ECLI:EU:C:2023:425

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

25 May 2023 (*)

(Reference for a preliminary ruling – Environment – Directive 2011/92/EU – Assessment of the effects of certain public and private projects on the environment – Article 2(1) and Article 4(2) – Projects covered by Annex II – Urban development projects – Examination on the basis of thresholds or criteria – Article 4(3) – Relevant selection criteria set in Annex III – Article 11 – Access to justice)

In Case C-575/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria), made by decision of 14 September 2021, received at the Court on 20 September 2021, in the proceedings

WertInvest Hotelbetriebs GmbH

v

Magistrat der Stadt Wien,

intervener:

Verein Alliance for Nature,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún, F. Biltgen, N. Wahl and J. Passer (Rapporteur), Judges,

Advocate General: A.M. Collins,

Registrar: S. Beer, Administrator,

having regard to the written procedure and further to the hearing on 14 September 2022,

after considering the observations submitted on behalf of:

– WertInvest Hotelbetriebs GmbH, by K. Liebenwein, Rechtsanwalt, and L. Pöcho, Rechtsanwältin,

– the Magistrat der Stadt Wien, by G. Cech, Senatsrat,

– Verein Alliance for Nature, by W. Proksch and P. Pyka, Rechtsanwälte,

– the Austrian Government, by A. Kögl, W. Petek, A. Posch and J. Schmoll, acting as Agents,

– the European Commission, by C. Hermes and M. Noll-Ehlers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 November 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of, inter alia, Article 4(2) and (3) and Article 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), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ 2014 L 124, p. 1) ('Directive 2011/92') and of point 10(b) of Annex II thereto and Annex III thereto.

2 The request has been made in proceedings between WertInvest Hotelbetriebs GmbH and the Magistrat der Stadt Wien (Vienna City Administration, Austria) concerning an application for development consent for an urban development project.

Legal context

European Union law

3 According to recitals 1 and 7 to 11 of Directive 2011/92:

'(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)] has been substantially amended several times. In the interests of clarity and rationality the said Directive should be codified.

…

(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.

(8) Projects belonging to certain types have significant effects on the environment and those projects should, as a rule, be subject to a systematic assessment.

(9) Projects of other types may not have significant effects on the environment in every case and those projects should be assessed where the Member States consider that they are likely to have significant effects on the environment.

(10) Member States may set thresholds or criteria for the purpose of determining which of such projects should be subject to assessment on the basis of the significance of their environmental effects. Member States should not be required to examine projects below those thresholds or outside those criteria on a case-by-case basis.

(11) When setting such thresholds or criteria or examining projects on a case-by-case basis, for the purpose of determining which projects should be subject to assessment on the basis of their significant environmental effects, Member States should take account of the relevant selection criteria set out in this Directive. In accordance with the subsidiarity principle, the Member States are in the best position to apply those criteria in specific instances.'

4 Article 1(2) of that directive is worded as follows:

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

…

(c) "development consent" means the decision of the competent authority or authorities which entitles the developer to proceed with the project;

(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 that directive provides:

'Member States shall adopt all measures necessary to ensure that, before development 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 on the environment. Those projects are defined in Article 4.'

6 Article 3(1) of that directive states:

‘The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:

(a) population and human health;

(b) biodiversity …;

(c) land, soil, water, air and climate;

(d) material assets, cultural heritage and the landscape;

(e) the interaction between the factors referred to in points (a) to (d).’

7 Article 4(2) to (5) of Directive 2011/92 is worded as follows:

‘2. Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

(a) a case-by-case examination;

or

(b) thresholds or criteria set by the Member State.

Member States may decide to apply both procedures referred to in points (a) and (b).

3. Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.

4. Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

5. The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:

(a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or

(b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.'

8 Under Article 11(1) of that directive:

'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.'

9 Annex II to that directive, entitled 'Projects referred to in Article 4(2)', provides in point 10 thereof, entitled 'Infrastructure projects':

'…

(b) Urban development projects, including the construction of shopping centres and car parks;

…'

10 Annex III to Directive 2011/92, entitled 'Selection criteria referred to in Article 4(3) (Criteria to determine whether the projects listed in Annex II should be subject to an environmental impact assessment)', is worded as follows:

'1. Characteristics of projects

The characteristics of projects must be considered, with particular regard to:

(a) the size and design of the whole project;

(b) cumulation with other existing and/or approved projects;

…

2. Location of projects

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard to:

(a) the existing and approved land use;

(b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;

(c) the absorption capacity of the natural environment, paying particular attention to the following areas:

…

(vii) densely populated areas;

(viii) landscapes and sites of historical, cultural or archaeological significance.

3. Type and characteristics of the potential impact

The likely significant effects of projects on the environment must be considered in relation to criteria set out in points 1 and 2 of this Annex, with regard to the impact of the project on the factors specified in Article 3(1), taking into account:

(a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);

…

(g) the cumulation of the impact with the impact of other existing and/or approved projects …

…'

Austrian law

11 Under Paragraph 3 of the Bundesgesetz über die Prüfung der Umweltverträglichkeit (Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000) (Federal Environmental Impact Assessment Law) (BGBl. 697/1993), in the version thereof applicable to the dispute in the main proceedings ('the UVP-G 2000'), entitled 'Object of the environmental impact assessment':

'(1) Projects listed in Annex 1 and modifications to such projects shall be subject to an environmental impact assessment in accordance with the following provisions. Projects listed in Columns 2 and 3 of Annex 1 shall be assessed by the simplified procedure. …'

(2) In the case of projects in Annex 1 which do not reach the thresholds or meet the criteria laid down in that annex but which when combined with other projects, reach the threshold or fulfil the criterion in question, the authority shall declare, on a case-by-case basis, whether the cumulative effects are likely to result in significant harmful, undesirable or adverse effects on the environment and, if so, whether an environmental impact assessment must be carried out for the proposed project. For the purposes of declaring such an accumulation of effects, other similar and geographically related projects which are already in existence or which have obtained development consent shall be taken into account, or projects which were submitted previously to an authority with a full application for development consent or for which consent has previously been applied for in accordance with Paragraphs 4 and 5. A case-by-case examination need not be carried out where the project in respect of which development consent is requested has a capacity of less than 25% of the threshold. When taking the decision on a case-by-case basis, the authority shall take into consideration the criteria set out in subparagraph 5, points 1 to 3, and apply subparagraphs 7 and 8.

