JUDGMENT OF THE COURT
24 October 1996 *

In Case C-72/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Nederlandse Raad van State (Netherlands) for a preliminary ruling in the proceedings pending before that court between

Aannemersbedrijf P. K. Kraaijeveld BV and Others

and

Gedeputeerde Staten van Zuid-Holland

on the interpretation 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) and on the duty of national courts to ensure that a directive having direct effect is complied with although no individual has invoked it,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, G. F. Mancini, J. L. Murray, L. Sevón (Rapporteur), (Presidents of Chambers), C. N. Kakouris, P. J. G. Kapteyn, C. Gulmann, D. A. O. Edward, J.-P. Puissochet, G. Hirsch and M. Wathelet, Judges,

* Language of the case: Dutch.

Advocate General: M. B. Elmer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Aannemersbedrijf P. K. Kraaijeveld BV and Others, by J. A. Kraaijeveld, J. Kraaijeveld Sr., J. Kraaijeveld Jr., W. Kraaijeveld and P. K. Kraaijeveld,

— the Government of the Netherlands, by A. Bos, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent,

— the Italian Government, by U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, assisted by P. G. Ferri, Avvocato dello Stato,

— the United Kingdom Government, by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by D. Wyatt QC,

— the Commission of the European Communities, by M. van der Woude, of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Aannemersbedrijf P. K. Kraaijeveld BV and Others, represented by J. Kraaijeveld Jr. and W. Kraaijeveld; the Government of the Netherlands, represented by J. S. van den Oosterkamp, Assistant Legal Adviser at the Ministry of Foreign Affairs, acting as Agent, assisted by J. Poot, expert adviser; the Italian Government, represented by P. G. Ferri; the United Kingdom

Government, represented by J. E. Collins, assisted by D. Wyatt; and the Commission, represented by W. Wils of its Legal Service, acting as Agent, at the hearing on 14 February 1996,

after hearing the Opinion of the Advocate General at the sitting on 26 March 1996,

gives the following

Judgment

1 By judgment of 8 March 1995, received at the Court on 14 March 1995, the Nederlandse Raad van State (Netherlands State Council) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty four questions on the interpretation 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, hereinafter 'the directive') and on the duty of national courts to ensure that a directive having direct effect is complied with although no individual has invoked it.

2 The questions were raised in proceedings brought by Aannemersbedrijf P. K. Kraaijeveld BV and Others (hereinafter 'Kraaijeveld') for annulment of a decision of 18 May 1993 by which the South Holland Provincial Executive approved a zoning plan entitled 'Partial modification of zoning plans in connection with dyke reinforcement' adopted by the Sliedrecht Municipal Council pursuant to the Wet op de ruimtelijke ordening (Regional Development Law).

Directive 85/337

3 The directive provides that, before certain works or other interventions in the natural surroundings are executed, an environmental impact assessment is to be carried out.

4 According to the sixth, eighth, ninth and eleventh recitals in the preamble to the directive:

'... development consent for public and private projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out; ... this assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question;

... projects belonging to certain types have significant effects on the environment and these projects must as a rule be subject to systematic assessment;

... projects of other types may not have significant effects on the environment in every case and ... these projects should be assessed where the Member States consider that their characteristics so require;

... the effects of a project on the environment must be assessed 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 Article 1(1) of the directive states:

'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.'

6 Article 1(2) states that for the purposes of the directive 'project' means:

'— the execution of construction works or of other installations or schemes,

— other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.'

7 Article 2(1) specifies the types of projects which are to be subject to an assessment:

'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.'

8 Article 3 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 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 distinguishes between two different types of projects. The first paragraph provides that an assessment is always required for projects described in Annex I. As regards other projects, Article 4(2) provides:

'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.

To this end Member States may *inter alia* specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment in accordance with Articles 5 to 10'.

10 Annex II lists a number of projects, including:

'10. Infrastructure projects

...

(e) Canalization and flood-relief works.

...

12. Modifications to development projects included in Annex I and projects in Annex I undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than one year.'

