

IMPORTANT LEGAL NOTICE - The information on this site is subject to a disclaimer and a copyright notice.

JUDGMENT OF THE COURT (Second Chamber)
16 September 2004 (1)

(Failure of a Member State to fulfil obligations – Directive 85/337/EEC – Assessment of the effects of certain public and private projects on the environment – Incorrect implementation – Project for a Valencia-Tarragona railway line, Las Palmas-Oropesa section)

In Case C-227/01,

ACTION under Article 226 EC for failure to fulfil obligations,

brought on 7 June 2001,

Commission of the European Communities, represented by G. Valero Jordana, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Kingdom of Spain, represented by S. Ortiz Vaamonde, acting as Agent, with an address for service in Luxembourg,

defendant,

THE COURT (Second Chamber),

composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.N. Cunha Rodrigues, R. Schintgen (Rapporteur) and F. Macken, Judges,

Advocate General: L. Poiares Maduro,
Registrar: M. Múgica Arzamendi, Principal Administrator,

having regard to the written procedure and further to the hearing on 19 February 2004,

after considering the observations submitted by the parties,

after hearing the Opinion of the Advocate General at the sitting on 24 March 2004,

gives the following

Judgment

- 1 By its application the Commission of the European Communities has brought an action for a declaration that in failing to carry out an assessment of the effects on the environment of the 'project for a Valencia-Tarragona railway line, Las Palmas-Oropesa section. Roadbed', which forms

part of the project known as the 'Mediterranean corridor', the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3, 5(2) and 6(2) of 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).

Legal framework

Community legislation

- 2 According to the first and sixth recitals in its preamble, Directive 85/337 seeks to prevent pollution and other damage to the environment by making certain public and private projects subject to prior assessment of their environmental effects.
- 3 As is clear from the fifth recital in the preamble, to that end the Directive introduces general principles for the assessment of environmental effects with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment.
- 4 The eighth and eleventh recitals in the preamble to Directive 85/337 state that certain types of projects have significant effects on the environment and must as a rule be subject to systematic assessment in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life.
- 5 The provisions of Directive 85/337 relevant in this case, in their wording prior to Council Directive 97/11/EC of 3 March 1997 amending that directive (OJ 1997 L 73, p. 5), are as follows.
- 6 Article 1 of Directive 85/337 reads:

'1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive:

"project" means:

- the execution of construction works or of other installations or schemes,

- other interventions in the natural surroundings and landscape ...'.

7 Article 2 of the Directive states:

'1. 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 an assessment with regard to their effects.

These projects are defined in Article 4.

...

3. Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.

In this event, the Member States shall:

(a) consider whether another form of assessment would be appropriate and whether the information thus collected should be made available to the public;

(b) make available to the public concerned the information relating to the exemption and the reasons for granting it;

- (c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where appropriate, to their own nationals.

The Commission shall immediately forward the documents received to the other Member States.

...'

- 8 Article 3 of the Directive provides:

'The environmental impact assessment will identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with the Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora,
- soil, water, air, climate and the landscape,
- the inter-action between the factors mentioned in the first and second indents,
- material assets and the cultural heritage.'

- 9 Article 4 of Directive 85/337, to which the second subparagraph of Article 2(1) thereof refers, states:

'1. Subject to Article 2(3), projects of the classes listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Projects of the classes listed in Annex II shall be made subject to an assessment, in accordance with Articles 5 to 10, where Member States consider that their characteristics so require.

...'

- 10 Point 7 of Annex I to that directive refers, among other projects, to 'construction of ... lines for long-distance railway traffic'.

- 11 Point 12 of Annex II to the Directive refers, inter alia, to 'modifications to development projects included in Annex I'.

- 12 Article 5(1) and (2) of Directive 85/337 state:

'1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex III inasmuch as:

- (a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;
- (b) the Member States consider that a developer may reasonably be required to compile this information having regard inter alia to current knowledge and methods of assessment.

2. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

- a description of the project comprising information on the site, design and size of the project,
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy

significant adverse effects,

- the data required to identify and assess the main effects which the project is likely to have on the environment,
- a non-technical summary of the information mentioned in indents 1 to 3.'

