

# Raad voor Vergunningsbetwistingen

**Judgment of the Court (Grand Chamber) 25 June 2020, Case C-24/19**

**Directive 2001/42/EC (SEA) — Environmental impact assessment**

**Main question:**

**Is a normative regulatory act (Order) and a policy instrument (circular) containing provisions relating to the installation of wind turbines (shadow, noise, safety, ...) covered by the concept of 'plans and programmes' and must they be subject to an environmental assessment?**

## **Council for Consent (or 'Permit') Disputes**

- **administrative court (Flanders)**
- **annulment of development consents (about 1000 appeals/year)**

## **Case:**

- **development consent for the installation and operation of five wind turbines ("wind park")**
- **local residents near the project who fear nuisance from shadow flicker and noise**
- **development consents are granted on basis of an Order of the Flemish Government (VLAREM II) and a Circular**

## **The Vlare II Order :**

- **lays down general and sectoral environmental conditions concerning the nuisances and risks to which certain installations and activities can give rise**
- **includes provisions regarding the shadow cast by blades, noise and the safety of wind turbines (presence of certain detection systems and an automatic stop, ...)**

**Circular 'Assessment framework and conditions for the installation of wind turbines'**

## **Evolution in the case law on Directive 2001/42/EC:**

- **D'Oultremont-case (C-290/15, 27 October 2016)**

**Council of State (nr. 239.886, 27 November 2017): annulment of Order of the Walloon Government – but the effects of the Order are maintained for a period of three years**

- **Inter-Environnement Bruxelles + Thybaut (C-671/16 and C-160/17, 7 June 2018)**

**As a result of the evolution in the case law of the Court of Justice, the Council of Consent Disputes referred ten questions to the Court of Justice, partly in order to obtain further clarification on the scope of the Directive and partly to request the Court of Justice to reconsider its case-law. (RvVb-A-1819-0352, 10 December 2018)**

## Judgement Court (Grand Chamber):

1. the concept of 'plans and programmes' covers an order and circular, adopted by the government of a federated entity of a Member State, both of which contain various provisions concerning the installation and operation of wind turbines (art. 2(a))
2. those instruments constitute plans and programmes that must be subject to an environmental assessment (art. 3(2)(a))
3. the national court may maintain the effects of those instruments and the consent granted only if the national law permits it to do so and if the annulment of that consent would be likely to have significant implications for the electricity supply of the whole of the Member State, and only for the period of time strictly necessary to remedy that illegality

## Clear judgement

- in accordance with previous case law
- broad interpretation of 'plan and programmes' and 'required' (art. 2(a))

Some questions about the maintenance of the effects concern 'national law'

## What happened?

**Flemish legislator:** The 'Validation decree of 17 July 2020': temporarily validates the provisions of the Order and Circular, for a period of 3 years. The validation is limited to the violation of European and national provisions on the obligation to carry out an environmental assessment.

## Belgian Constitutional Court:

- actions for annulment and suspension of this Validation Decree
- judgement of 25 February 2021: rejection of the actions for suspension



## **Council for Consent Disputes:**

- the decree validates the sectoral standards for wind turbines, but not the consents referring to those provisions
- in the case 'A and others' (Mestdagh-case): annulment of consent due to decision of the operator (22 October 2020, RvVb-A-2021-0172)
- in other wind turbine cases: waiting for the judgement of the Constitutional Court on the annulment cases against the Decree (October 2021?)
- if the Validation Decree is fully valid, the validated provisions are applicable

**Flemish Government: instructed to carry out environmental assessment on new provisions for wind turbines**