11 The directive contains no specific provision in relation to modifications to projects listed in Annex II.

12 Lastly, the directive provides for the public to be given information and the opportunity to express an opinion. Article 6(3) of the directive provides that the detailed arrangements for such information and consultation are to be determined by the Member States, in particular as regards determination of the public concerned and the way in which the public will be informed.

13 Article 12(1) of the directive provides that 'Member States shall take the measures necessary to comply with this directive within three years of its notification'.

The provisions of Netherlands law applicable to the facts of the main proceedings

14 In the Netherlands the Deltawet (of 8 May 1958) houdende de afsluiting van de zeearmen tussen de Westerschelde en de Rotterdamse Waterweg en de versterking van de hoogwaterkering ter beveiliging van het land tegen stormvloeden (*Staatsblad 246*, Delta Law providing for the closure of the sea inlets linking the Western Scheldt to the Rotterdam Waterway and consolidating the tide control scheme to protect land against storm tides, hereinafter the 'Delta Law') provides in particular for the construction of works intended to reinforce high-water protection along the Rotterdam Waterway and along the waters communicating with it (Article 1(II)d). Pursuant to that Law, studies were undertaken, mainly in 1987 and 1988, by the Dyke Reinforcement Coordinating Committee responsible to the South Holland Provincial Executive. A new dyke line in the West, Central and East Sliedrecht sector was proposed by the Committee, approved by the South Holland Provincial Executive and adopted by the Minister for Transport and Water Control on 26 April 1990 in accordance with Article 2(4) of the Delta Law. Subsequently the Sliedrecht Municipal Council adopted the zoning plan for that sector on 23 November 1992 under the Regional Development Law.

15 The directive was transposed into national law in the Netherlands by an amendment to the Wet algemene bepalingen milieuhygiëne (Law laying down general provisions on environmental health) of 13 June 1979 (hereinafter 'the 1979 Law'), Article 41b(1) of which provided, at the material time: 'Activities which are likely to have significant adverse effects on the environment shall be designated by a general administrative measure. The same instrument shall designate the decision(s) of the public authorities concerning such activities prior to which an environmental impact assessment must be made.' The 1979 Law was itself implemented by the Besluit milieu-effectrapportage (Environmental Impact Assessment Decision) of 20 May 1987. In Article 2 of the decision and Section C 12.1 of the annex thereto, in the version in force at the material time, defined the 'construction of a dyke' as an activity within the meaning of Article 41(b) of the Law if the dyke was 5 km or more in length, with a cross-section of at least 250 m^2. They also characterize as a

decision in respect of which an environmental impact assessment must be made the adoption of an outline plan or a decision made pursuant to Article 2(3) and (4) of the Delta Law.

16 The 1979 Law was amended and became, in 1994, the Wet milieubeheer (Environmental Management Law). A further implementing decision was adopted on 4 July 1994, omitting the criteria in respect of the size of the works. That decision is not applicable, however, to the facts of the case in the main proceedings.

Procedure before the national court and the questions referred for a preliminary ruling

17 Kraaijeveld contested the zoning plan adopted on 23 November 1992 by the Sliedrecht Municipal Council, in so far as it concerned the Merwede dyke, before the South Holland Provincial Executive which, by decision of 18 May 1993, nevertheless approved the plan. On 20 July 1993 Kraaijeveld brought an action before the Raad van State seeking annulment of that decision.

18 According to the new plan, the waterway to which Kraaijeveld has access will no longer be linked to navigable waterways; the removal of access to navigable waterways would be ruinous to Kraaijeveld's business, whose economic activity is related to waterways ('natte waterbouw').

19 The Nederlandse Raad van State observes that no environment impact assessment was made because the size of the works was less than the minimum laid down by national legislation.

20 By judgment of 8 March 1995 the Nederlandse Raad van State decided to refer to the Court of Justice for a preliminary ruling the following four questions:

'1. Must the expression "canalization and flood-relief works" in Annex II to Directive 85/337/EEC be interpreted as including certain types of work on a dyke running alongside waterways?