13 According to Article 6(2) of the Directive:

'Member States shall ensure that:

- any request for development consent and any information gathered pursuant to Article 5 are made available to the public,
- the public concerned is given the opportunity to express an opinion before the project is initiated.'

14 Article 12 of Directive 85/337 provides:

'1. Member States shall take the measures necessary to comply with this Directive within three years of its notification.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.'

15 The Directive was notified to the Member States on 3 July 1985.

National legislation

16 The Spanish legislation which implements point 7 of Annex I to Directive 85/337 lists, among the projects which must be made subject to an environmental impact assessment procedure, 'long-distance railway lines which involve a new route'.

The pre-litigation procedure

17 Following receipt of a complaint in May 1999 and an exchange of letters between the Commission and the Spanish authorities, the Commission gave the Kingdom of Spain formal notice by letter of 13 April 2000 to submit its observations within two months. It took the view that those authorities had incorrectly implemented Directive 85/337 by not subjecting to a prior environmental impact assessment the 'project for a Valencia-Tarragona railway line, Las Palmas-Oropesa section. Roadbed', which forms part of the project known as the 'Mediterranean corridor'.

18 Since it was not satisfied with the explanations provided by the Spanish Government, the Commission sent a reasoned opinion to the Kingdom of Spain on 26 September 2000, requesting that it adopt, within two months from the notification of that opinion, the measures necessary to comply therewith.

19 After the Spanish Government replied to that reasoned opinion by a letter of 2 January 2001 in which it repeated its earlier arguments, the Commission decided to bring the present action.

The application

20 The Commission complains that the Spanish Government failed to fulfil its obligations under Articles 2, 3, 5(2) and 6(2) of Directive 85/337 by not carrying out an assessment of the effects on the environment of the 'project for a Valencia-Tarragona railway line, Las Palmas-Oropesa section. Roadbed', which forms part of the project known as the 'Mediterranean corridor' linking the Spanish region of Levante to Catalonia and the French border.

Admissibility

- 21 At the hearing, the Spanish Government challenged the admissibility of the action on the ground that the application was based on a complaint different from that relied on during the pre-litigation procedure.
- 22 That Government maintains that during the pre-litigation procedure, the subject-matter of the dispute was clearly limited to a 13.2-km-long section of the railway line which separates Las Palmas from the town of Oropesa. At that stage of the proceedings the Commission complained more particularly that the Spanish Government had not complied with the requirements of Directive 85/337 as regards a 7.64-km-long part of that section, where the route was moved a maximum of 800 m to the west in order to bypass the town of Benicasim. The Commission did not, however, in either the letter of formal notice or the reasoned opinion, refer to the doubling of the track on the rest of the section, which is 13.2 km in length; in particular, it at no point stated that the doubling of existing track falls within the scope of the Directive.
- 23 In its application, the Commission insists that such a doubling of the track of an existing railway line should be held to be subject to the requirements of the Directive. In addition, it refers to the entire length of the Valencia-Tarragona line, which is 251 km.
- 24 Under those conditions, the subject-matter of the dispute has clearly been expanded.
- 25 First of all, in this case, the Court notes that the validity of the reasoned opinion and of the procedure which preceded it is not in dispute. Nevertheless, the Spanish Government maintains that the complaint put forward in the application differs from that contained in the letter of formal notice and the reasoned opinion.
- 26 It is settled case-law that the subject-matter of proceedings brought under Article 226 EC is circumscribed by the pre-litigation procedure provided for by that provision and that, consequently, the Commission's reasoned opinion and the application must be based on the same complaints (see, *inter alia*, Case C-139/00 *Commission v Spain* [2002] ECR I-6407, paragraph 18).
- 27 In the present case, however, it cannot be maintained that the subject-matter of the dispute as defined during the pre-litigation procedure has been expanded or modified.
- 28 First, in response to a question by the Court, the Commission confirmed that the subject-matter of the present action is limited to a 13.2-km-long section between Las Palmas and Oropesa and that, contrary to the Spanish Government's assertion, it in no way extends to the whole of the route of the Valencia-Tarragona line, which is 251 km in length.
- 29 Secondly, both the letter of formal notice and the reasoned opinion sent by the Commission to the Kingdom of Spain refer, as does the application, to the 'Las Palmas-Oropesa section', which the defendant Government does not deny is 13.2 km in length. Moreover, the defence lodged by the Spanish Government shows unambiguously that it in no way misunderstood the scope of the proceedings, since it itself considers that the project at issue concerns the 13.2 km section which separates the towns of Las Palmas and Oropesa, on which the existing track is doubled and adapted for speeds of up to 220 km/h, a 7.64-km-long section of which constitutes a new route intended to bypass the town of Benicasim.
- 30 Consequently, the present action is admissible.