The environmental impact assessment shall be carried out by the simplified procedure. A case-by-case examination is not required if the developer applies for an environmental impact assessment to be carried out.

…

(4) With regard to projects for which a threshold is defined for certain protected sites in Column 3 of Annex I, where this criterion is fulfilled, the authority shall decide on a case-by-case basis, taking into consideration the extent and lasting effects of the environmental impact, whether significant adverse effects are to be expected for the protected habitat (Category B of Annex 2) or the objective of protection for which the protected site has been defined (Categories A, C, D and E of Annex 2). In carrying out that examination, account should be taken of protected sites in Categories A, C, D and E of Annex 2 only if, on the date on which the procedure is initiated, they are included in the list of Sites of Community Importance (Category A of Annex 2). If significant adverse effects are to be expected, an environmental impact assessment shall be performed. When deciding on a case-by-case basis, account shall be taken of the criteria in points 1 to 3 of subparagraph 5, and subparagraphs 7 and 8 shall be applied. A case-by-case examination is not required if the developer applies for an environmental impact assessment to be carried out.

(4a) For projects for which specific conditions other than those set out in subparagraph 4 are laid down in Column 3 of Annex 1, where those conditions are met, the authority shall determine on a case-by-case basis, pursuant to subparagraph 7, whether it is to be expected that significant harmful or adverse effects on the environment within the meaning of Paragraph 1(1)(1) will occur as a result of such a project. Where that is the case, an environmental impact assessment shall be carried out in accordance with the simplified procedure. A case-by-case examination is not required if the developer applies for an environmental impact assessment to be carried out.

…

(6) Consent for projects subject to an assessment in accordance with subparagraphs 1, 2 or 4 shall not be issued before completion of the environmental impact assessment or the case-by-case examination, and notices given under administrative provisions shall have no legal effect before completion of the environmental impact assessment. Development consent issued in breach of the present provision may be annulled within a period of three years by the competent authority under Paragraph 39(3).

(7) Upon request by the project developer, a participating authority or the Umweltanwalt [Environmental Ombudsman, Austria], the authority shall determine whether an environmental impact assessment as provided for in the present Federal Law is to be carried out for a project and which of the criteria laid down in Annex 1 or Paragraph 3a(1) to (3) that project satisfies. That determination can also be made on the authority's own motion. …

…

(9) If the authority determines, in accordance with subparagraph 7, that no environmental impact assessment is to be carried out in respect of a project, an environmental protection organisation recognised in accordance with Paragraph 19(7) or a neighbour in accordance with point (1) of Paragraph 19(1) shall have the right to bring an action before the Bundesverwaltungsgericht [Federal Administrative Court, Austria]. As from the date of publication on the internet, such an environmental protection organisation or such a neighbour shall be given access to the

administrative file. As regards the standing of the environmental protection organisation, the area of activity indicated in the order of recognition pursuant to Paragraph 19(7) shall be decisive.'

12 Annex 1 to the UVP-G 2000 provides:

'The Annex includes the projects subject to an environmental impact assessment in accordance with Paragraph 3.

Columns 1 and 2 include projects which are in any event subject to an environmental impact assessment (Column 1) or which must be subject to a simplified procedure (Column 2). The amendments referred to in Annex 1 require a case-by-case examination from and above the threshold indicated; otherwise, Paragraph 3a(2) and (3) shall apply unless expressly and solely new constructions, new buildings or new utilities are referred to.

Column 3 includes projects which are subject to an environmental impact assessment only when certain specific conditions are met. In respect of those projects, as soon as the minimum threshold indicated is reached, a case-by-case examination shall be carried out. If that examination shows that the project must be made subject to an environmental impact assessment, the simplified procedure shall be applied.

The categories of sites to be protected which are included in Column 3 are defined in Annex 2. However, sites in categories A, C, D and E need not be taken into account for the purposes of determining whether a project is subject to an environmental impact assessment unless they are included there at the date of submission of the application.

	Environmental impact assessment	Environmental impact assessment under a simplified procedure	
	Column 1	Column 2	Column 3
…	…	…	…
	Infrastructure projects		
…	…	…	…
Z 17		(a) Theme parks or amusement parks, sports stadia or golf courses with a land take of at least 10 ha or at least 1 500 parking spaces for motor vehicles;	(b) Theme parks or amusement parks, sports stadia or golf courses in protected areas of category A or D with a land take of at least 5 ha or at least 750 parking spaces for motor vehicles. (c) Projects under (a) and (b) and related installations that are built, modified

			or enlarged on the basis of agreements with international organisations for major events (for example, Olympic Games, World or European Championships, Formula 1 races), after carrying out an individual assessment in accordance with Paragraph 3(4a); …
Z 18		(a) Industrial or trading estates with a land take of at least 50 ha; (b) Urban development projects[3a)] with a land take of at least 15 ha and a gross floor area exceeding 150 000 m^2;	(c) Industrial or trading estates situated in protected areas in category A or D with a land take of at least 25 ha; With regard to projects under (b), Paragraph 3(2) shall apply taking into account the sum of capacity for which development consent has been given in the last five years, including the capacity or capacity extension applied for.
Z 19		(a) Shopping centres with a land take of at least 10 ha or at least 1 000 parking spaces for motor vehicles;	(b) Shopping centres in protected areas in category A or D with a land take of at least 5 ha or at least 500 parking spaces for motor vehicles; …
Z 2		(a) accommodat	(b) accommodat

