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RULINGS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION
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ENVIRONMENTAL ASSESSMENT OF PROJECTS AND PLANS AND PROGRAMMES

RULINGS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

(Last update 20 October 2020)

Contents

Introduction

The EU environmental policy

The European Union (EU) has one of the world's highest environmental standards, developed over decades. Environment policy helps the EU economy become more environmentally friendly, protects Europe's natural resources and safeguards the health and wellbeing of people living in the EU.

EU environmental policies and legislation protect natural habitats, keep air and water clean, ensure proper waste disposal, improve knowledge about toxic chemicals and help businesses move toward a sustainable economy. Furthermore, the EU, which is already a frontrunner in the fight against climate change at international level, is expected to further step up its action in the course of its 2019-2024 inter-institutional cycle. On 11 December 2019, the von der Leyen Commission launched the European Green Deal[1] as the new EU growth strategy, with view to promoting and facilitating the transition to a climate-friendly, competitive and inclusive economy.

EU environment policy is based on Articles 11 and 191-193 of the Treaty on the Functioning of the European Union (TFEU)[2]. Sustainable development is an overarching objective for the EU, which is committed to a 'high level of protection and improvement of the quality of the environment' (Article 3 (3) of the Treaty on European Union (TEU)[3].

The Environmental Impact Assessment Directive (EIA Directive) and the Strategic Environmental Assessment Directive (SEA Directive) and the SEA Directives are founded on the Fundamental treaties' provision concerning environmental actions to be taken by the EUArticle 192(1) TFEU) in order to achieve the objectives of the Union's policy on the environment. According to Article 191(1) of the TFEU, Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,

- protecting human health,

- prudent and rational utilisation of natural resources,

- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

[1] COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS The European Green Deal, COM/2019/640.

[2] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

[3] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT

About the EIA Directive

The EIA Directive came into force in 1985[4] and its **purpose** is to make sure that **an assessment is made of the effects of certain public and private projects** on the environment in order to attain one of the EU's objective: the protection of the environment and the quality of life.

The EIA Directive of 1985[5] has been amended three times, in 1997[6], in 2003[7] and in 2009[8]:

- Directive 97/11/EC brought the Directive in line with the Espoo Convention on EIA in a Transboundary Context. The Directive of 1997 widened the scope of the EIA Directive by increasing the types of projects covered, and the number of projects requiring mandatory environmental impact assessment (Annex I). It also provided for new screening arrangements, including new screening criteria (at Annex III) for Annex II projects, and established minimum information requirements.

- Directive 2003/35/EC was seeking to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.

- Directive 2009/31/EC amended the Annexes I and II of the EIA Directive, by adding projects related to the transport, capture and storage of carbon dioxide (CO_2).

Transposition deadlines of the EIA Directive into national law

Directive	Deadline for transposition
85/337/EEC	3 July 1988
97/11/EC	14 March 1999
2003/35/EC	25 June 2005
2009/31/EC	25 June 2011

In 2011 the Directive of 1985 and its three subsequent amendments (1997, 2003 and 2009) in Directive 2011/92/EU[9] was codified.

On 26 October 2012 the Commission services published a proposal for amending the codified Directive 2011/92/EC.[10] The proposal aimed to address certain shortcomings of implementation, reduce unnecessary administrative burdens, simplify the assessment procedure and reinforce certain level of environmental protection taking into account emerging challenges, such as biodiversity, climate change, disaster and risk prevention, resource efficiency. Directive 2014/52 amending

[4] OJ 175, 5.7.1985, p.40.
[5] OJ 175, 5.7.1985, p.40.
[6] OJ L 73, 14.3.1997, p.5.
[7] OJ L 156, 25.6.2003, p.17.
[8] OJ L 140, 5.6.2009, p.114.
[9] 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 L 26, 28.1.2012, pp.1-21, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, OJ L 124, 25.4.2014, pp. 1-18.
[10] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012PC0628

Directive 2011/92 was adopted in April 2014 and entered into force on 16 May 2014. Member States had to adopt their transposing legislation and communicate it to the Commission services by 16 May 2017.

Scope and objective of the EIA Directive

According to the EIA Directive, before development consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size and location are made subject to a requirement for development consent and an assessment to their effects. The Directive has a broad scope and wide purpose and applies to public and private projects which are likely to have significant effects on the environment.

Under the EIA Directive, some project categories are always considered likely to have significant effects on the environment and **must be subject to an EIA in all cases**. These project categories are listed in **Annex I** of the EIA Directive (nuclear power stations, long distance railways, airports with a basic runaway length of 2 100 m or more, motorways, express roads, roads of four lanes or more (of at least 10 km), waste disposal installations for hazardous waste, waste disposal installations for non-hazardous waste (with a capacity of more than 100 tonnes per day), waste water treatment plants (with a capacity exceeding 150 000 population equivalent) etc.).

Other project categories are considered likely to have significant effects depending on their nature, size and location. These project categories are listed in **Annex II** of the EIA Directive and include urban development projects, inland waterways, canalization and flood-relief works, changes or extensions of Annex I and II projects that may have adverse environmental effects, etc. For Annex II projects Member States can decide to subject them to an environmental impact assessment on a case-by-case basis or according to thresholds or criteria (for example size), location (sensitive ecological areas in particular) and potential impact (surface affected, duration). The process of determining whether an environmental impact assessment is required for a project listed in Annex II is called **"screening"**[11].

The environmental impact assessment must identify, describe and assess the direct and indirect effects of a project on the following factors: human beings, the fauna, the flora, the soil, water, air, the climate, the landscape, the material assets and cultural heritage, as well as the interaction between these various elements.

The developer (the applicant for development consent or the public authority which initiated the project) must provide the authority responsible for approving the project with the following information as a minimum: a description of the project (location, design and size); features of the project and/or measures to avoid, prevent, reduce or offset significant adverse effects; description of the likely significant effects of the project on the environment; the reasonable alternatives relevant to the project considered by the developer and the main reasons for this choice; a non-technical summary of this information.

[11] For further information on the screening process see the EIA – Guidance on Screening – 2017: https://ec.europa.eu/environment/eia/pdf/EIA_guidance_Screening_final.pdf

With due regard for rules and practices regarding commercial and industrial secrecy, this information must be made available to interested parties sufficiently early in the decision-making process:

- the competent environmental authorities likely to be consulted on the authorisation of the project as well as local and regional authorities;
- the public, by the appropriate means (including electronically) at the same time as information (in particular) on the procedure for approving the project, details of the authority responsible for approving or rejecting the project and the possibility of public participation in the approval procedure;
- other Member States, if the project is likely to have transboundary effects. Each Member State must make this information available to interested parties on its territory to enable them to express an opinion.

Reasonable time-limits must be provided for, allowing sufficient time for all the interested parties to participate in the environmental decision-making procedures and express their opinions. These opinions and the information gathered pursuant to consultations must be taken into account in the approval procedure.

At the end of the procedure, the following information must be made available to the public and transmitted to the other Member States concerned:

- the approval or rejection of the project and any conditions associated with it;
- the principal arguments upon which the decision was based after examination of the results of the public consultation, including information on the process of public participation;

In accordance with national legislation, Member States must ensure that the interested parties can challenge the decision in court.

Directive 2014/52/EU[12]

The main objective of the 2014 amending Directive is to simplify the rules for assessing the potential effects of projects on the environment. The amending EIA Directive is in line with the drive for smarter regulation, as it reduces the administrative burden. It also improves the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term.

The greater attention to threats and challenges that have emerged since the original rules came into force some 25 years ago. This means more attention to areas like resource efficiency, climate change and disaster prevention, which are now better reflected in the assessment process. The main amendments are as follows:

[12] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, OJ L 124, 25.4.2014, pp. 1-18.

- The **screening** procedure, determining whether an EIA is required, is simplified. Decisions must be duly motivated in the light of the updated screening criteria.

- The EIA process is defined (Article 1(2)(g));

- Member States now have a mandate under Article 2(3) of the EIA Directive to **streamline environmental assessment procedures due** under the EIA Directive, Habitats and/or Birds Directives ;[13]

- **The content of the EIA report** is extended to cover new issues, such as climate change, biodiversity, risk of major accidents and/or disasters. Plus, the assessment of the reasonable alternatives is broadened.