Substance

Arguments of the parties

- 31 In support of its action, the Commission states that it is common ground that the 'project for a Valencia-Tarragona railway line, Las Palmas-Oropesa section. Roadbed', which forms part of the project known as the 'Mediterranean corridor', was not made subject to the environmental impact assessment procedure laid down in Directive 85/337.
- 32 According to the Commission, such an assessment was mandatory in the present case, since it involved one of the projects mentioned in point 7 of Annex I to the Directive, to which Article 4(1) thereof refers.

- 33 The Commission infers from this that Directive 85/337 was incorrectly implemented in respect of the project in question and that the Kingdom of Spain has therefore infringed Articles 2, 3, 5(2) and 6(2) of the Directive.
- 34 In the opinion of the Commission, none of the reasons relied on by the Spanish Government to justify its method of proceeding in the present case can be accepted.
- 35 The line of argument put forward by that Government conflicts with the letter of Directive 85/337, and in particular the actual wording of point 7 of Annex I thereto, and is incompatible with the spirit and purpose of that directive.
- 36 The Spanish Government admits that the project at issue was not formally made subject to the environmental impact assessment procedure laid down by Directive 85/337, but it takes the view that that procedure was not necessary in the present case.
- 37 That directive was not applicable since the work undertaken merely consisted in improving an already existing railway line by doubling the original single track without constructing a new railway line and with no need for a new long-distance route.
- 38 That view is supported by the wording of the national legislation transposing point 7 of Annex I to Directive 85/337 into Spanish law, which the Commission at no time claimed was incompatible with the requirements of the Directive. Moreover, as regards the wording of point 7, the English-language version also uses the term 'lines' rather than the term 'tracks'.
- 39 In addition, the project at issue is not intended for long-distance traffic within the meaning of point 7, since it links two towns which are only 13.2 km distant from one another.
- 40 Moreover, the doubling of the tracks does not in fact have environmental effects beyond those caused by the construction of the original line and, in any event, the Commission has not furnished evidence of the existence of such effects.
- 41 The Spanish Government adds, in the alternative, that the requirements of the Directive have in the present case been complied with in substance, since the revision of the general development plan for Benicasim, which took place in 1992, was preceded by an impact assessment submitted to a public inquiry and an environmental impact declaration. Since the subject-matter of that revision was precisely the setting aside of an area for construction of the loop line around the town of Benicasim, a new study on the effects of the work undertaken for that purpose was not required.
- 42 Finally, the competent national authorities acted in good faith in the present case and demonstrated their cooperative spirit by accepting the Commission's position as regards the part of the project where it was still possible to do so, since they submitted 'modification No 3' of that project, which in essence relates to the construction of a 754.5-m-long viaduct, to a public inquiry before completion of the works.