0		ion establishments such as hotels or holiday villages, and ancillary facilities, with at least 500 beds or a land take of at least 5 ha, outside enclosed settlements;	ion establishments such as hotels or holiday villages, including ancillary facilities, in protected areas in category A or B with at least 250 beds or an occupied surface area of at least 2.5 ha, outside enclosed settlements. …
Z 2 1		(a) car parks or garages accessible to the public with at least 1 500 parking spaces for motor vehicles;	(b) car parks and garages accessible to the public in protected areas in category A, B or D with at least 750 parking spaces for motor vehicles. …
…	…	…	…

…’

13 Footnote 3a, in Column 2 of point Z 8 of Annex 1 to the UVP-G 2000, states:

‘Urban development projects are projects for entirely multifunctional development with at least residential and commercial buildings, including the access roads and utilities provided for those buildings, and with a catchment area that extends beyond the area covered by the project. Once completed, urban development projects or parts of such projects shall no longer be regarded as urban development projects as defined in the present footnote.’

14 Annex 2 to the UVP-G 2000 provides:

‘Classification of sites to be protected in the following categories:

Category	Protected site	Scope of application
A	Special area of conservation	… sites listed as [United Nations Educational, Scientific and Cultural Organisation (UNESCO)] World Heritage Sites in accordance with Article 11(2) of the Convention

		concerning the Protection of the World Cultural and Natural Heritage [adopted in Paris on 16 November 1972 (*United Nations Treaty Series*, Vol. 1037, No I-15511)]
…	…	…
D	Polluted site (air)	Sites determined in accordance with Paragraph 3(8)
…	…	…

…’

15 Paragraph 70 of the Wiener Stadtentwicklungs-, Stadtplanungs- und Baugesetzbuch, Bauordnung für Wien (Viennese Urban Development, Urban Planning and Building Code, Building Regulations for Vienna) (LGBl. 1930/11), in the version thereof applicable to the dispute in the main proceedings (‘the Viennese Urban Development Code’), entitled ‘Examination of the construction project and grant of the building permit’, provides in subparagraph 1 thereof:

‘If a construction project is liable to infringe individual public law rights of neighbours (Paragraph 134a), where the simplified procedure for the grant of a building permit does not apply, a hearing shall be arranged to which the designer and the developer shall also be summoned, in so far as Paragraph 65(1) does not apply. …’

16 Paragraph 134 of that code, entitled ‘Parties’, provides:

‘(1) The applicant or party filing an application is in any event a party within the meaning of Paragraph 8 of the [Allgemeine Verwaltungsverfahrensgesetz (General Code of Administrative Procedure)] where [the Viennese Urban Development Code] provides for an application or the filing of an application.

…

(3) In the context of the procedure for granting a building permit …, in addition to the applicant (developer), the owners (co-owners) of the land shall be parties. Persons with a right to build shall be treated as owners of land. Owners (co-owners) of neighbouring land shall be parties where the planned construction and use thereof infringes their individual public law rights listed exhaustively in Paragraph 134a and where, notwithstanding subparagraph 4, in accordance with Paragraph 70(2), they raise objections to the construction project as provided for in Paragraph 134a at the latest at the hearing. Neighbours shall not qualify as parties where they have expressly approved the construction project on the plans or by reference to them. Neighbours shall have the right to inspect the file … from the moment the construction project has been submitted to the authority. All other persons whose private rights or interests are affected shall be participants … Land neighbouring the building area shall be land that adjoins the land concerned by the construction project or is separated from it by a maximum of 6 metres by strips of land or a public road with a width of up to 20 metres, and, in the latter case, is situated opposite the land to be built upon. In all areas with a different use and when the land is public, neighbouring land shall be land situated a maximum of 20 metres from the development project.’

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

17 The applicant in the main proceedings envisaged the construction in Vienna (Austria) city centre of a group of buildings, the name of that project being ‘ICV Heumarkt Neu – Neubau Hotel InterContinental, Wiener Eislaufverein WEV’ (‘the Heumarkt Neu project’).

18 According to the information provided by the referring court, that project consisted of redeveloping the site in question by demolishing the existing InterContinental Hotel and constructing two new buildings providing hotel, commercial and conference premises, a high rise block for hotel, events, residential and office purposes and a basic building situated under that tower and one of the abovementioned buildings, for hotel, commercial and conference use, with three basement levels. The building not situated on the base building would be situated between that building and an adjacent concert hall and would also have three basement levels. In the context of that project, it was also planned that, first, an ice-skating rink and the building housing it would be rebuilt, involving the construction of an underground skating rink with an area of approximately 1 000 m² and a underground sports hall with a swimming pool, secondly, an underground car park with 275 spaces for motor vehicles would be built and, thirdly, a road contiguous to that project would be moved by approximately 11 metres. The ‘Heumarkt Neu’ project would occupy an area of approximately 1.55 ha and a gross floor area of 89 000 m² (including 58 000 m² above ground level and 31 000 m² below ground level). Moreover, the entire project was located in the central area of the UNESCO World Heritage Site known as ‘Historic Centre of Vienna’.

19 By decision of 16 October 2018, adopted in response to an application of 17 October 2017 from the applicant in the main proceedings, submitted on the basis of Paragraph 3(7) of the UVP-G 2000, the Government of the Province of Vienna (Austria) found that the ‘Heumarkt Neu’ project need not be made subject to an environmental impact assessment on the ground that it did not fall within any of the categories of projects listed in Annex 1 thereto which could have been relevant (in particular points Z 17 to Z 21 of that annex). As regards the category ‘urban development projects’ referred to point Z 18 (b) of Annex 1 to the UVP-G 2000, the Government of the Province of Vienna stated that the thresholds laid down in that provision would not be reached by that project and that Paragraph 3(2) of the UVP-G 2000, relating to cumulation with other projects, did not apply, since the 25% threshold laid down in that provision had not been reached.