- **Timeframes** are introduced as follows ***(i)*** the competent authority must issue a **screening decision** as soon as possible and within **90 days** from the date the developer provides all the information required (possible extension of this period in exceptional circumstances); ***(ii)*** minimum time for **public consultation** during the **EIA** procedure – **at least 30 days;** ***(iii)*** finally, the Members States also need to ensure that **final decisions** are taken within a "**reasonable period of time"**.

- Notices of projects must be made available electronically, in addition to more traditional methods;

- Competent authorities also need to avoid **conflict of interest**.

- The grounds for **development consent decisions** must be clear and more transparent for the public. The decision to grant or refuse development consent needs also to be justified. Member States may also set timeframes for the validity of any reasoned conclusions or opinions issued as part of the EIA procedure.

- If projects do entail significant adverse effects on the environment, developers will be obliged to do the necessary to avoid, prevent or reduce such effects. These projects will need to be **monitored** using procedures determined by the Member States. Existing monitoring arrangements may be used to avoid duplication of monitoring and unnecessary costs.

To help the reader perceive the changes of the Directive 2014/52/EU, the booklet lists in parallel the provisions of Directive 2011/92/EU and its provisions as amended by Directive 2014/52/EU.. The rulings of the CJEU interpreting Directive 2011/92/EU, codifying Directive 85/337/EEC, Directive 97/11/EC, Directive 2003/35/EC, and Directive 2009/31/EC, remain relevant. As long as the will of the legislators introduced by Directive 2014/52/EU does not contradict the existing jurisprudence, the case-law interpreting the EIA Directive has to be taken into account in the application of Directive 2014/52/EU. Finally, a number of changes introduced by Directive 2014/52/EU are based on the jurisprudence of the Court, proposed by the Commission in line with its Better Regulation Agenda.

[13] Commission guidance document on streamlining environmental assessments conducted under Article 2(3) of the EIA Directive, OJ C 273, 27.7.2016, p. 1–6.

About the SEA Directive

Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment[14], known as the "SEA" (strategic environmental assessment), requires that an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment (e.g. on land use, transport, energy, waste, agriculture, etc). It entered into force on 21 July 2001 and the Member States had to implement it by 21 July 2004. The Directive applies to **public** plans and programmes, i.e. the ones which are subject to preparation and/or adoption by an authority and which are required by national legislative, regulatory or administrative provisions.

Scope and objective of the EIA Directive

The objective of the SEA Directive (as stated in Article 1) is to provide for a high level of protection of the environment and contribute to the integration of environmental considerations into the preparation, adoption and implementation of plans and programmes, with a view of promoting sustainable development. This objective should be achieved by ensuring that environmental assessment is carried out, in accordance with the provisions of the Directive, for those plans and programmes which are identified as likely to have significant effects on the environment.

To decide whether a plan and programme falls under the scope of Article 3(2)(a) of the SEA Directive, the following four criteria should all be met:

(i) the plan and programme should be subject to preparation and/or adoption by an authority at national, regional or local level;

(ii) it is required by a legislative, regulatory or administrative provisions;

(iii) it is prepared by any of the sectors listed in Article 3(2)(a) of the Directive;

(iv) it sets the framework for future development consent of projects listed in Annex I and II to the EIA Directive.

Plans and programmes which fulfil the above requirements but which determine the use of small areas at local level and represent minor modifications to plans and programmes fulfilling the above requirements, are not automatically assessed. For these the **Member States have to determine**, through case-by-case examination or by specifying types of plans and programmes or by combining both approaches, which plans and programmes have to be subject to an environmental assessment as they are likely to have significant environmental effects. This, so-called *"screening"*, process is based on criteria set out in Annex II of the Directive. Member States may decide to apply the same approach to plans of other sectors, not mentioned in the Directive, which set the framework for future development consent of projects, are likely to have significant environmental effects.

The strategic environmental assessment procedure can be summarized in the following steps: scoping; the preparation of the environmental report with due consideration of the baseline information and the reasonable alternatives; public consultation and participation; the decision-

[14] OJ L 197, 21.7.2001, p. 30.

making, and monitoring. As regards plans and programmes which are likely to have significant effects on the environment in another Member State, the Member State in whose territory the plan or programme is being prepared must consult the other Member State(s). The environmental report and the results of the consultations are taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

In order to identify unforeseen adverse effects at an early stage, significant environmental effects of the plan or programme are to be monitored.

Once the plan or programme is adopted, the following information must be made available to the environmental authorities, the public and other Member States concerned:

- the plan or programme as adopted;
- a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report, the opinions of environmental authorities and the results of consultations with the public and affected Member States have been taken into account as well as the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with;
- the monitoring measures.

Unlike the EIA Directive, the SEA Directive does not provide for a review procedure before a court or another independent impartial body to challenge the substantive or procedural legality of decisions, acts or omissions subject to public participation provisions of the SEA Directive. However, based on the case law, procedural rights serve the purpose of ensuring the effective implementation of EU environmental law.[15] The CJEU observed in *Kraaijeveld and Others* that procedural rights serve the purpose of ensuring the effective implementation of EU environmental law: '*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*' [16].

The particular course of conduct alluded to in that case was the undertaking of an environmental impact assessment, which included public consultation. The same rationale holds true for other provisions of EU environmental law requiring public consultation, such as those found in the SEA Directive, 2001/42/EC.[17]

About the Court

For the purpose of European construction, the Member States concluded treaties creating first the European Communities and subsequently the European Union (EU), with institutions which adopt laws in specific fields. The EU therefore produces its secondary binding legislation, in the form of regulations, directives and decisions. To ensure that the law is enforced, understood and uniformly

[15] Commission Notice on access to justice in environmental matters, OJ C 275, 18.8.2017, p. 1–39.
[16] *Kraaijeveld and Others*, C-72/95**,** EU:C:1996:404, paragraph 56.
[17] *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103, paragraph 42).

applied in all Member States, a judicial institution is essential. That institution is **the Court of Justice of the European Union.**

The Court thus constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of EU law.

The Court of Justice of the European Union (CJEU), which has its seat in Luxembourg, consists of two courts: the Court of Justice and the General Court[18] (created in 1988). The Civil Service Tribunal, established in 2004, ceased to operate on 1 September 2016 after its jurisdiction was transferred to the General Court in the context of the reform of the European Union's judicial structure.

The Court of Justice of the European Union has jurisdiction on various categories of proceedings[19]. Rulings which are mentioned in this booklet come from actions for failure of Member States to fulfil obligations or from references for a preliminary ruling.

Actions for failure to fulfil obligations (Article 258 TFEU) - These actions enable the Court of Justice to determine whether a Member State has fulfilled its obligations under EU law. Before bringing the case before the Court of Justice, the Commission conducts a preliminary procedure in which the Member State concerned is given the opportunity to reply to the complaints addressed to it. If that procedure does not result in the Member State terminating the failure, an action for infringement of EU law may be brought before the Court of Justice. The action may be brought by the Commission - as, in practice, is usually the case - or by a Member State. If the Court finds that an obligation has not been fulfilled, the State must bring the failure to an end without delay. If, after a further action is brought by the Commission, the Court of Justice finds that the Member State concerned has not complied with its judgment, it may impose on it a fixed or periodic financial penalty. However, if measures transposing a directive are not notified to the Commission, it may propose that the Court impose a pecuniary penalty on the Member State concerned, once the initial

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[18] The General Court has jurisdiction to hear and determine:

- actions brought by natural or legal persons against acts of the institutions, bodies, offices or agencies of the European Union (which are addressed to them or are of direct and individual concern to them) and against regulatory acts (which concern them directly and which do not entail implementing measures) or against a failure to act on the part of those institutions, bodies, offices or agencies; for example, a case brought by a company against a Commission decision imposing a fine on that company;
- actions brought by the Member States against the Commission;
- actions brought by the Member States against the Council relating to acts adopted in the field of State aid, trade protection measures (dumping) and acts by which it exercises implementing powers;
- actions seeking compensation for damage caused by the institutions or the bodies, offices or agencies of the European Union or their staff;
- actions based on contracts made by the European Union which expressly give jurisdiction to the General Court;
- actions relating to intellectual property brought against the European Union Intellectual Property Office and against the Community Plant Variety Office;
- disputes between the institutions of the European Union and their staff concerning employment relations and the social security system.

The decisions of the General Court may, within two months, be subject to an appeal before the Court of Justice, limited to points of law.

At 31 December 2016, the pending cases were split as follows: 51% direct actions, 30% intellectual property cases, 11% European civil service cases and 8% appeals and special procedures.