Findings of the Court

- 43 Given the line of argument of the defendant Government, in order to assess the merits of the Commission's action it is appropriate to establish whether Directive 85/337 and, in particular, the obligation which it lays down to carry out an environmental impact assessment, apply to the project in question and, if so, whether that project was carried out in compliance with the rules set out in that directive.
- 44 As regards the first point, the argument put forward by the Spanish Government that point 7 of Annex I to the Directive refers only to the construction of a new line in the sense of a new railway connection between two towns and therefore does not apply to a doubling of existing tracks cannot be upheld.
- 45 While it is not necessary in the context of these proceedings to give a ruling on whether all the language versions of point 7 of Annex I to Directive 85/337 use a term equivalent to the term 'tracks' ('vias' in the Spanish-language version) or on the compatibility with the Directive of the Spanish legislation adopted to implement that provision inasmuch as it uses the term 'lines' ('líneas'), it is clear from the Court's case-law that the need for a uniform interpretation of Community law requires, in the case of divergence between different language versions of a

provision, that it be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, inter alia, Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 28).

- 46 The Court has already held that the wording of Directive 85/337 indicates that its scope is wide and its purpose very broad (*Kraaijeveld and Others*, cited above, paragraphs 31 and 39).
- 47 In particular, Articles 1(1) and 2(1) and the first, fifth, sixth, eighth and 11th recitals in the preamble make clear that the Directive's fundamental objective is that, before consent is granted, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location should be made subject to a mandatory assessment with regard to their effects (see to that effect Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 52).
- 48 On the basis of those considerations alone, point 7 of Annex I to Directive 85/337 must be understood to include the doubling of an already existing railway track.
- 49 A project of that kind can have a significant effect on the environment within the meaning of that directive, since it is likely to have lasting effects on, for example, flora and fauna and the composition of soil or even on the landscape and produce significant noise effects, inter alia, so that it must be included in the scope of the Directive. The objective of Directive 85/337 would be seriously undermined if that type of project for the construction of new railway track, even parallel to existing track, could be excluded from the obligation to carry out an assessment of its effects on the environment. Accordingly, a project of that sort cannot be considered a mere modification to an earlier project within the meaning of point 12 of Annex II to the Directive.
- 50 Moreover, that conclusion is all the more obvious when, as in the present case, the execution of the project at issue involves a new track route, even if that applies only to part of the project. Such a construction project is by its nature likely to have significant effects on the environment within the meaning of Directive 85/337.
- 51 The argument of the Spanish Government that the conditions for applying point 7 of Annex I to the Directive are not fulfilled, since the project in question does not relate to long-distance traffic within the meaning of that provision but rather only to a 13.2 km section between neighbouring towns, is also without substance.
- 52 As the Commission rightly maintains, the project in question is part of a 251-km-long railway line between Valencia and Tarragona, which forms part of the project known as the 'Mediterranean corridor', linking the Spanish region of Levante to Catalonia and the French border.
- 53 If the argument of the Spanish Government were upheld, the effectiveness of Directive 85/337 could be seriously compromised, since the national authorities concerned would need only to split up a long-distance project into successive shorter sections in order to exclude from the requirements of the Directive both the project as a whole and the sections resulting from that division.
- 54 In the light of all those considerations, the project which is the subject of the Commission's action, which concerns laying a supplementary 13.2-km-long railway track, a 7.64 km section of which covers a new route in order to bypass the town of Benicasim, and which is part of a 251-km-long railway line, belongs in one of the categories listed in Annex I to Directive 85/337 which must in principle be made subject to a mandatory systematic assessment pursuant to Articles 4(1) and 5(1) of the Directive.
- 55 As to whether that project was carried out in compliance with the rules set out in Directive 85/337, it should be noted that the Spanish Government admits that the project as such was not made subject to the requirements of the Directive as regards assessment of its effects on the environment. Moreover, that Government does not claim that the conditions laid down in Article 2 (3) of the Directive are fulfilled in this case.
- 56 Next, as regards the Spanish Government's argument that the 1992 revision of the general development plan for Benicasim was preceded by an impact assessment submitted to a public inquiry and an environmental impact declaration, it must be pointed out that even if that plan included all the information necessary to fulfil the minimum conditions set by Directive 85/337 it could not, in any event, be considered adequate since, as the Commission claims without

being seriously contradicted on that point by the defendant Government, the plan involves only the territory of the town of Benicasim and, more specifically, the bypass around that town, while the parties agree that the contested project is far broader. It follows that, at least for the remaining part of that project, the Directive's requirements have not been correctly applied.