20 The Bundesverwaltungsgericht (Federal Administrative Court), after receiving an appeal against this decision from several neighbours and an environmental protection organisation, informed the developer of the ‘Heumarkt Neu’ project and the Government of the Province of Vienna that it considered the transposition into national law of point 10(b) of Annex II to Directive 2011/92 to be inadequate and that the project should be examined on a case-by-case basis. That court appointed an expert and set a date for the hearing. Subsequently, the applicant in the main proceedings withdrew its application, referred to in paragraph 19 above, seeking a determination that an environmental impact assessment was not required.

21 Despite the withdrawal of that application, by decision of 9 April 2019 the Bundesverwaltungsgericht (Federal Administrative Court) held that the ‘Heumarkt Neu’ project was subject to the obligation to carry out an environmental impact assessment.

22 Seised of appeals on a point of law brought by the applicant in the main proceedings and the Government of the Province of Vienna, the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), by decision of 25 June 2021, set aside the decision of the Bundesverwaltungsgericht (Federal Administrative Court) of 9 April 2019 on the ground, in essence, that, after the withdrawal of the application by the applicant in the main proceedings, that latter court no longer had jurisdiction to rule on the substance of the action before it and should

have confined itself to annulling the decision of the Government of the Province of Vienna dated 16 October 2018.

23 Consequently, by decision of 15 July 2021, the Bundesverwaltungsgericht (Federal Administrative Court) declared the decision of the Government of the Province of Vienna of 16 October 2018 null and void.

24 Previously, by an application of 30 November 2018, the applicant in the main proceedings had, in parallel with the abovementioned determination procedure, applied to the Vienna City Administration for the issue of a building permit for the 'Heumarkt Neu' project.

25 In view of the failure of the Vienna City Administration to take a decision on that application, the applicant in the main proceedings brought an action on 12 March 2021 for failure to act before the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria), the referring court in the present case, by which it asks that court to grant the building permit applied for, stating that, in view of the thresholds and criteria laid down in Annex 1, point Z 18(b), to the UVP-G 2000, the 'Heumarkt Neu' project was not subject to an environmental impact assessment.

26 The referring court states that, under national law, where the action for failure to act must, as in the present case, be declared well founded, it is now for that court to rule, as the case may be, on the permit application at issue. However, any jurisdiction it may have to rule on that application depends, like the jurisdiction of the building authority which it replaces in the present case, on whether or not an environmental impact assessment must take place, a question which it is therefore for that court to decide as a preliminary issue. It also states that, in the present case, that preliminary issue must be examined taking into account the thresholds and criteria relating to 'urban development projects' within the meaning of point Z 18(b) of Annex 1 to the UVP-G 2000, as the only situation provided for by that annex which is possible in the present case.

27 In those circumstances, the Verwaltungsgericht Wien (Administrative Court, Vienna) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does [Directive 2011/92] preclude a national rule by which the performance of an environmental impact assessment on urban development projects is made conditional both on the attainment of thresholds for land take of at least 15 ha and for gross floor area of more than 150 000 m² and on the development project in question being a project for entirely multifunctional development with at least residential and commercial buildings, including the access roads and utilities intended for those buildings, and with a catchment area that extends beyond the area covered by the project? In this regard, is it relevant that national law imposes special conditions for:

– theme parks or amusement parks, sports stadia or golf courses (above a certain land take or a certain number of parking spaces);

– industrial or trading estates (above a certain land take);

– shopping centres (above a certain land take or a certain number of parking spaces);

– accommodation establishments, such as hotels or holiday villages, and ancillary facilities (above a certain number of beds or a certain land take, limited to the area outside enclosed settlements); and

– car parks or garages accessible to the public (above a certain number of parking spaces)?

(2) Does [Directive 2011/92] require lower thresholds or criteria with lower thresholds (than those referred to in the first question) to be set for areas of particular historical, cultural, urban-design or architectural significance, such as UNESCO World Heritage Sites, having regard, in particular, to the rule in point 2(c)(viii) of Annex III, according to which 'landscapes and sites of historical, cultural or archaeological significance' are also to be taken into account when deciding whether an environmental impact assessment must be carried out for the projects listed in Annex II?

(3) Does [Directive 2011/92] preclude a national rule according to which, when assessing an 'urban development project' as referred to in the first question, aggregation (cumulation) with other similar and geographically related projects is restricted in such a way that only the sum of the capacities approved in the last five years, including the capacity or capacity expansion applied for, is to be taken into account; urban development projects or parts of such projects are no longer to be regarded conceptually as urban development projects once they have been carried out; and the assessment to be carried out on a case-by-case basis of whether an accumulation of effects is likely to result in significant harmful, undesirable or adverse effects on the environment, thus requiring an environmental impact assessment to be carried out for the proposed project, is not carried out if the capacity of the proposed project is less than 25% of the threshold?

(4) If the answer to Question 1 and/or 2 is in the affirmative: Can the examination to be carried out on a case-by-case basis in the event that the discretion accorded to the national authorities of the Member States (in conformity with the provisions of Article 2(1) and Article 4(2) and (3) of [Directive 2011/92], which are directly applicable in this case) is exceeded, in order to determine whether the project is likely to have significant effects on the environment and must therefore be made subject to an environmental impact assessment, be limited to certain aspects of protection, such as the protection objective of a particular area, or must all of the criteria set out in Annex III to [Directive 2011/92] be taken into account in that case?

(5) Does [Directive 2011/92], having regard in particular to the principles of judicial protection laid down in Article 11 of that directive, permit the assessment referred to in the fourth question to be carried out first by the referring court (in a building consent procedure and as part of the verification of its own jurisdiction) in the proceedings of which national law accords the 'public' only extremely limited status as a party and against the decisions of which members of the 'public concerned' have only extremely limited judicial protection within the meaning of Article 1(2)(d) and (e) of [Directive 2011/92]? Is it relevant to the answer to that question that – apart from the possibility for an authority to make a determination of its own motion – only the project developer, a participating authority or the Umweltanwalt (Environmental Ombudsman) is permitted under national law to request a separate determination to establish whether the project is subject to the requirement to carry out an environmental impact assessment?