[19] See Articles 251-281 of the TFEU describing the CJEU competences, including the type of proceedings it handles. The various types of proceedings of the Court of Justice include: references for preliminary rulings; actions for failure of Member States to fulfil obligations under EU law; actions for annulment; actions for failure to act; appeals; reviews; See: https://curia.europa.eu/jcms/jcms/Jo2_7024/en/#competences (last accessed on 11 August 2020).

judgment establishing a failure to fulfil obligations has been delivered. Where failure to comply with a judgment of the Court is likely to harm the environment, the protection of which is one of the European Union's policy objectives, as is apparent from Article 191 TFEU, such a breach is of a particularly serious nature.[20])

References for a preliminary ruling (Article 267 TFEU) - The Court of Justice cooperates with all the courts of the Member States, which are the ordinary courts in matters of EU law. To ensure the effective and uniform application of EU legislation and to prevent divergent interpretations, the national courts may, and sometimes must, refer to the Court of Justice and ask it to clarify a point concerning the interpretation of EU law, so that they may ascertain, for example, whether their national legislation complies with that law. A reference for a preliminary ruling may also seek the review of the validity of an act of EU law. The Court of Justice's reply is not merely an opinion, but takes the form of a judgment or reasoned order. The national court to which it is addressed is, in deciding the dispute before it, bound by the interpretation given. The Court's judgment likewise binds other national courts before which the same problem is raised. It is thus through references for preliminary rulings that any European citizen can seek clarification of the EU rules which affect him. Although such a reference can be made only by a national court, all the parties to the proceedings before that court, the Member States and the institutions of the EU may take part in the proceedings before the Court of Justice. In that way, several important principles of EU law have been laid down by preliminary rulings, sometimes in reply to questions referred by national courts of first instanceThe fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not preclude this Court from providing the national court with all the elements of interpretation that may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 22 June 2017, *E.ON Biofor Sverige*, C-549/15, EU:C:2017:490, paragraph 72 and the case-law cited).

(*Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraph 29 ; *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 35)

It should be recalled, in that regard, that, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and tribunals and the Court of Justice, any assessment of the facts in the case is a matter for the national court or tribunal. In particular, the Court is empowered to rule only on the interpretation or the validity of EU acts on the basis of the facts placed before it by the national court or tribunal. **It is for the national court or tribunal to ascertain the facts** which have given rise to the dispute and to establish the consequences which they have for the judgment which it is required to deliver (judgment of 8 May 2008, *Danske Svineproducenter*, C-491/06, EU:C:2008:263, paragraph 23).

(*Prenninger and Others*, Case C-329/17, ECLI:EU:C:2018:640, paragraph 27)

[20] See *Commission v France*, Case C-121/07, paragraph 77, *Commission v Ireland* ,Case-279/11, ECLI:EU:C:2012:834 paragraph 72.

About this booklet

The CJEU plays an important role in implementation and interpretation of the EIA and the SEA directives. Knowledge of its case-law is therefore necessary for a better understanding of substance and aims of the two environmental assessment directives. The purpose of this booklet is to assemble the **most important excerpts from the rulings of the CJEU** related to the provisions of the **codified EIA Directive and the SEA Directive**. This is the fourth, updated and supplemented edition of this booklet.[21] Following the entry into force of the Treaty of Lisbon on 1 December 2009, the EU has legal personality and has acquired the competences previously conferred on the European Community. Community law has therefore become EU law, which also includes all the provisions previously adopted under the Treaty on EU as applicable before the Treaty of Lisbon. In the booklet, the term 'Community law' will nevertheless be used where reference is being made to the case-law of the Court of Justice before the entry into force of the Treaty of Lisbon.

The **first part** of this booklet summarises statements of the Court of Justice laying down either general principles of the EU law or principles of the EIA Directive and SEA Directive. The **second part** contains statements of the Court, as they were pronounced in each particular case, concerning provisions of the EIA Directive.

The **third part** contains statements of the Court, as they were pronounced in each particular case, concerning provisions of the SEA Directive.

The **Annex** contains a list of the judgments of the Court of Justice mentioned in the booklet sorted by directive and date of publication.

Some of these r**eferences** for a preliminary ruling **are complemented** by information about the national judgment on the case that has triggered the referral to the Court, plus a summary of the final national judgment, based on the CJEU interpretative ruling.

[21] The first booklet was published in 2010, its second edition in 2013, and the third in 2017.

PART I - General Principles

Rule of Law

The European Union is founded on the **rule of law** which is one of the values stated under Article 2 of the Treaty of the European Union (TEU). As described in 2019 Commission Communication on strengthening the rule of law in the Union[22] , under the rule of law, all public powers always act within the constraints set out by law in accordance with the values of democracy and fundamental rights, and under the life of every citizen.

Proper implementation of the EU law is essential to deliver the EU policy as defined in the Treaties and secondary legislation. According to Article 4(3) TEU, Member States must implement the Treaty obligations and those arising from secondary measures adopted at EU level. The role of the Commission, as guardian of the treaties, is to ensure the correct application of those obligations (Article 17(1) TEU).

The EU Directives lay down certain end results that must be achieved in every Member State, be it technical or procedural. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so. Each directive specifies the date by which the national laws must be adapted - giving national authorities the room for manoeuvre within the deadlines necessary to take account of differing national situations. Directives are used to bring different national laws into line with each other, and are particularly common in matters that affect the operation of the single market (e.g. product safety standards) or the protection of the environment. Both the EIA and the SEA Directive are founded on the fundamental treaties' provision concerning environmental actions to be taken by the European Union (Article 192(1) TFEU) in order to achieve the objectives of the Union's policy on the environment (Article 191 TFEU)[23].

According to the case-law of the Court:

Transposition of a directive

The transposition of a directive into domestic law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific, express provision of national law and a general legal context may be sufficient if it actually ensures the full application of the directive in a **sufficiently clear and precise manner**.

The provisions of a directive must be implemented with unquestionable **binding force** and with the specificity, precision and clarity required in order to satisfy the need for legal certainty, which

[22] COM (2019) 343 – 17.7.2019.

[23] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT.

requires that, in the case of a directive intended to confer rights on individuals, the persons concerned must be enabled to ascertain the full extent of their rights.

(*Commission v. Spain*, C-332/04, ECLI:EU:C:2006:180, paragraph 38; *Commission v Ireland*, C-427/07, EU:C:2009:457, paragraphs 54-55, *Commission v. UK,* C-530/11, EU:C:2014:67, paragraphs 33-34)

The judgment of the Supreme Court in O'Connell v Environmental Protection Agency gives, admittedly, in the passage upon which Ireland relies, an interpretation of the provisions of domestic law consistent with Directive 85/337. However, according to the Court's settled case-law, such a **consistent interpretation of the provisions of domestic law cannot in itself achieve the clarity and precision** needed to meet the requirement of legal certainty (see, in particular, Case C-508/04 Commission v Austria [2007] ECR I-3787, paragraph 79 and the case-law cited). The passage in the judgment of the same court in Martin v An Bord Pleanála, to which Ireland also refers, concerns the question of whether all the factors referred to in Article 3 of Directive 85/337 are mentioned in the consent procedures put in place by the Irish legislation. By contrast, it has no bearing on the question, which is decisive for the purposes of determining the first complaint, of what the examination of those factors by the competent national authorities should comprise.

(*Commission v. Ireland*, C-50/09, ECLI:EU:C:2011:109, paragraph 47)

In that situation, **the national court is under an obligation to interpret national law**, **so far as possible, in order to achieve the result sought by the untransposed provisions of a direct**ive, [as pointed out in paragraph 35 above]. The **immediate applicability of a new rule** stemming from a directive to the future effects of existing situations, as from the expiry of the time limit for transposing that directive, **forms part of that result, unless the directive concerned has provided otherwise**.

Consequently, **national courts are required to interpret national law, as soon as the time limit for transposing an untransposed directive expires,** so as to **render the future effects of situations which arose under the old rule immediately compatible with the provisions of that directive**.

(*Klohn,* C-167/17, ECLI:EU:C:2018:833, paragraphs 44-45)

[…] The provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirement of legal certainty, and that the Member States cannot rely on domestic circumstances or practical difficulties to justify non-transposition of a directive within the period prescribed by the EU legislature. It is therefore incumbent on each Member State to take into account the stage necessary for the adoption of the required legislation that arise in its domestic legal system in order to ensure that transposition can be achieved within the period prescribed.