- 57 Nor is the Spanish Government's assertion that the competent authorities complied with the requirements of that directive as regards 'modification No 3' of the project justified. First, according to the defendant Government, the information intended for the public was published only after work on the project had begun. Such a method of proceeding is clearly contrary to the requirements of Article 6(2) of Directive 85/337, which states that the public concerned is to be given the opportunity to express an opinion before the project is initiated. The fact, invoked by the Spanish Government, that the public inquiry took place before the work was completed is therefore wholly irrelevant. Secondly, that procedure related to only one part of the section in question, which is 13.2 km in length, namely 'modification No 3', relating essentially to the construction of a viaduct of some 750 m in length.
- 58 Moreover, the fact that the national authorities acted in good faith is also irrelevant. It is settled case-law that an action for failure to fulfil obligations is objective in nature and the fact that a failure to fulfil obligations results from a Member State's incorrect interpretation of the Community-law provisions in question cannot preclude the Court from declaring that there has been such a failure (Case C-73/92 *Commission v Spain* [1993] ECR I-5997, paragraph 19).
- 59 Finally, as regards the Spanish Government's contention that the Commission failed to provide a proper statement of reasons for the alleged infringement since it did not furnish evidence that the doubling of an existing track has effects on the environment beyond those produced by the construction of the original line, suffice it to point out that the relevant criterion for the implementation of Directive 85/337 is the significant effect that a particular project is 'likely' to have on the environment (see, in that regard, Article 1(1) of the Directive and the fifth and sixth recitals in the preamble thereto). Under those conditions, it is not for the Commission to establish the concrete negative effects that a project in fact has on the environment. On the other hand, the Commission has in the present case proved to the requisite legal standard that the project in question falls within the scope of one of the provisions of Annex I to that directive and must therefore be made subject to a mandatory environmental impact assessment. Moreover, it is indisputable that a project of this type is such as to create significant new nuisances, even if only as the result of the adaptation of the railway line with a view to traffic which can attain a speed of 220 km/h.
- 60 In the light of all the foregoing considerations, the Commission's application must be considered well-founded.
- 61 Consequently, it must be held that by failing to carry out an assessment of the effects on the environment of the 'project for a Valencia-Tarragona railway line, Las Palmas-Oropesa section. Roadbed', which forms part of the project known as the 'Mediterranean corridor', the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3, 5(2) and 6(2) of Directive 85/337.

Costs

- 62 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of Spain has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) hereby:

- 1. Declares that by failing to carry out an assessment of the effects on the environment of the 'project for a Valencia-Tarragona railway line, Las Palmas-Oropesa section. Roadbed', which forms part of the project known as the 'Mediterranean corridor', the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3, 5(2) and 6(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the**

environment;

2. Orders the Kingdom of Spain to pay the costs.

Signatures.

1 - Language of the case: Spanish.

IMPORTANT LEGAL NOTICE - The information on this site is subject to a [disclaimer](#) and a [copyright notice](#).

Notice for the OJ

Judgment of the Court (Second Chamber) of 16 September 2004 in Case C-227/01: **Commission of the European Communities v Kingdom of Spain 1**

(Failure of a Member State to fulfil obligations - Directive 85/337/EEC - Assessment of the effects of certain public and private projects on the environment - Incorrect implementation - Project for a Valencia-Tarragona railway line, Las Palmas-Oropesa section)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-227/01: action under Article 226 EC for failure to fulfil obligations, brought on 7 June 2001, **Commission of the European Communities** (Agent: G. Valero Jordana) v **Kingdom of Spain** (Agents: S. Ortiz Vaamonde) (the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.N. Cunha Rodrigues, R. Schintgen (Rapporteur) and F. Macken, Judges; L. Poiares Maduro, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 16 September 2004, in which it:

Declares that by failing to carry out an assessment of the effects on the environment of the 'project for a Valencia-Tarragona railway line, Las Palmas-Oropesa section. Roadbed', which forms part of the project known as the 'Mediterranean corridor', the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3, 5(2) and 6(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment;

2. Orders the Kingdom of Spain to pay the costs