(6) Does [Directive 2011/92] permit building permits for individual construction measures which form part of 'urban development projects' pursuant to point 10(b) of Annex II to that directive to be granted before, or alongside, a necessary 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, without carrying out a comprehensive assessment of the environmental effects within the meaning of [Directive 2011/92] as part of the building consent procedure, and while according the public only limited status as a party?'

Admissibility of the request for a preliminary ruling

28 WertInvest Hotelbetrieb submits that the present request for a preliminary ruling is inadmissible in so far as the 'Heumarkt Neu' project does not fall within the definition of 'urban development works' within the meaning of point 10(b) of Annex II to Directive 2011/92, since that project essentially merely transforms an existing site.

29 It must be borne in mind in that regard that, according to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need of a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 12 October 2017, *Sleutjes*, C-278/16, EU:C:2017:757, paragraph 21 and the case-law cited).

30 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 12 October 2017, *Sleutjes*, C-278/16, EU:C:2017:757, paragraph 22 and the case-law cited).

31 That is not the case here, since the questions referred are, on the contrary, manifestly connected with the subject matter of the dispute in the main proceedings. Furthermore, it should be noted that the objections thus raised by WertInvest Hotelbetrieb concern the very scope of point 10(b) of Annex II to Directive 2011/92 and the legal classification of the facts in the light of that provision. The issue of whether a situation such as that at issue in the main proceedings comes within the scope of application of the EU provisions referred to by the national court is a question of substance relating to the interpretation thereof, with the result that any doubts in that regard do not affect the admissibility of the questions referred (see, by analogy, judgment of 27 October 2009, *ČEZ*, C-115/08, EU:C:2009:660, paragraph 67).

32 Therefore, WertInvest Hotelbetrieb's arguments alleging that the request for a preliminary ruling is inadmissible must be rejected.

Consideration of the questions referred

The first and second questions

33 By its first and second questions, which it is appropriate to examine together, the referring court asks, in essence, whether Directive 2011/92 must be interpreted as precluding national legislation which makes the carrying out of an environmental impact assessment of 'urban development projects' conditional, first, on the thresholds of land take of at least 15 ha and gross floor area of more than 150 000 m² being attained and, secondly, on the fact that the project is one for entirely multifunctional development, including at least residential and commercial buildings, a project including the access roads and utilities intended for those buildings, with a catchment area that extends beyond the area covered by the project and which does not set lower thresholds or stricter criteria depending on the location of the projects concerned, in particular in areas of particular historical, cultural, urban-design or architectural significance.

34 It follows from Article 4(2) of Directive 2011/92, in conjunction with point 10(b) of Annex II thereto, that the Member States must determine, on the basis of a case-by-case examination or on the basis of thresholds or criteria set by them, whether an urban development project must be made subject to an environmental impact assessment in accordance with Articles 5 to 10 of that directive. Member States may also decide to apply both procedures.

35 It should be noted as a preliminary point in that regard that, as is apparent from the order for reference, the referring court, which is responsible for assessing the facts, does not appear to have been in any doubt as to the fact that a project such as that at issue in the main proceedings must be regarded as falling within the scope of the concept of 'urban development projects' within the meaning of point 10(b) of Annex II to Directive 2011/92, a concept concerning the interpretation of which that court moreover has not put questions to the Court. In the present case, and in the light, in particular, of the characteristics of that project as described in the order for reference and reproduced in paragraph 18 above, the Court sees no reason to call into question the legal classification of the facts thus made by the referring court.

36 Furthermore, as regards WertInvest Hotelbetrieb's objection referred to in paragraph 28 above, it is sufficient to note that the fact that the project in question concerns the conversion of an existing site by, as in the present case, demolishing the existing site and reconstructing a new site is not such as to prevent such a project from being regarded as falling within the concept of 'urban development projects' within the meaning of point 10(b) of Annex II to Directive 2011/92 (see, to that effect, judgment of 3 March 2011, *Commission* v *Ireland*, C-50/09, EU:C:2011:109, paragraph 100).

37 It must be recalled that the Member States must implement Directive 2011/92 in a manner which fully corresponds to its requirements, having regard to its fundamental objective which, as is clear from Article 2(1) thereof, is that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location, should be the subject of an assessment with regard to their effects (see, to that effect, regarding the corresponding provisions of Directive 85/337, judgment of 27 March 2014, *Consejería de Infraestructuras y Transporte de la Generalitat Valenciana and Iberdrola Distribución Eléctrica*, C-300/13, not published, EU:C:2014:188, paragraph 23 and the case-law cited).

38 In that connection, even a small project may have significant effects on the environment and that it is settled case-law that the provisions of the Member State's legislation which provide for the assessment of the environmental impact of certain types of project must also comply with the requirements set out in Article 3 of Directive 2011/92 and take into account the effect of the project on population and human health, biodiversity, land, soil, water, air and climate, as well as material assets, cultural heritage and the landscape (see, to that effect, judgment of 24 March 2011, *Commission* v *Belgium*, C-435/09, not published, EU:C:2011:176, paragraph 50 and the case-law cited).

39 It also follows from settled case-law that, where, as regards projects listed in Annex II to Directive 2011/92, the Member States have decided to have recourse to the establishment of thresholds or criteria in order to determine whether those projects must be made subject to an assessment in accordance with Articles 5 to 10 of that directive, the limits of the measure of discretion which is thus conferred upon them are to be found in the obligation set out in Article 2(1) of that directive that projects likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment are to be subject to an assessment before consent is given (judgment of 31 May 2018, *Commission* v *Poland*, C-526/16, not published, EU:C:2018:356, paragraph 60 and the case-law cited).

40 Finally, it should be noted that, pursuant to Article 4(3) of Directive 2011/92, Member States are required, when setting those thresholds or criteria, to take account of the relevant selection criteria set out in Annex III to that directive.