(*European Commission v Kingdom of Belgium*, Case C-543/17, ECLI:EU:C:2019:573, paragraph 16)

Obligation to notify measures transposing a Directive – Article 260(3) TFEU

[…] It must be recalled that the first subparagraph of Article 260(3) TFEU provides that, where the Commission brings before the Court an action pursuant to Article 258 TFEU, on the grounds that a Member State has failed to fulfil its obligation to notify the measures transposing a directive adopted through a legislative procedure, the Commission may, when it deems appropriate, specify

the amount of the lump sum or penalty payment to be paid by that Member State which it considers appropriate in the circumstances. In accordance with the second subparagraph of Article 260(3) TFEU, if the Court finds that there is an infringement, it may impose a lump sum or penalty payment not exceeding the amount specified by the Commission, the payment obligation to take effect on the date set by the Court in its judgment.

In order to determine the scope of Article 260(3) TFEU, it is necessary to define the circumstances in which a Member State may be considered to have failed to fulfil its 'obligation to notify the measures transposing a directive' within the meaning of that provision.

In that regard, it is clear from the Court's settled case-law that the interpretation of a provision of EU law requires that account be taken not only of its wording and the objectives it pursues, but also of its context and the provisions of EU law as a whole. The origins of a provision of EU law may also provide information relevant to its interpretation (judgment of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 47 and the case-law cited).

As regards, first of all, the wording of Article 260(3) TFEU, it is appropriate to consider the seriousness of the failure to fulfil the 'obligation to notify measures transposing a directive', which is central to that provision.

The Court has repeatedly held on that matter, in proceedings relating to Article 258 TFEU, that the notification required of the Member States, in accordance with the principle of sincere cooperation laid down in Article 4(3) TEU, is intended to facilitate the achievement of the Commission's tasks, which consist, inter alia, under Article 17 TEU, in ensuring the application of the Treaties and of measures adopted by the institutions pursuant to them. That notification must contain sufficiently clear and precise information on the substance of the national rules which transpose a directive. Thus, notification, to which a correlation table may be added, must indicate unequivocally the laws, regulations and administrative provisions by means of which the Member State considers that it has satisfied the various requirements imposed on it by that directive. In the absence of such information, the Commission is not in a position to ascertain whether the Member State has genuinely implemented the directive in full. The failure of a Member State to fulfil that obligation, whether by providing no information at all, partial information or by providing insufficiently clear and precise information, may of itself justify recourse to the procedure under Article 258 TFEU in order to establish the failure to fulfil the obligation (see, to that effect, judgments of 16 June 2005, *Commission* v *Italy*, C-456/03, EU:C:2005:388, paragraph 27, and of 27 October 2011, *Commission* v *Poland*, C-311/10, not published, EU:C:2011:702, paragraphs 30 to 32).

Next, as regards the purpose of Article 260(3) TFEU, it must be borne in mind that that provision broadly corresponds to Draft Article 228(3) of the Treaty establishing a Constitution for Europe, as set out on page 15 of the cover note of the Praesidium to the Convention of 12 May 2003 (CONV 734/03), a draft of which the wording itself mirrors the wording proposed in the Final report of the discussion circle on the Court of Justice of 25 March 2003 (CONV 636/03, pages 10 and 11). It is clear from that final report that the objective pursued by the introduction of the system set out in Article 260(3) TFEU is not only to induce Member States to put an end as soon as possible to a breach of obligations which, in the absence of such a measure, would tend to persist, but also to simplify and speed up the procedure for imposing pecuniary sanctions for failures to comply with the obligation to notify a national measure transposing a directive adopted through a legislative procedure, it being specified that, prior to the introduction of such a system, it might be years before a pecuniary sanction was imposed on Member States which had failed to comply timely with an earlier judgment of the Court and failed to respect their obligations to transpose a directive.

That aim would be compromised if, as contended by the Kingdom of Belgium and the other Member States who have intervened in the present procedure, the Commission was capable of imposing a financial penalty on a Member State under Article 260(3) TFEU only where the Member State failed to notify it of any measure transposing a directive adopted through a legislative procedure.

Such an interpretation would entail the risk that a Member State notifies the Commission either of measures ensuring the transposition of an insignificant number of provisions of the directive in question, or of measures clearly not intended to ensure the transposition of that directive, and would thus allow the Member States to prevent the Commission from applying Article 260(3) TFEU.

Nonetheless, the interpretation that only those Member States which correctly transpose, from the point of view of the Commission, the provisions of a directive and notify that institution thereof may be regarded as satisfying the obligation of notification referred to in Article 260(3) TFEU also cannot be accepted.

That interpretation would be irreconcilable with the legislative history of Article 260(3) TFEU. It is clear from the final report referred to in paragraph 52 of the present judgment that the members of the discussion circle on the Court of Justice distinguished cases of 'non-communication' and non-transposition from cases of incorrect transposition, and considered that the draft provision should not apply to the latter, a financial penalty being capable of being imposed in that case only as the result of an action for failure to fulfil obligations under Article 260(2) TFEU.

That interpretation would also be irreconcilable with the legislative context of which Article 260(3) TFEU forms a part, which includes the procedure for failure to fulfil obligations referred to in Article 258 TFEU. In that regard, it is to be noted that the procedure laid down in that provision allows the Member States the opportunity to challenge the position adopted by the Commission in a particular case, as regards the measures enabling a correct transposition of the directive concerned to be ensured without, however, being immediately exposed to the risk of a financial penalty being imposed on them, since such a penalty can be imposed, under Article 260(2) TFEU, only if the Member States in question have not taken the measures required by execution of a first judgment declaring a failure to fulfil obligations.

In those circumstances, the Court upholds an interpretation of Article 260(3) TFEU which, on the one hand, allows prerogatives held by the Commission for the purposes of ensuring the effective application of EU law, of protecting the rights of the defence and the procedural position enjoyed by the Member States under Article 258 TFEU read in conjunction with Article 260(2) TFEU to be guaranteed, and, on the other, puts the Court into a position of being able to exercise its judicial function of determining, in a single set of proceedings, whether the Member State in question has fulfilled its notification obligations and, where relevant, assess the seriousness of the declared failure and to impose the financial penalty which it considers to be the most suited to the circumstances of the case.

In the light of all the foregoing, the expression 'obligation to notify measures transposing a directive' in Article 260(3) TFEU must be interpreted as referring to the obligation of the Member States to provide sufficiently clear and precise information on the measures transposing a directive. In order to satisfy the obligation of legal certainty and to ensure the transposition of the provisions of that directive in full throughout its territory, the Member States are required to state, for each provision of the directive, the national provision or provisions ensuring its transposition. Once notified, where relevant in addition to a correlation table, it is for the Commission to establish, for the purposes of seeking the financial penalty to be imposed on the Member State in question laid

down in that provision, whether certain transposing measures are clearly lacking or do not cover all of the territory of the Member State in question, bearing in mind that it is not for the Court, in court proceedings brought under Article 260(3) TFEU, to examine whether the national measures notified to the Commission ensure a correct transposition of the provisions of the directive in question.

(*European Commission v Kingdom of Belgium*, Case C-543/17, ECLI:EU:C:2019:573, paragraphs 47-59)

Objectives of the EU Treaties on the environment

It must be stated as a preliminary point that Directive 2001/42 is founded on Article 175(1) EC, concerning environmental actions to be taken by the European Union in order to achieve the objectives of Article 174 EC.

Article 191 TFEU, which corresponds to Article 174 EC Treaty and previously, in essence, to Article 130r of the EC Treaty, provides, in paragraph 2, that **the European Union's policy on the environment aims at a 'high level of protection'** taking into account the diversity of situations in the various regions of the Union. Similarly, Article 3(3) TEU provides that the European Union works in particular for a 'high level of protection and improvement of the quality of the environment'.

According to the case-law of the Court, Article 191(1) TFEU authorises the **adoption of measures** relating solely to certain specified aspects of the environment, **provided that such measures contribute to the preservation, protection and improvement of the quality of the environment** (see judgments of 14 July 1998, Safety Hi-Tech, C-284/95, EU:C:1998:352, paragraph 45, and of 14 July 1998, Bettati, C-341/95, EU:C:1998:353, paragraph 43).

Whilst it is undisputed that Article 191(2) TFEU requires EU policy in environmental matters to aim for a high level of protection, **such a level of protection, to be compatible with that provision, does not necessarily have to be the highest that is technically possible**. Article 193 TFEU authorises the Member States to maintain or introduce more stringent protective measures (see judgments of 14 July 1998, Safety Hi-Tech, C-284/95, EU:C:1998:352, paragraph 49, and of 14 July 1998, Bettati, C-341/95, EU:C:1998:353, paragraph 47).