2. Having regard in particular to the terms "projects" and "modifications to development projects" employed in the directive, does it make any difference to the answer to Question 1 whether what is involved is:

(a) the construction of a new dyke;

(b) the relocation of an existing dyke;

(c) the reinforcement and/or widening of an existing dyke;

(d) the replacement *in situ* of a dyke whether or not the new dyke is stronger and/or wider than the old one; or

(e) a combination of two or more of (a) to (d) above?

3. Must Article 2(1) and Article 4(2) of the directive be interpreted as meaning that where a Member State in its national implementing legislation has laid down specifications, criteria or thresholds for a particular project covered by Annex II in accordance with Article 4(2) of the directive, but those specifica-

tions, criteria or thresholds are incorrect, Article 2(1) requires that an environmental impact assessment be made if the project is likely to have "significant effects on the environment by virtue *inter alia* of [its] nature, size or location" within the meaning of that provision?

4. If Question 3 is answered in the affirmative, does that obligation have direct effect, that is to say, may it be relied upon by an individual before a national court and must it be applied by the national court even if it was not in fact invoked in the matter pending before that court?'

Question 1

21 In this question the Nederlandse Raad van State asks whether the expression 'canalization and flood-relief works' in point 10(e) of Annex II to the directive is to be interpreted as including certain types of work on a dyke running alongside waterways.

22 In view of the wording of the English version of the directive ('canalization and flood-relief works'), the national court considers that projects falling under that heading of Annex II involve activities likely to have significant effects on the environment, so that the expression could encompass certain works relating to a dyke.

23 According to Kraaijeveld, river dyke projects are works which tend to alter the frequency with which river banks and the surrounding areas are submerged and

which thus have a significant effect on the environment. In the regulation of watercourses, dykes are no less important than other canalization and flood-relief works.

24 The Government of the Netherlands contends that there is a distinction between work on a dyke and flood-relief and canalization work. The latter are carried out to regulate water flow or for the benefit of river navigation. They change the character of the watercourse itself, that is to say, the quantity or quality of the water and the riverbanks and riverside, so that they have a considerable impact on aquatic flora and fauna. Dyke reinforcement work, on the other hand, consists in constructing or increasing the height of the embankment with sand or clay. The Rivierenwet (Law on Rivers) ensures that the works now undertaken do not affect the regulated level already achieved for any given river. Such work therefore has little effect on the fauna and flora of a river.

25 As regards the reference to the English version of the directive, the Government of the Netherlands considers that the Dutch version of the directive is, as far as it is concerned, the only authentic language version. It cites the Court's case-law to the effect that the elimination of linguistic discrepancies by way of interpretation may in certain circumstances run counter to the principle of legal certainty, inasmuch as one or more of the texts involved may have to be interpreted in a manner at variance with the natural and usual meaning of the words (Case 80/76 *North Kerry Milk Products* v *Minister for Agriculture and Fisheries* [1977] ECR 425, paragraph 11). Uniform interpretation cannot be determined by one particular language. The various language versions are equally authentic (Case 283/81 *CILFIT* [1982] ECR 3415).

26 Lastly, the Government of the Netherlands refers to the purpose of the directive, which is to create equal conditions of competition in the various Member States. The work referred to in the directive can therefore only refer to work which can be undertaken in practically all the Member States, not to work which is mainly carried out in only one Member State, such as the construction of dykes. The

Government of the Netherlands therefore concludes that reinforcement work on dykes along waterways in the Netherlands is not covered by the expression 'canalization and flood-relief works'.

27 According to the Commission, canalization of a river has an inevitable effect on its flow rate and water level. It may make it necessary to erect dykes along the river banks in order to prevent floods and safeguard the population. A dyke of that type must therefore be held to be flood-relief works. Moreover, it is necessary to take into account the purpose of the directive, which concerns the effects certain projects may have on the environment, regardless of their social objective. The construction of river dykes affects the environment, whether their purpose is to improve the navigability of a watercourse or to protect the population living on territory liable to flood. Works on a river dyke capable of having significant effects on the environment are therefore covered by the term 'canalization and flood-relief works'.

28 As the case-law of the Court shows, interpretation of a provision of Community law involves a comparison of the language versions (see Case 283/81 *CILFIT*, cited above, paragraph 18). Moreover, the need for a uniform interpretation of those versions requires, in the case of divergence between them, that the provision in question be interpreted by reference to the purpose and general scheme of the rules of which it forms part (Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28).