41 Among the latter criteria, that annex identifies, first, the characteristics of projects, which must be considered in particular in relation to the size of the project and the cumulation with other existing or approved projects, secondly, the location of projects, so that account is taken of the environmental sensitivity of geographical areas likely to be affected by them, with particular regard to the existing and approved land use and the absorption capacity of the natural environment, paying particular attention, inter alia, to densely populated areas and landscapes and sites of historical, cultural or archaeological significance and, thirdly, the characteristics of the potential impact of projects, particularly with regard to the geographical area and the size of the population likely to be affected by projects and their cumulative effect with other existing or approved projects.

42 It follows that a Member State which, on the basis of Article 4(2) of Directive 2011/92, establishes thresholds or criteria which take account only of the dimension of the projects, without taking into consideration the criteria recalled in paragraph 41 above, exceeds its margin of discretion under Article 2(1) and Article 4(2) of that directive (see, to that effect, judgment of 24 March 2011, *Commission* v *Belgium*, C-435/09, not published, EU:C:2011:176, paragraph 55 and the case-law cited).

43 In the present case it appears that, while the Republic of Austria set a number of thresholds, applicable according to the location of the project, in particular in Category A areas, which include UNESCO World Heritage sites, for the projects concerning ‘shopping centres’ and ‘car parks and garages accessible to the public’ referred to in points Z 9 and Z 21 of Annex 1 to the UVP-G 2000, being projects which also fall within the concept of ‘urban development projects’ within the meaning of point 10(b), in Annex II to Directive 2011/92, it set only a single threshold with respect to the ‘urban development projects’ referred to in point Z 18(b) of Annex 1 to the UVP-G 2000.

44 It is apparent from the case-law of the Court that 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 project (see, to that effect, judgment of 21 September 1999, *Commission* v *Ireland*, C-392/96, EU:C:1999:431, paragraph 70).

45 In that regard, it should be recalled that, according to the information provided by the referring court, the project at issue in the main proceedings is situated in the central area of a UNESCO World Heritage Site, so that the criterion in relation to the location of projects, referred to in point 2(c)(viii) of Annex III to Directive 2011/92, is particularly relevant in that context.

46 Furthermore, it follows from the Court’s settled case-law that a Member State which established those thresholds or criteria at a level such that, in practice, all projects of a certain type would be exempted in advance from the requirement of an impact assessment would likewise exceed the discretion referred to in paragraph 39 above, unless all the projects excluded could, when viewed as a whole, be regarded as not likely to have significant effects on the environment (judgment of 31 May 2018, *Commission* v *Poland*, C-526/16, not published, EU:C:2018:356, paragraph 61 and the case-law cited).

47 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.

48 In that regard, it should be noted, first, that the referring court stated, in its order for reference, that it is apparent from certain sources that, in practice, no urban development project should reach the thresholds and criteria laid down in point Z 18(b) of Annex 1 to the UVP-G 2000. Secondly, it is apparent from the information in the documents before the Court that, in Austria, the majority of urban development projects within the meaning of point 10(b) of Annex II to Directive 2011/92 are not subject to an environmental impact assessment.

49 In addition, the Austrian Government stated at the hearing that it had realised that it was possible that the thresholds laid down for that purpose by the national legislation were too high and that it was for that reason that it had decided to amend that legislation.

50 However, it will ultimately be for the referring court to assess, on the basis of all the relevant information available, whether the thresholds and criteria concerned are set at a level such that, in practice, all or almost all of the projects concerned are exempt from the obligation to carry out an environmental impact assessment and to ensure, in that case, that such exemption cannot be justified by the fact that all the projects thus excluded could, when viewed as a whole, be regarded as not likely to have significant effects on the environment.

51 Having regard to the foregoing considerations, the answer to the first and second questions is that Article 2(1), Article 4(2)(b) and Article 4(3) of Directive 2011/92 and point 10(b) of Annex II thereto and Annex III thereto must be interpreted as precluding national legislation which makes the carrying out of an environmental impact assessment of 'urban development projects' conditional, first, on the attainment of thresholds of land take of at least 15 ha and gross floor area of more than 150 000 m² and, secondly, on the fact that it is a project for entirely multifunctional development, including at least residential and commercial buildings, a project including the access roads and utilities intended for those buildings, and with a catchment area that extends beyond the area covered by the project.

The third question

52 By its third question, the referring court asks, in essence, whether Directive 2011/92 must be interpreted as precluding a national provision which, for the purposes of assessing whether a 'urban development project' must be made subject to an environmental impact assessment, restricts the examination of the accumulation of effects of that project with those of other similar and geographically related projects in such a way that only the sum of the capacities approved in the last five years, including the capacity or capacity expansion applied for in connection with that project, is to be taken into account; urban development projects or parts of such projects are no longer to be regarded conceptually as urban development projects once they have been carried out; and the assessment to be carried out on a case-by-case basis of whether an accumulation of effects is likely to result in significant harmful, undesirable or adverse effects on the environment, thus requiring an environmental impact assessment to be carried out for the proposed project, is not carried out if the capacity of the proposed project is less than 25% of the threshold.

53 It follows from the request for a preliminary ruling that that question relates to the rule laid down in Paragraph 3(2) of the UVP-G 2000, read in conjunction with point Z 18 of Annex 1 to that law and, in particular, with footnote 3a in Column 2 of point Z 18 of that annex.

54 However, in accordance with the case-law of the Court, when a Member State, pursuant to Article 4(2)(b) of Directive 2011/92, with regard to projects falling within the scope of Annex II to that directive, establishes a threshold which is incompatible with the obligations laid down in Articles 2(1) and 4(3) thereof, the provisions of Articles 2(1), Article 4(2)(a) and Article 4(3) of the directive have direct effect, which means that the competent national authorities must ensure that it is first examined whether the projects concerned are likely to have significant effects on the environment and, if so, that an assessment of those effects is then undertaken (see, to that effect, judgment of 21 March 2013, *Salzburger Flughafen*, C-244/12, EU:C:2013:203, paragraph 48).