(*Associazione Italia Nostra Onlus*, C-444/15, ECLI:EU:C:2016:978, paragraphs 41-44)

Uniform interpretation and application of EU law

Interpretation of a provision of Community law **involves a comparison of the language versions**. In the case of divergence between them, the need for a **uniform interpretation** of those versions requires that the provision in question be interpreted by reference to the purpose and general scheme of the rules of which it forms part.

(*Kraaijeveld and Others*, C-72/95, EU:C:1996:404, paragraph 28; *Commission v. Spain*, C-332/04, ECLI:EU:C:2006:180, paragraphs 47-52)

The need for **uniform application** of Community law and the principle of equality require that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an

autonomous and uniform interpretation throughout the Community; that interpretation must take into account the context of the provision and the purpose of the legislation in question.
(*Linster*, C-287/98, EU:C:2000:468, paragraph 43; *Leth*, C-420/11, EU:C:2013:166, paragraph 24, *Marktgemeinde Straßwalchen and Others* ,C-531/13, ECLI:EU:C:2015:79, paragraph 21)

According to settled case-law, when national courts apply national law, they are required to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and consequently comply with the third paragraph of Article 288 TFEU (judgment of 4 July 2006, *Adelener and Others*, C-212/04, EU:C:2006:443, paragraph 108 and the case-law cited).

The requirement for national law to be interpreted in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before them (judgment of 4 July 2006, *Adelener and Others*, C-212/04, EU:C:2006:443, paragraph 109 and the case-law cited).

However, the principle of interpreting national law in conformity with EU law has certain limitations.

First, as mentioned in paragraph 48 above, the obligation of a national court to refer to the content of a directive when interpreting and applying the relevant rules of national law is limited by the general principles of law.

In that regard, the principle of *res judicata* is, both in the legal order of the European Union and in national legal systems, of particular importance. In order to ensure stability of the law and legal relations, as well as the sound administration of justice, it is important that judicial decisions which have become final after all rights of appeal have been exhausted or after expiry of the time limits provided for in that regard can no longer be called into question (judgment of 11 November 2015, *Klausner Holz Niedersachsen*, C-505/14, EU:C:2015:742, paragraph 38 and the case-law cited).

EU law does not, therefore, preclude the application of national procedural rules conferring *res judicata* effects on a judicial decision (judgment of 20 March 2018, *Di Puma and Consob*, C-596/16 and C-597/16, EU:C:2018:192, paragraph 31 and the case-law cited).

Secondly, the obligation for national law to be interpreted in conformity with EU law ceases when national law cannot be interpreted so as to achieve a result which is compatible with that sought by the directive concerned. In other words, the principle that national law is to be interpreted in conformity with EU law cannot serve as the basis for an interpretation of national law *contra legem* (judgments of 4 July 2006, *Adelener and Others*, C-212/04, EU:C:2006:443, paragraph 110, and of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 100).

The Court points out that when a matter is brought before it under Article 267 TFEU, **it does not have jurisdiction to assess whether the abovementioned limits preclude an interpretation of national law in conformity with a rule of EU law. Generally, it is not for the Court, when giving a preliminary ruling, to interpret national law** (judgment of 1 December 1965, *Dekker*, 33/65 EU:C:1965:118), since the national court has sole jurisdiction in that regard (see, to that effect, judgment of 26 September 2013, *Ottica New Line*, C-539/11, EU:C:2013:591, paragraph 48).

(*Klohn,* C-167/17, ECLI:EU:C:2018:833, paragraphs 59-66)

The principle of legal certainty

However, the obligation of a national court to refer to the content of a directive when interpreting and applying the relevant rules of national law is limited by the general principles of law, in particular, the principles of legal certainty and non-retroactivity (judgment of 8 November 2016, *Ognyanov*, C-554/14,EU:C:2016:835, paragraph 63 and the case-law cited).

Admittedly, the principle of legal certainty, the corollary of which is the principle of the protection of legitimate expectations, requires, inter alia, that rules of law be clear, precise and predictable in their effect, especially where they may have negative consequences on individuals and undertakings (judgment of 22 June 2017, *Unibet International*, C-49/16, EU:C:2017:491, paragraph 43 and the case-law cited).

In addition, the right to rely on the principle of the protection of legitimate expectations extends to any person in a situation in which it is clear that the relevant authorities have, in giving him precise assurances, caused him to entertain expectations which are justified (see, to that effect, judgment of 14 October 2010, *Nuova Agricast and Cofra* v *Commission*, C-67/09 P, EU:C:2010:607, paragraph 71).

(*Klohn,* C-167/17, ECLI:EU:C:2018:833, paragraphs 48; 50-51)

Obligation to make a reference for a preliminary ruling

By its first question, the referring court seeks to know whether, **before making use of the exceptional power enabling it to decide to maintain**, on the conditions set out in the judgment of 28 February 2012 in Inter-Environnement Wallonie and Terre wallonne (C-41/11, EU:C:2012:103), certain effects of a **national measure incompatible with EU law, a national court is in all cases obliged to make a reference for a preliminary ruling to the Court**.

In that regard, it should be recalled that Article 267 TFEU gives national courts against whose decisions there is a right of appeal under national law the right to make a reference to the Court for a preliminary ruling.

On the other hand, if a national court against whose decisions there is no judicial remedy finds that interpretation of EU law is necessary to enable it to decide a case before it, the third paragraph of Article 267 TFEU obliges it to make a reference to the Court for a preliminary ruling.

The Court thus held, in paragraph 21 of the judgment of 6 October 1982 in Cilfit and Others (283/81, EU:C:1982:335), that **a court against whose decisions there is no judicial remedy** under national law is required, when a question of EU law is raised before it, to fulfil its **obligation to bring the matter** before the Court of Justice, **unless** it has established that **the correct application of EU law is so obvious as to leave no scope for any reasonable doubt** and that the existence of such a possibility must be assessed **in the light of the specific characteristics of EU law**, the particular **difficulties to which its interpretation gives rise** and **the risk of divergences in judicial decisions within the European Union**.

In respect of a case such as that in the main proceedings, therefore, in which the question of its being possible for a national court to limit in time certain of the effects of a declaration of illegality of a provision of national law adopted in disregard of the obligations provided for by Directive 2001/42, in particular the obligations arising from Article 6(3) of the directive, has not been the subject of another decision of the Court since the judgment of 28 February 2012 in Inter-

Environnement Wallonie and Terre wallonne (C-41/11, EU:C:2012:103) and, moreover, in which such a possibility is exceptional in nature, as is apparent from the answer given to the second question, **the national court against whose decisions there is no longer any judicial remedy under law must make a reference to the Court for a preliminary ruling when it has the slightest doubt as regards the interpretation or correct application of EU law**.

In particular, given that the exercise of that exceptional power could adversely affect observance of the principle of the primacy of EU law, that national court could be relieved of the obligation to make a reference to the Court for a preliminary ruling only if it is convinced that the exercise of that exceptional power does not give rise to any reasonable doubt. In addition, **it must be established in detail that there is no such doubt**.

(*Association France Nature Environnement,* C-379/15, ECLI:EU:C:2016:603, paragraphs 44-45, 47, 50-52)

Burden of proof

While, in proceedings under Article 226 EC [Article 258 TFEU] for failure to fulfil obligations, it is **incumbent upon the Commission to prove the allegation** and to place before the Court the information needed to enable the Court to establish that an obligation has not been fulfilled, in doing which the Commission may not rely on any presumption, it is also for the Member States, under Article 10 EC [Article 4(3) TEU], to facilitate the achievement of the Commission's tasks, which consist in particular, pursuant to Article 211 EC [Article 17(1) TEU], in ensuring that the provisions of the EC Treaty and the measures taken by the institutions pursuant thereto are applied. It is indeed for those purposes that a certain number of directives impose upon the Member States an obligation to provide information.

(*Commission* v *Ireland*, C-427/07, EU:C:2009:457, paragraphs 105-106)

Regarding the insufficiency of the evidence provided by the Commission, it should be pointed out that, in so far as this complaint concerns the manner in which Directive 85/337 has been transposed into the legal system of the Flemish Region and not the concrete result of applying the implementing legislation, it is not necessary to evaluate the actual effects of the Flemish Region's legislation transposing the Directive in order to prove that the transposition is insufficient or inadequate. Indeed, it is the provisions of this legislation that are the reason why the Directive has been transposed insufficiently or defectively.