29 Examination of the various language versions of point 10(e) of Annex II to the directive shows that they fall into two categories according to whether the terms employed denote the idea of flooding. The English ('canalization and flood-relief works') and Finnish ('kanavointi-ja tulvasuojeluhankkeet') versions are similar, whereas the German, Greek, Spanish, French, Italian, Dutch and Portuguese versions refer to canalization and regulation of watercourses, the Greek version including in addition the French term 'canalisation' in brackets after the Greek

term 'διευθέτησης'. The Danish and Swedish versions contain only a single expression reflecting the idea of regulating watercourses ('anlæg til regulering af vandløb', 'anläggningar för reglering av vattenflöden').

30 Given that divergence, one must go to the purpose and general scheme of the directive. According to Article 1(2) of the directive, 'project' means 'the execution of construction works or of other installations or schemes' and 'other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources'. According to Article 2(1), the directive is aimed at 'projects likely to have significant effects on the environment by virtue *inter alia* of their nature, size or location'. Article 3 provides that the environmental impact assessment is to identify, describe and assess the direct and indirect effects of a project on human beings, fauna and flora, soil, water, air, climate and the landscape, material assets and the cultural heritage.

31 The wording of the directive indicates that it has a wide scope and a broad purpose. That observation alone should suffice to interpret point 10(e) of Annex II to the directive as encompassing all works for retaining water and preventing floods — and therefore dyke works — even if not all the linguistic versions are so precise.

32 Even if, as argued by the Government of the Netherlands, dyke works consist in the construction or raising of the height of embankments in order to contain watercourses and avoid flooding, works retaining a static quantity of water, rather than a running watercourse, may have a significant effect on the environment within the meaning of the directive where they are liable permanently to affect the composition of the soil, flora and fauna or the landscape. Such works must therefore fall under the directive.

33 Consequently, the argument of the Government of the Netherlands that dyke work does not alter the course of a waterway is not well founded.

34 Lastly, the submission of the Government of the Netherlands that dykes do not fall within the scope of a Community directive because such work is specific to the Netherlands is irrelevant, since, as explained above, the criterion to be applied is the significance of the effect that a project is likely to have on the environment.

35 The reply to the first question is therefore that the expression 'canalization and flood-relief works' in point 10(e) of Annex II to the directive must be interpreted as including certain types of work on a dyke running alongside waterways.

Question 2

36 In this question the Nederlandse Raad van State asks whether, having regard in particular to the expressions 'projects' and 'modifications to development projects' employed in the directive, it makes any difference to the answer to Question 1 whether what is involved is:

(a) the construction of a new dyke;

(b) the relocation of an existing dyke;

(c) the reinforcement and/or widening of an existing dyke;

(d) the replacement *in situ* of a dyke whether or not the new dyke is stronger and/or wider than the old one; or

(e) a combination of two or more of (a) to (d) above.

37 Under the terms of the directive, modifications to development projects included in Annex I are to be subject to the same system as projects included in Annex II, and are thus subject to Article 4(2) of the directive. The lack of any reference to modifications of projects of the classes included in Annex II is construed, in the observations submitted, in different ways as regards their inclusion in the scope of the directive. According to the Italian and United Kingdom Governments, modifications of projects included in Annex II are also covered by that annex, whereas the Government of the Netherlands and the Commission argue that they do not fall within the scope of the directive. The Commission specifies, however, that it depends on the meaning attributed to the expression 'modifications to development projects' and in certain cases modifications may be so significant that they constitute a new project.

38 Since the directive provides no specific definition of 'modifications to development projects', the expression must be interpreted in the light of the general scheme and purpose of the directive.

39 It has already been pointed out in paragraph 31 above that the scope of the directive is wide and its purpose very broad. Its purpose would be undermined if 'modifications to development projects' were so construed as to enable certain works to escape the requirement of an impact assessment although, by reason of their nature, size or location, such works were likely to have significant effects on the environment.