55 Consequently, in view of the answer to the first and second questions, there is no need to answer the third question.

56 In the light of that answer, in order to determine whether the project at issue in the main proceedings must be made subject to an environmental impact assessment, it will be for the competent authority or, as the case may be, the referring court to carry out an examination of that project exclusively in the light of the criteria laid down in Annex III to Directive 2011/92, so that the answer to the third question is not necessary for the purposes of resolving the dispute in the main proceedings.

The fourth question

57 By its fourth question, the referring court asks, in essence, whether Article 4(3) of Directive 2011/92 must be interpreted as meaning that in the context of the case-by-case assessment of whether a project is likely to have significant effects on the environment and must therefore be subject to an environmental impact assessment, the competent authority may confine itself to taking into account certain aspects of environmental protection, such as the objective of the protection of a given area, or whether it must examine the project concerned having regard to all the selection criteria set out in Annex III to that directive.

58 Under Article 4(3) of Directive 2011/92, in examining whether a project is likely to have significant effects on the environment, account is to be taken of the relevant selection criteria set out in Annex III to that directive.

59 In that regard, the Court has already held that a Member State cannot, without failing to fulfil its obligations under Directive 2011/92, exclude expressly or impliedly one or more of the criteria in Annex III to that directive, in so far as any of those criteria may, depending on which project in the classes listed in Annex II is concerned, be relevant for the purposes of ascertaining whether an environmental impact assessment procedure must be organised (see, to that effect, order of 10 July 2008, *Aiello and Others*, C-156/07, EU:C:2008:398, paragraph 50).

60 It follows that, in the context of a case-by-case examination, the competent authority must examine the project concerned having regard to all the selection criteria listed in Annex III to Directive 2011/92 in order to determine the relevant criteria in the particular case and must then take due account of all the criteria which thus prove to be relevant.

61 In that context, that the Court has already rejected the argument that, in urban areas, the environmental impact of urban development projects is practically non-existent and has referred in that regard to the criteria relating to densely populated areas and to landscapes of historical, cultural and archaeological significance, which now appear in point 2(c)(vii) and (viii) of Annex III to Directive 2011/92 (see, to that effect, judgment of 16 March 2006, *Commission* v *Spain*, C-332/04, not published, EU:C:2006:180, paragraphs 79 and 80).

62 In the light of the foregoing considerations, the answer to the fourth question is that Article 4(3) of Directive 2011/92 must be interpreted as meaning that, in the context of a case-by-case examination as to whether a project is likely to have significant effects on the environment and must therefore be subject to an environmental impact assessment, the competent authority must examine the project concerned having regard to all the selection criteria listed in Annex III to that directive in order to determine the relevant criteria in the particular case and must then apply those relevant criteria to the particular situation.

The fifth question

63 By its fifth question, the referring court asks, in essence, whether Article 11 of Directive 2011/92 must be interpreted as precluding the case-by-case examination provided for in Article 4(2)(a) of that directive from being carried out for the first time by a court with jurisdiction to grant development consent, as provided for in Article 1(2)(c) of that directive, in a procedure in which the public is accorded only extremely limited status as a party and at the end of which the public has also only extremely limited access to review procedures. In that context, the referring court also asks whether it is relevant that, under national law, apart from the possibility of *ex officio* determination, only the project developer, a participating authority or the Environmental Ombudsman may ask for a determination on whether the project in question must be subject to an environmental impact assessment.

64 It is apparent from the request for a preliminary ruling that the referring court asks that question for two reasons. First, it notes that, in accordance with the requirements of the Viennese Urban Development Code, only persons who own a plot of land or who have a right to build on land situated in a precisely defined area around the land of the project at issue in the main proceedings enjoy the status of parties to the procedure for the grant of a building permit pending before it, so that the public, within the meaning of Article 1(2)(d) of Directive 2011/92, is almost entirely excluded from that procedure and therefore, a priori, from the possibility of bringing an action against any decision of the referring court not to require an environmental impact assessment for that project. Secondly, in accordance with Paragraph 3(7) of the UVP-G 2000, only the developer, a participating authority or the Environmental Ombudsman may request, on their own initiative, a determination as to whether that project must be subject to an environmental impact assessment.

65 It must be observed in that regard that Directive 2011/92 does not require the Member States to provide for the possibility for the public, within the meaning of Article 1(2)(d) of that directive, or for the public concerned, within the meaning of Article 1(2)(e) of that directive, to initiate the determination procedure provided for in paragraphs 4 and 5 of Article 4 thereof.

66 Similarly, Directive 2011/92 does not provide for the existence of a right of participation by the public or the public concerned in such a procedure.

67 However, it follows from Article 4(5) of that directive that the decision adopted at the end of that procedure and which meets the formal requirements laid down by that provision must be made available to the public.

68 Furthermore, in accordance with Article 11 of Directive 2011/92, an individual who is part of the ‘public concerned’ within the meaning of Article 1(2)(e) of that directive and who satisfies the criteria laid down by national law as to ‘sufficient interest’ or, as the case may be, the ‘impairment of a right’, referred to in Article 11, must be able to challenge, before a court of law or another independent and impartial body established by law, the substantive or procedural legality of a decision finding that there is no need to carry out an environmental impact assessment in an action

brought, as the case may be, against a development consent decision (see, to that effect, judgment of 16 April 2015, *Gruber*, C-570/13, EU:C:2015:231, paragraph 44).

69 In addition, the Court has already held that the fact that such a decision is given by a court exercising administrative powers does not prevent the public concerned from exercising its right of access to a review procedure in order to challenge that decision (see, to that effect, judgment of 15 October 2009, *Djurgården-Lilla Värtans Miljöskyddsförening,* C-263/08, EU:C:2009:631, paragraph 37).

70 Lastly, Article 11(1) of Directive 2011/92, pursuant to which the decisions, acts or omissions covered by that article must be subject to a review procedure before a court of law or another independent and impartial body established by law to challenge their substantive or procedural legality, lays down no restriction whatsoever on the pleas which may be relied on in support of such a review (judgment of 15 October 2015, *Commission* v *Germany*, C-137/14, EU:C:2015:683, paragraph 77 and the case-law cited).

