek Government to a question asked by the Court at the hearing that Greek law provides that any defects concerning public participation must be raised in the action against the final decision granting consent.

50 Next, pursuant to Article 9(1) of the EIA Directive, the competent authority or authorities are to inform the public in accordance with the appropriate procedures of the decision to grant or refuse development consent. Whilst that provision lays down certain conditions relating to the content of the announcement, it is silent as to the procedure to be followed.

51 As, moreover, no rule relating to the triggering and calculation of the period for bringing proceedings is laid down in the EIA Directive, it must be held that the EU legislature intended to reserve those questions for the procedural autonomy of the Member States, in compliance with the principles of equivalence and effectiveness referred to in paragraph 27 above; however, for reasons analogous to those set out in paragraph 28 above, only the second of those principles appears to be at issue here.

52 The referring court's doubts in the light of the principle of effectiveness should be dispelled as regards publication of the decision on the internet, or the existence of a time limit for bringing proceedings, per se.

53 Indeed, Article 6(2) of the EIA Directive expressly refers to electronic media, where available, as a means of communicating information to the public.

54 As to time limits for bringing proceedings, the Court has recognised that it is compatible with the principle of effectiveness to lay down reasonable time limits for bringing proceedings in the interests of legal certainty which protects both the individual and the authorities concerned, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought (see, to that effect, judgment of 20 December 2017, *Caterpillar Financial Services*, C-500/16, EU:C:2017:996, paragraph 42).

55 In particular, the Court does not regard as an excessive difficulty the imposition of periods for bringing proceedings which start to run only from the date on which the person concerned was aware or at least ought to have been aware of the announcement (see, to that effect, judgments of 27 February 2003, *Santex*, C-327/00, EU:C:2003:109, paragraphs 55 and 57; of 6 October 2009, *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 45; and of 8 September 2011, *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 96).

56 It would, on the other hand, be incompatible with the principle of effectiveness to rely on a period against a person if the conduct of the national authorities in conjunction with the existence of the period had the effect of totally depriving him of the opportunity to enforce his rights before the national courts, that is to say, if the authorities, by their conduct, were responsible for the delay in

the application (see, to that effect, judgment of 19 May 2011, *Iaia and Others*, C-452/09, EU:C:2011:323, paragraph 21).

57 Finally, it is apparent from Article 11(3) of the EIA Directive that the Member States must pursue an objective of wide access to justice when they lay down the rules governing review procedures in respect of public participation in decision-making (see, to that effect, judgments of 11 April 2013, *Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:221, paragraphs 31 and 44, and of 17 October 2018, *Klohn*, C-167/17, EU:C:2018:833, paragraph 35).

58 It may be pointed out in this regard that, as is clear from the answer to the first question, the public concerned must be informed of the consent procedure and of its opportunities to participate in it adequately and sufficiently in advance. If that is not the case, members of the public concerned cannot expect to be informed of a final decision granting consent.

59 That is especially so in circumstances such as those at issue in the main proceedings. Indeed, the mere ability to have access *ex post* on the Ministry of the Environment's website to a decision granting consent cannot be regarded as being sufficient in the light of the principle of effectiveness since, in the absence of sufficient information on the launch of the public participation procedure, no one can be deemed informed of the publication of the corresponding final decision.

60 Consequently, the answer to the second question is that Articles 9 and 11 of the EIA Directive must be interpreted as precluding legislation, such as that at issue in the main proceedings, which results in a period for bringing proceedings that starts to run from the announcement of consent for a project on the internet being relied on against members of the public concerned where they did not previously have an adequate opportunity to find out about the consent procedure in accordance with Article 6(2) of that directive.

Costs

61 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 (First Chamber) hereby rules:

- 1. Article 6 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment must be interpreted as precluding a Member State from carrying out the procedures for public participation in decision-making that relate to a project at the level of the headquarters of the competent regional administrative authority, and not at the level of the municipal unit within which the site of the project falls, where the specific arrangements implemented do not ensure that the rights of the public concerned are actually complied with, a matter which is for the national court to establish.**
- 2. Articles 9 and 11 of Directive 2011/92 must be interpreted as precluding legislation, such as that at issue in the main proceedings, which results in a period for bringing proceedings that starts to run from the announcement of consent for a project on the internet being relied on against members of the public concerned where they did not previously have an adequate opportunity to find out about the consent procedure in accordance with Article 6(2) of that directive.**

[Signatures]

* Language of the case: Greek.