40 Furthermore, the mere fact that the directive does not expressly refer to modifications to projects included in Annex II, as opposed to modifications to projects included in Annex I, does not justify the conclusion that they are not covered by the directive. The distinction between a 'project' and a 'modification to a project', where projects included in Annex I are concerned, relates to the different systems to which they are subject under the directive, whereas such a distinction in the case of projects included in Annex II would relate to the general scope of the directive.

41 Moreover, in Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, which concerned the Großkrotzenburg thermal power station, the Court held (paragraph 35) that links with a pre-existing construction of a new block of a thermal power station with a heat output of 500 megawatts did not prevent the project being a 'thermal power station with a heat output of 300 megawatts or more' so as to bring it within the category headed 'Modifications to development projects included in Annex I' mentioned in point 12 of Annex II. In that judgment the Court held that, in order to establish whether the work envisaged should undergo an impact assessment, such projects should be assessed irrespective of whether they were separate constructions, were added to a pre-existing construction, or even had close functional links with a pre-existing construction.

42 In the light of those considerations, the reply to the second question must be that the expression 'canalization and flood-relief works' in point 10(e) of Annex II to the directive is to be interpreted as including not only construction of a new dyke but also modification of an existing dyke involving its relocation, reinforcement or widening, replacement of a dyke by constructing a new dyke *in situ*, whether or not the new dyke is stronger or wider than the old one, or a combination of such works.

Questions 3 and 4

43 By these questions, which will be examined together, the national court asks whether Articles 2(1) and 4(2) of the directive should be interpreted as meaning that where a Member State in its national implementing legislation has laid down specifications, criteria or thresholds for a particular project covered by Annex II in accordance with Article 4(2) of the directive, but those specifications, criteria or thresholds are incorrect, Article 2(1) requires that an environmental impact assessment be made if the project is likely to have 'significant effects on the environment by virtue *inter alia* of [its] nature, size or location' within the meaning of that provision. If that question is answered in the affirmative, the national court asks whether that obligation to make an environmental impact assessment of the project has direct effect, so that it may be relied upon by an individual before a national court, and whether it must be applied by the national court even if it was not in fact invoked in the matter pending before that court.

44 Referring to Case C-355/90 *Commission* v *Spain* [1993] ECR I-4221, the Nederlandse Raad van State states that it is possible to argue that the measure of discretion which Article 4(2) allows the Member States in establishing the specifications, criteria or thresholds is limited by the expression 'likely to have significant effects on the environment by virtue *inter alia* of their nature, size or location' in Article 2(1).

45 Kraaijeveld and the Commission put forward a similar argument. The Commission states that the specifications, criteria or thresholds established by the Member States are primarily designed to facilitate examination of projects in order to determine whether they should undergo an impact assessment, but that the existence of those specifications, criteria or thresholds does not exempt the Member States from undertaking an actual examination of the project in order to verify that it satisfies the criteria in Article 2(1) of the directive. Both consider that the Kingdom of the Netherlands has not properly performed its obligation to implement the directive since the minimum size criteria laid down by the national legislation on

dykes was fixed at a level such that no river dyke projects met the criteria and hence all dyke reinforcement projects remained outside the ambit of impact assessments. On this issue Kraaijeveld produced a decision of a Netherlands court supporting its argument.

46 According to the Government of the Netherlands, however, the discretion allowed to the Member States is not limited in a precise manner in the directive. Moreover, the choice of thresholds for dyke length and cross-section measurements was made with due account taken of the impact of such work on the environment. The fact that, in practice, the Netherlands legislation transposing the directive left numerous projects free of the requirement of an assessment is wholly immaterial, since those projects had no harmful effects. It therefore considers that it did not go beyond the limits of its discretion in establishing those thresholds.

47 As regards the direct effect of the obligation to make impact assessments for some projects, the national court considers that that obligation may be regarded as resulting from a precise and unconditional provision of the directive. Kraaijeveld and the Commission have submitted observations to that effect, and the Commission adds that since the rules are of a procedural nature they leave no latitude as far as the result to be achieved is concerned. Conversely, the Netherlands and United Kingdom Governments consider that Article 2(1), read in conjunction with Article 4(2), of the directive is not sufficiently precise and unconditional to have direct effect, in view of the discretion conferred on Member States with regard to establishing thresholds and criteria or the procedure for consulting the public.