(*Commission v. Belgium,* C-435/09, ECLI:EU:C:2011:176, paragraph 59)

According to established case-law, **it is for the Commission to prove the alleged failure to fulfil obligations**. It is the responsibility of the Commission to place before the Court the information needed to enable the Court to establish that the obligation has not been fulfilled, and in so doing the Commission may not rely on any presumption (see Case C-179/06 *Commission* v *Italy* [2007] ECR I-8131, paragraph 37, and Case C-416/07 *Commission* v *Greece* [2009] ECR I-0000, paragraph 32).

(*Commission v Spain,* C-308/08, ECLI: EU:C:2010:281, paragraph 23)

In that regard, it must be pointed out that, according to established case-law, **it is for the Commission to prove the alleged failure to fulfil obligations.** It is the Commission which must

provide the Court with the information necessary for it to determine whether the infringement is made out, and the **Commission may not rely on any presumption for that purpose** (judgment of 20 May 2010, Commission v Spain, C- 308/08, EU:C:2010:281, paragraph 23 and the case-law cited).

Second, as regards the Commission's argument that the environmental impact assessment in question did not adequately identify, describe or assess the effects of the project in question on the environment, and more specifically on bird areas, it should be pointed out that, in the absence of more specific and detailed explanations, **it cannot be concluded**, as the Advocate General has pointed out, in essence, in point 41 of his Opinion, **that it has been established to the requisite legal standard that such was the case.**

As regards the identification of the bird species present in the area concerned by the project in question, it must be held that, despite the absence of a reference to the IBA 98, the environmental impact assessment at issue refers to the particularity of that area as regards bird life, contains an inventory of the bird species listed in Annex I to the Birds Directive present in that area, in particular Otis tarda, and indicates the category of protection applicable to each of them. That assessment also identifies certain measures intended to preserve those species, such as the interruption of works during periods of breeding and rearing of offspring, as well as the prohibition of removing vegetation between March and July in order to avoid a negative effect on reproduction. **The Commission does not specify the reasons why,** having regard to the project specifically referred to in the assessment at issue, **those measures are insufficient**.

(*Commission v. Spain,* C-461/14, ECLI:EU:C:2016:895, paragraphs 50, 54)

Application of an order to pay a penalty payment and a lump sum – Article 260 (2) TFEU

As a preliminary point, it should be borne in mind that, in each case, it is for the Court to determine, in the light of the circumstances of the case before it and according to the degree of persuasion and deterrence which appears to it to be required, the financial penalties appropriate, in particular, for preventing the recurrence of similar infringements of EU law (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 107 and the case-law cited).

The lump sum payment

As a preliminary point it must be borne in mind that, in exercising the discretion conferred on it in such matters, the Court is empowered to impose a penalty payment and a lump sum payment cumulatively (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 153).

The imposition of a lump sum payment and the fixing of that sum must depend in each individual case on all the relevant factors relating both to the characteristics of the failure to fulfil obligations established and to the conduct of the Member State involved in the procedure initiated under Article 260 TFEU. That provision confers a wide discretion on the Court in deciding whether to impose such a penalty and, if it decides to do so, in determining the amount (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 154).

In addition, it is for the Court, in the exercise of its discretion, to fix the lump sum in an amount appropriate to the circumstances and proportionate to the infringement. Relevant considerations in this respect include factors such as the seriousness of the infringement and the length of time for

which the infringement has persisted since the delivery of the judgment establishing it, and the relevant Member State's ability to pay (see, to that effect, judgments of 2 December 2014, *Commission* v *Italy*, C-196/13, EU:C:2014:2407, paragraphs 117 and 118, and of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraphs 156, 157 and 158).

In the first place, as regards the seriousness of the infringement, it must be borne in mind that the **objective of protecting the environment constitutes one of the essential objectives of the European Union and is both fundamental and inter-disciplinary in nature** (see, to that effect, judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 57 and the case-law cited).

It must be found that, in those circumstances, Ireland's conduct shows that it has not acted in accordance with its duty of sincere cooperation to put an end to the failure to fulfil obligations established in the second indent of point 1 of the operative part of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), which constitutes an aggravating circumstance.

Since that judgment has not yet been complied with, the Court cannot, therefore, but confirm the particularly lengthy character of an infringement which, in the light of the environmental protection aim pursued by Directive 85/337, is a matter of indisputable seriousness (see, by analogy, judgment of 22 February 2018, *Commission* v *Greece*, C-328/16, EU:C:2018:98, paragraph 94).

As regards, in the second place, the duration of the infringement, it should be borne in mind that that duration must be assessed by reference to the date on which the Court assesses the facts and not the date on which proceedings are brought before it by the Commission. In the present case, the duration of the infringement, of over 11 years from the date of delivery of the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380), is considerable (see, by analogy, judgment of 22 February 2018, *Commission* v *Greece*, C-328/16, EU:C:2018:98, paragraph 99).

Although Article 260(1) TFEU does not specify the period within which a judgment must be complied with, it follows from settled case-law that the **importance of immediate and uniform application of EU law means that the process of compliance must be initiated at once and completed as soon as possible** (judgment of 22 February 2018, *Commission* v *Greece*, C-328/16, EU:C:2018:98, paragraph 100).

In the third place, as regards the ability to pay of the Member State concerned, it is apparent from the case-law of the Court that it is necessary to take account of recent trends in that Member State's gross domestic product (GDP) at the time of the Court's examination of the facts (judgment of 22 February 2018, *Commission* v *Greece*, C-328/16, EU:C:2018:98, paragraph 101).

Having regard to all the circumstances of the present case, it must be found that if the future repetition of similar infringements of EU law is to be effectively prevented, a lump sum payment of EUR 5 000 000 must be imposed.

Ireland must, therefore, be ordered to pay the Commission a lump sum of EUR 5 000 000.

The penalty payment

According to settled case-law, the imposition of a penalty payment is, in principle, justified only in so far as the failure to comply with an earlier judgment of the Court continues up to the time of the

Court's examination of the facts (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 108 and the case-law cited).

In the present case, it is not in dispute that, as noted, in particular in paragraphs 118 and 119 above, Ireland has still not carried out an environmental impact assessment of the wind farm in the context of a procedure for regularising the consents at issue, granted in breach of the obligation to carry out a prior environmental impact assessment laid down in Directive 85/337. As at the date on which the facts were examined by it, the Court does not have any information that would show that there has been any change to that situation.

In the light of the foregoing, it must be held that the failure to fulfil obligations of which Ireland stands criticised continued up until the Court's examination of the facts in the present case.

In those circumstances, the Court considers that an order imposing a penalty payment on Ireland is an appropriate financial means by which to induce it to take the measures necessary to bring to an end the failure to fulfil obligations established and to ensure full compliance with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380).

As regards the calculation of the amount of the penalty payment, according to settled case-law, the penalty payment must be decided upon according to the degree of persuasion needed in order for the Member State which has failed to comply with a judgment establishing a breach of obligations to alter its conduct and bring to an end the infringement established. In exercising its discretion in the matter, it is for the Court to set the penalty payment so that it is both appropriate to the circumstances and proportionate to the infringement established and the ability to pay of the Member State concerned (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraphs 117 and 118).

The Commission's proposals regarding the amount of the penalty payment cannot bind the Court and are merely a useful point of reference. The Court must remain free to set the penalty payment to be imposed in an amount and in a form that it considers appropriate for the purposes of inducing the Member State concerned to bring to an end its failure to comply with its obligations arising under EU law (see, to that effect, judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 119).

For the purposes of determining the amount of a penalty payment, the basic criteria which must be taken into consideration in order to ensure that that payment has coercive effect and that EU law is applied uniformly and effectively are, in principle, the seriousness of the infringement, its duration and the ability to pay of the Member State in question. In applying those criteria, regard must be had, in particular, to the effects on public and private interests of the failure to comply and to how urgent it is for the Member State concerned to be induced to fulfil its obligations (judgment of 14 November 2018, *Commission* v *Greece*, C-93/17, EU:C:2018:903, paragraph 120).

In the present case, having regard to all the legal and factual circumstances culminating in the breach of obligations established and the considerations set out in paragraphs 115 to 124 above, the Court considers it appropriate to impose a penalty payment of EUR 15 000 per day.

Ireland must, therefore be ordered to pay the Commission a periodic penalty payment of EUR 15 000 per day of delay of implementing the measures necessary in order to comply with the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380) from the date of delivery of the present judgment until the date of compliance with that judgment of 3 July 2008.