71 In the light of the foregoing considerations, the answer to the fifth question is that Article 11 of Directive 2011/92 must be interpreted as not precluding the case-by-case examination provided for in Article 4(2)(a) of that directive from being carried out for the first time by a court with jurisdiction to grant development consent, as provided for in Article 1(2)(c) of that directive. However, an individual who is part of the 'public concerned', within the meaning of Article 1(2)(e) of Directive 2011/92, and who satisfies the criteria laid down by national law as to 'sufficient interest' or, as appropriate, 'impairment of a right', referred to in Article 11 of that directive, must have the possibility of challenging, before another court of law or, depending on the case, another independent and impartial body established by law, the substantive or procedural legality of any decision taken by such a court with jurisdiction finding that there is no need for an environmental impact assessment.

The sixth question

72 By its sixth question, the referring court asks, in essence, whether Directive 2011/92 must be interpreted as precluding 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.

73 The Austrian Government submits that this question is hypothetical and therefore inadmissible.

74 It is true in that regard that, as the Austrian Government observes, the referring court itself states in its order for reference, in particular, that the subject matter of the 'urban development project' and that of the 'detailed project', for which an 'early' building permit could, according to that court, be envisaged, are identical. Furthermore, it is apparent from the documents before the Court that the application lodged by the applicant in the main proceedings on 12 March 2021, which gave rise to the dispute in the main proceedings, concerns the same project as that referred to in the application dated 30 November 2018 for a building permit and which corresponds, in essence, to the description provided by the referring court in that order for reference, reproduced, in essence, in paragraph 18 above. Furthermore, it appears that in the case at the origin of the order for reference, the applicant in the main proceedings applied for the issue of a building permit for that project in its entirety.

75 Nevertheless, the referring court in its question refers to ‘building permits for individual construction measures which form part of “urban development projects”’ and in the order for reference it refers to the arguments of the applicant in the main proceedings according to which, in the case of ‘urban development projects’, even where the project as a whole is subject to the obligation to perform an environmental impact assessment, development consent for individual construction measures remains possible. In those circumstances, it cannot be ruled out that that court may, under Austrian law and pending the execution, as the case may be, of an environmental impact assessment within the meaning of Directive 2011/92 or a case-by-case examination intended to clarify the need for that assessment, have jurisdiction to grant development consent for such individual construction measures and that an application to that effect may have been made in the context of the dispute in the main proceedings.

76 Consequently, since the questions referred for a preliminary ruling enjoy, in accordance with the case-law referred to in paragraph 30 above, a presumption of relevance, it is necessary to answer the sixth question.

77 Under Article 2(1) of Directive 2011/92, projects likely to have significant effects on the environment must be made subject to an assessment with regard to their effects on the environment before development consent is granted.

78 Such a rule means that the examination of the direct and indirect effects of a project on the factors referred to in Article 3 of that directive and on the interaction between those factors must be carried out in full, and in a comprehensive manner, before that consent is granted (see, to that effect, judgment of 24 February 2022, *Namur-Est Environnement*, C-463/20, EU:C:2022:121, paragraph 58 and the case-law cited).

79 As the Court has pointed out, the prior nature of such an assessment is justified by the fact it is necessary for the competent authority to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than subsequently trying to counteract their effects (judgment of 31 May 2018, *Commission* v *Poland*, C-526/16, not published, EU:C:2018:356, paragraph 75 and the case-law cited).

80 To grant building permits for individual construction measures which form part of a larger urban development project before it is determined whether that project must be made subject to an assessment in accordance with Articles 5 to 10 of Directive 2011/92 and, as the case may be, before that assessment is carried out, would be manifestly contrary to those requirements and to the essential objective which they reflect, recalled in paragraph 37 above.

81 In the light of the foregoing considerations, the answer to the sixth question is that Directive 2011/92 must be interpreted as precluding 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.

Costs

82 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

1. **Article 2(1), Article 4(2)(b) and Article 4(3) 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, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, and point 10(b) of Annex II thereto and Annex III thereto,**

must be interpreted as precluding national legislation which makes the carrying out of an environmental impact assessment of 'urban development projects' conditional, first, on the attainment of thresholds of land take of at least 15 ha and gross floor area of more than 150 000 m² and, secondly, on the fact that it is a project for entirely multifunctional development, including at least residential and commercial buildings, a project including the access roads and utilities intended for those buildings, and with a catchment area that extends beyond the area covered by the project.

2. **Article 4(3) of Directive 2011/92, as amended by Directive 2014/52,**

must be interpreted as meaning that, in the context of a case-by-case examination as to whether a project is likely to have significant effects on the environment and must therefore be subject to an environmental impact assessment, the competent authority must examine the project concerned having regard to all the selection criteria listed in Annex III to Directive 2011/92, as amended, in order to determine the relevant criteria in the particular case and must then apply those relevant criteria to the particular situation.

3. **Article 11 of Directive 2011/92, amended by Directive 2014/52,**

must be interpreted as not precluding any case-by-case examination, as provided for in Article 4(2)(a) of Directive 2011/92, as amended, from being carried out for the first time by a court with jurisdiction to grant development consent, as provided for in Article 1(2)(c) of Directive 2011/92, as amended.

However, an individual who is part of the 'public concerned', within the meaning of Article 1(2)(e) of Directive 2011/92, as amended, and who satisfies the criteria laid down by national law as to 'sufficient interest' or, as appropriate, 'impairment of a right', referred to in Article 11 of that directive, must have the possibility of challenging, before another court of law or, depending on the case, another independent and impartial body established by law, the substantive or procedural legality of any decision taken by such a court with jurisdiction finding that there is no need for an environmental impact assessment.

4. **Directive 2011/92, as amended by Directive 2014/52,**

must be interpreted as precluding 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.

[Signatures]

* Language of the case: German.