48 It should be noted that Article 2(1) of the directive refers to Article 4 for the definition of projects which must undergo an assessment of their effects. Article 4(2) allows Member States a certain discretion, since it states that projects of the classes listed in Annex II are to be subject to an assessment 'where Member States consider that their characteristics so require' and that, to that end, Member States may *inter alia* specify certain types of projects as being subject to an assessment or may

establish the criteria or thresholds necessary to determine which projects are to be subject to an assesment.

49 The interpretation put forward by the Commission — namely that the existence of specifications, criteria and thresholds does not remove the need for an actual examination of each project in order to verify that it fulfils the criteria of Article 2(1) — would deprive Article 4(2) of any point. A Member State would have no interest in fixing specifications, thresholds and criteria if, in any case, every project had to undergo an individual examination with respect to the criteria in Article 2(1).

50 However, although the second paragraph of Article 4(2) of the directive confers on Member States a measure of discretion to specify certain types of projects which will be subject to an assessment or to establish the criteria or thresholds applicable, the limits of that discretion are to be found in the obligation set out in Article 2(1) 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 impact assessment.

51 Thus, ruling on the legislation of a Member State in terms of which certain entire classes of projects included in Annex II were excluded from the obligation of an impact assessment, the Court held in its judgment of 2 May 1996, in Case C-133/94 *Commission* v *Belgium*, [1996] ECR I-2323, at paragraph 42, that the criteria and/or the thresholds mentioned in Article 4(2) are designed to facilitate examination of the actual characteristics of any given project in order to determine whether it is subject to the requirement of assessment, not to exempt in advance from that obligation certain whole classes of projects listed in Annex II which may be envisaged as taking place on the territory of a Member State.

52 In a situation such as the present, it must be accepted that the Member State concerned was entitled to fix criteria relating to the size of dykes in order to establish

which dyke projects had to undergo an impact assessment. The question whether, in laying down such criteria, the Member State went beyond the limits of its discretion cannot be determined in relation to the characteristics of a single project. It depends on an overall assessment of the characteristics of projects of that nature which could be envisaged in the Member State.

53 Thus a Member State which established criteria or thresholds at a level such that, in practice, all projects relating to dykes would be exempted in advance from the requirement of an impact assessment would exceed the limits of its discretion under Articles 2(1) and 4(2) of the directive unless all projects excluded could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment.

54 Lastly, as regards more particularly the fourth question, it appears from the order for reference that in its action Kraaijeveld did not raise the question whether an environmental impact assessment ought to have been made. In order to reply to the question, it must therefore be considered whether the national court hearing an action for annulment of a decision approving a zoning plan is required to raise of its own motion the question whether an environmental impact assessment should have been carried out pursuant to Article 2(1) and Article 4(2) of the directive.

55 First of all it should be recalled that the obligation of a Member State to take all the measures necessary to achieve the result prescribed by a directive is a binding obligation imposed by the third paragraph of Article 189 of the EC Treaty and by the directive itself (see Case 51/76 *Verbond van Nederlandse Ondernemingen* [1977] ECR 113, paragraph 22, and Case 152/84 *Marshall* [1986] ECR 723,

paragraph 48). That duty to take all appropriate measures, whether general or particular, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts (see Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8).

56 As regards the right of an individual to invoke a directive and of the national court to take it into consideration, the Court has already held that it would be incompatible with the binding effect attributed to a directive by Article 189 to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before their national courts, and if the latter were prevented from taking it into consideration as an element of Community law in order to rule whether the national legislature, in exercising the choice open to it as to the form and methods for implementation, has kept within the limits of its discretion set out in the directive (*Verbond van Nederlandse Ondernemingen*, paragraphs 22 to 24).

57 Secondly, where, by virtue of national law, courts or tribunals must, of their own motion, raise points of law based on binding domestic rules which have not been raised by the parties, such an obligation also exists where binding Community rules are concerned (see, in particular, Joined Cases C-430/93 and C-431/93 *Van Schijndel and Van Veen* v *SPF* [1995] ECR I-4705, paragraph 13).