(*European Commission v Ireland*, C-261/18, ECLI:EU:C:2019:955, par1agraphs 111-115 ; 120-135)

Scope and purpose of the EIA Directive

The wording of the **EIA Directive** indicates that it has a **wide scope** and a **broad purpose**.

(*Kraaijeveld and Others,* C-72/95, EU:C:1996:404, paragraph 31; *WWF and Others,* C-435/97, EU:C:1999:418, paragraph 40; *Commission* v *Spain,* C-227/01, EU:C:2004:528, paragraph 46; *Commission* v *Italy,* C-486/04, EU:C:2006:732, paragraph 37; *Abraham and Others,* C-2/07, EU:C:2008:133, paragraph 32; *Ecologistas en Acción-CODA,* C-142/07, EU:C:2008:445, paragraph 28; *Umweltanwalt von Kärnten,*C-205/08, EU:C:2009:767, paragraph 48; *Brussels Hoofdstedelijk Gewest and Others,* C-275/09, EU:C:2011:154, paragraph 29; *Commission* v *Spain,*C-404/09, EU:C:2011:768, paragraph 79; *Commission* v *Spain,* C-560/08, EU:C:2011:835, paragraph 103; *Iberdrola Distribución Eléctrica,* C-300/13, EU:C:2014:188, paragraph 22; and order in *Aiello and Others,* C-156/07, EU:C:2008:398, paragraph 33; *Prenninger and Others*, Case C-329/17, ECLI:EU:C:2018:640, paragraph 36)

A purposive interpretation of the directive cannot, in any event, disregard the **clearly expressed intention** of the legislature of the European Union.

(*Brussels Hoofdstedelijk Gewest and Others*, C-275/09, EU:C:2011:154, paragraph 29)

Environmental assessments are due at the earliest possible stage

As the Court has previously held, the requirement for such an assessment to be carried out as a preliminary step is justified by the fact it is necessary for the competent authority to take into account effects on the environment 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 (see, to that effect, judgments of 3 July 2008, *Commission* v *Ireland*, C-215/06, EU:C:2008:380, paragraph 58, and of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 33).

(*Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraph 25; *IL and Others v Land Nordrhein-Westfalen*, Case C-535/18, ECLI:EU:C:2020:391, paragraph 78)

Objective and scope of the SEA Directive

First of all, as is apparent from Article 1 of Directive 2001/42, **the fundamental objective** of that directive is, where plans and programmes are likely to have significant effects on the environment, to require an environmental assessment to be carried out at the time they are prepared and before they are adopted.

Where such an environmental assessment is required by Directive 2001/42, the directive lays down **minimum rules** concerning the preparation of the environmental report, the carrying out of consultations, the taking into account of the results of the environmental assessment and the communication of information on the decision adopted at the end of the assessment.

In order to establish whether action programmes drawn up under Article 5(1) of Directive 91/676 ('action programmes') fall within the scope of Article 3(2)(a) of Directive 2001/42, it is necessary to consider, **first**, whether they are 'plans and programmes' within the meaning of Article 2(a) of that directive and, **second**, whether they fulfil the conditions laid down in Article 3(2)(a).

(*Terre wallonne ASBL and Inter-Environnement Wallonie ASBL*, C-105/09 and C-110/09, EU:C:2010:355, paragraphs 32-34)

[I]t must be borne in mind, first, that recital 4 of the SEA Directive describes environmental assessment as an important **tool for integrating environmental considerations** into the preparation and adoption of certain plans and programmes. In that regard, under Article 1 of the directive, its objective is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with the directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

[…] given **the objective of the SEA Directive, which is to provide for so high a level of protection of the environment**, the provisions which delimit the directive's scope, in particular those setting out the definitions of the measures envisaged by the directive, must be interpreted broadly (judgments of 7 June 2018, *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraphs 32 to 34 and the case-law cited, and, of the same date, *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraphs 38 to 40 and the case-law cited).

(*Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraphs 32 and 33; *CFE*, C-43/18, ECLI:EU:C:2019:483, paragraphs 35-36; *Terre wallonne ASBL v Région wallonne*, Case C-321/18, ECLI:EU:C:2019:484, paragraphs 22-23)

It should be borne in mind that the fundamental objective of the SEA Directive is to **ensure that 'plans and programmes' which are likely to have significant effects on the environment** are subject to an environmental assessment when they are prepared and **prior to their adoption** (see, to that effect, judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 40 and the case-law cited).

In that regard, it is apparent from Article 6(2) of that directive that the environmental assessment is supposed to be **carried out as soon as possible so that its conclusions may still have an influence on any potential decision-making**. Indeed, it is at that stage that the various alternatives may be analysed and strategic choices may be made

(*Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraph 62 and 63 ; *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 61 and 62; *A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraph 46)

It must also be recalled that Directive 2001/42 was adopted on the basis of Article 175(1) EC, concerning environmental actions to be taken by the Community in order to achieve the objectives of Article 174 EC. Article 191 TFEU, which corresponds to Article 174 EC, provides, in paragraph 2 thereof, that the European Union's policy on the environment aims for a 'high level of protection' taking into account the diversity of situations in the various regions of the Union. Article 191(1) TFEU authorises the adoption of measures covering, inter alia, certain specified aspects of the environment, such as the preservation, protection and improvement of the quality of the environment, the protection of human health and the prudent and rational utilisation of natural resources. In the same way, Article 3(3) TEU provides that the European Union works in particular for 'a high level of protection and improvement of the quality of the environment' (see, to that effect, judgment of 21 December 2016, *Associazione Italia Nostra Onlus*, C-444/15, EU:C:2016:978, paragraphs 41 to 43 and the case-law cited).

Those objectives would be likely to be compromised if Article 2(a) of Directive 2001/42 were interpreted as meaning that only those plans or programmes whose adoption is compulsory are covered by the obligation to carry out an environmental assessment laid down by that directive. First, as has been observed in paragraph 42 above, the adoption of those plans and programmes is often not imposed as a general requirement. Second, such an interpretation would allow a Member State to circumvent easily that requirement for an environmental assessment by deliberately refraining from providing that competent authorities are required to adopt such plans and programmes.

(*A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraph 47)

Self-standing obligations to carry out EIA or SEA

In addition, the fact that an environmental assessment for the purposes of the SEA Directive will be carried out subsequently, when planning at regional level is undertaken, has no bearing on the applicability of the provisions relating to such an assessment. **An assessment of the effects on the environment carried out under the EIA Directive cannot lead to an exemption from the obligation to carry out the environmental assessment required by the SEA Directive for the purposes of addressing the environmental aspects particular to the SEA Directive.** An environmental impact assessment report completed under the EIA Directive cannot be used to circumvent the obligation to carry out the environmental assessment required under the SEA Directive in order to address environmental aspects specific to that directive (judgment of 7 June 2018, *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 64).

(Verdi Ambiente e Società (VAS) – Aps Onlus' and Others, C-305/18, EU:C:2019:384, paragraph 56)

Furthermore, an environmental impact assessment report completed under the EIA Directive cannot be used to circumvent the obligation to carry out the environmental assessment required under the SEA Directive in order to address environmental aspects specific to that directive.

(*Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraph 65)

Rights of individuals concerned to have the environmental effects of projects assessed and be consulted

It must therefore be held that the environmental impact assessment, as provided for in Article 3 of Directive 85/337, does not include the assessment of the effects which the project under examination has on the value of material assets.

That finding, however, does not necessarily imply that Article 3 of Directive 85/337 must be interpreted as meaning that the fact that an environmental impact assessment has not been carried out, contrary to the requirements of that directive, in particular an assessment of the effects on one or more of the factors set out in that provision other than that of material assets, does not entitle an individual to any compensation for pecuniary damage which is attributable to a decrease in the value of his material assets.

It must be recalled, from the outset, that the Court has already ruled that an individual may, where appropriate, rely on the duty to carry out an environmental impact assessment under Article 2(1) of Directive 85/337, read in conjunction with Articles 1(2) and 4 thereof (see Case C-201/02 Wells

[2004] ECR I-723, paragraph 61). That directive thus confers on the individuals concerned a right to have the environmental effects of the project under examination assessed by the competent services and to be consulted in that respect.

Accordingly, it is necessary to examine whether Article 3 of Directive 85/337, read in conjunction with Article 2 thereof, is intended, in the event of an omission to carry out an environmental impact assessment, to confer on individuals a right to compensation for pecuniary damage such as that invoked by Ms Leth.