58 The position is the same if national law confers on courts and tribunals a discretion to apply of their own motion binding rules of law. Indeed, pursuant to the principle of cooperation laid down in Article 5 of the Treaty, it is for national courts to ensure the legal protection which persons derive from the direct effect of provi-

sions of Community law (see, in particular, Case C-213/89 *Factortame* [1990] ECR I-2433, paragraph 19, and *Van Schijndel and Van Veen* v *SPF*, cited above, at paragraph 14).

59 The fact that in this case the Member States have a discretion under Articles 2(1) and 4(2) of the directive does not preclude judicial review of the question whether the national authorities exceeded their discretion (see, in particular, *Verbond van Nederlandse Ondernemingen*, paragraphs 27 to 29).

60 Consequently where, pursuant to national law, a court must or may raise of its own motion pleas in law based on a binding national rule which were not put forward by the parties, it must, for matters within its jurisdiction, examine of its own motion whether the legislative or administrative authorities of the Member State remained within the limits of their discretion under Articles 2(1) and 4(2) of the directive, and take account thereof when examining the action for annulment.

61 If that discretion has been exceeded and consequently the national provisions must be set aside in that respect, it is for the authorities of the Member State, according to their respective powers, to take all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.

62 Consequently, the replies to the third and fourth questions must be that:

— Article 4(2) of the directive and point 10(e) of Annex II must be interpreted as meaning that a Member State which establishes the criteria or thresholds neces-

sary to classify projects relating to dykes at a level such that, in practice, all such projects are exempted in advance from the requirement of an impact assessment exceeds the limits of its discretion under Articles 2(1) and 4(2) of the directive unless all projects excluded could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment.

— Where under national law a court must or may raise of its own motion pleas in law based on a binding national rule which have not been put forward by the parties, it must, for matters within its jurisdiction, examine of its own motion whether the legislative or administrative authorities of the Member State have remained within the limits of their discretion under Articles 2(1) and 4(2) of the directive, and take account thereof when examining the action for annulment.

— Where that discretion has been exceeded and consequently the national provisions must be set aside in that respect, it is for the authorities of the Member State, according to their respective powers, to take all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.

Costs

63 The costs incurred by the Netherlands, Italian and United Kingdom Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Nederlandse Raad van State, by judgment of 8 March 1995, hereby rules:

1. The expression 'canalization and flood-relief works' in point 10(e) of Annex II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment must be interpreted as including certain types of work on a dyke running alongside waterways.

2. The expression 'canalization and flood-relief works' in point 10(e) of Annex II to Directive 85/337 is to be interpreted as including not only construction of a new dyke but also modification of an existing dyke involving its relocation, reinforcement or widening, replacement of a dyke by constructing a new dyke *in situ*, whether or not the new dyke is stronger or wider than the old one, or a combination of such works.

3. Article 4(2) of Directive 85/337 and point 10(e) of Annex II must be interpreted as meaning that a Member State which establishes the criteria or thresholds necessary to classify projects relating to dykes at a level such that, in practice, all such projects are exempted in advance from the requirement of an impact assessment exceeds the limits of its discretion under Articles 2(1) and 4(2) of the directive unless all projects excluded could, when viewed as a whole, be regarded as not being likely to have significant effects on the environment.

Where under national law a court must or may raise of its own motion pleas in law based on a binding national rule which have not been put forward by the parties, it must, for matters within its jurisdiction, examine of its own motion whether the legislative or administrative authorities of the Member State have remained within the limits of their discretion under Articles 2(1) and 4(2) of the directive, and take account thereof when examining the action for annulment.

Where that discretion has been exceeded and consequently the national provisions must be set aside in that respect, it is for the authorities of the Member State, according to their respective powers, to take all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment.

Rodríguez Iglesias Mancini Murray

Sevón Kakouris Kapteyn

Gulmann Edward Puissochet

Hirsch Wathelet

Delivered in open court in Luxembourg on 24 October 1996.

R. Grass G. C. Rodríguez Iglesias

Registrar President