In that respect, it follows from the third and eleventh recitals in the preamble to Directive 85/337 that **the purpose of that directive is to achieve one of the European Union's objectives in the sphere of the protection of the environment and the quality of life and that the effects of a project on the environment must be assessed in order to take account of the concerns to contribute by means of a better environment to the quality of life**.

In circumstances where exposure to noise resulting from a project covered by Article 4 of Directive 85/337 has significant effects on individuals, in the sense that a home affected by that noise is rendered less capable of fulfilling its function and the individuals' environment, quality of life and, potentially, health are affected, a decrease in the pecuniary value of that house may indeed be a direct economic consequence of such effects on the environment, this being a matter which must be examined on a case-by-case basis.

It must therefore be concluded that **the prevention of pecuniary damage,** in so far as that damage is the direct economic consequence of the environmental effects of a public or private project, **is covered by the objective of protection pursued by Directive 85/337**. As such economic damage is a direct consequence of such effects, it must be distinguished from economic damage which does not have its direct source in the environmental effects and which, therefore, is not covered by the objective of protection pursued by that directive, such as, inter alia, certain competitive disadvantages.

(*Leth*, C-420/11, EU:C:2013:166, paragraphs 30-36)

Right of individuals to rely on the EIA Directive and invoke it before national courts

As regards the **right of individuals to rely on a directive** and of the **national court** to take it into consideration, it would be incompatible with the binding effect conferred on directives by that provision to exclude, as a matter of principle, any possibility for those concerned to rely on the obligation which directives impose. Particularly where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the effectiveness of such an act would be diminished if individuals were prevented from relying on it in legal proceedings and if national courts were prevented from taking it into consideration as a matter of Community law in determining whether the national legislature, in exercising its choice as to the form and methods for implementing the directive, had kept within the limits of its discretion set by the directive.

(*Kraaijeveld and Others,* C-72/95, EU:C:1996:404, paragraph 56: *WWF and Others,* C-435/97, EU:C:1999:418, paragraph 69; *Linster*, C-287/98, EU:C:2000:468, , paragraph 32, *Wells,* C-201/02, EU:C:2004:12, paragraph 57)

The provisions of the EIA Directive **may be taken into account by national courts** in order to review whether the national legislature has kept within the limits of the discretion set by it.

(*Linster*, C-287/98, EU:C:2000:468, paragraph 38)

A posteriori assessment and the obligation to remedy the failure to carry out an EIA

Under Article 10 EC [Article 4(3) TEU] the competent authorities are obliged to take, within the sphere of their competence, all general or particular measures for remedying the failure to carry out an assessment of the environmental effects of a project as provided for in Article 2(1) of the EIA Directive.

The detailed procedural rules applicable in that context are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order (principle of effectiveness).

In that regard, it is for the national court to determine whether it is possible under domestic law for a consent already granted to be **revoked or suspended** in order to subject the project to an assessment of its environmental effects, in accordance with the requirements of the EIA Directive, or alternatively, if the individual so agrees, whether it is possible for the latter to claim **compensation** for the harm suffered.

(*Wells,* C-201/02, EU:C:2004:12, paragraph 66-70 ; *Leth*, C-420/11, EU:C:2013:166, paragraphs 37-38; *Stadt Wiener Neustadt,* C-348/15, EU:C:2016:882, paragraph 40, 45-46)

While Community law cannot preclude the applicable national rules from allowing, in certain cases, the **regularisation of operations or measures which are unlawful in the light of Community law**, such a possibility should be subject to the condition that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.

Under the principle of cooperation in good faith laid down in Article 10 EC [Article 4(3) TEU], Member States are required to nullify the unlawful consequences of a breach of Community law. The competent authorities are therefore obliged to take the measures necessary to remedy failure to carry out an environmental impact assessment, for example the revocation or suspension of a consent already granted in order to carry out such an assessment, subject to the limits resulting from the procedural autonomy of the Member States.

(*Commission* v *Ireland*, C-215/06, EU:C:2008:380, paragraphs 57 and 59; *Stadt Wiener Neustadt,* C-348/15, EU:C:2016:882, paragraphs 36-37)

However, a national provision under which projects in respect of which the consent can no longer be subject to challenge before the courts, because of the expiry of the time limit for bringing proceedings laid down in national legislation, are **purely and simply deemed to be lawfully authorised** as regards the obligation to assess their effects on the environment, which it is for the referring court to ascertain, is not compatible with that directive.

(*Stadt Wiener Neustadt,* C-348/15, EU:C:2016:882, paragraph 43)

Under the principle of cooperation in good faith laid down in Article 4 TEU, Member States are nevertheless required to nullify the unlawful consequences of that breach of EU law. The competent national authorities are therefore under an obligation to take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment, for example by revoking or suspending consent already granted in order to carry out such an assessment (see, to that effect, judgments of 7 January 2004, Wells, C-201/02, EU:C:2004:12, paragraphs 64 and 65; of 3 July 2008, Commission v Ireland, C-215/06, EU:C:2008:380, paragraph 59; and of 28 February 2012, Inter-Environnement Wallonie and Terre wallonne, C-41/11, EU:C:2012:103, paragraphs 42, 43 and 46).

The Member State concerned is likewise required to make good any harm caused by the failure to carry out an environmental impact assessment (judgment of 7 January 2004, Wells, C-201/02, EU:C:2004:12, paragraph 66).

The Court has, however, held that EU law does not preclude national rules which, in certain cases, permit the **regularisation of operations or measures which are unlawful in the light of EU law** (judgments of 3 July 2008, Commission v Ireland, C-215/06, EU:C:2008:380, paragraph 57; of 15 January 2013, Križan and Others, C-416/10, EU:C:2013:8, paragraph 87; and of 17 November 2016, Stadt Wiener Neustadt, C-348/15, EU:C:2016:882, paragraph 36).

The Court has made it clear that such a possible regularisation would have to be subject to the condition that it **does not offer the persons concerned the opportunity to circumvent the rules of EU law or to dispense with their application**, and that it should **remain the exception** (judgments of 3 July 2008, Commission v Ireland, C-215/06, EU:C:2008:380, paragraph 57; of 15 January 2013, Križan and Others, C-416/10, EU:C:2013:8, paragraph 87; and of 17 November 2016, Stadt WienerNeustadt, C-348/15, EU:C:2016:882, paragraph 36).

Consequently, the Court has held that legislation which attaches the same effects to regularisation permission, which can be issued even where no exceptional circumstances are proved, as those attached to prior planning consent fails to have regard for the requirements of Directive 85/337 (see, to that effect, judgments of 3 July 2008, Commission v Ireland, C-215/06, EU:C:2008:380, paragraph 61, and of 17 November 2016, Stadt Wiener Neustadt, C-348/15, EU:C:2016:882, paragraph 37).

The same is also true of a legislative measure which could allow, without even requiring a later assessment and even where there are no specific exceptional circumstances, a project which ought to have been subject to an environmental impact assessment, by virtue of Article 2(1) of Directive 85/337, to be deemed to have been subject to such an assessment, even if such a measure were applicable only to projects in respect of which consent was no longer subject to a possibility of being directly challenged before the courts because of the expiry of the time limit for bringing proceedings laid down in national legislation (see, to that effect, judgment of 17 November 2016, Stadt Wiener Neustadt, C-348/15, EU:C:2016:882, paragraphs 38 and 43).

Furthermore, an assessment carried out after a plant has been constructed and has entered into operation **cannot be confined to its future impact on the environment, but must also take into account its environmental impact from the time of its completion**.

In the light of all of the foregoing considerations, the answer to the question posed is that, in the event of **failure to carry out an environmental impact assessment** required under Directive 85/337, **EU law**, on the one hand, **requires Member States to nullify the unlawful consequences of that failure** and, on the other hand, **does not preclude regularisation through the conducting**

of an impact assessment, after the plant concerned has been constructed and has entered into operation, on **condition** that:

– national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EU law or to dispense with applying them, **and**

– an assessment carried out for regularisation purposes is not conducted solely in respect of the plant's future environmental impact, but must also take into account its environmental impact from the time of its completion.

(*Comune di Corridonia* C-196/16 and C-197/16, paragraphs 35- 43; *Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraph 30; *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen*, C-411/17, ECLI:EU:C:2019:622, paragraphs 170-175; *European Commission v Ireland*, C-261/18), ECLI:EU:C:2019:955, paragraphs 75-80 ; *A and Others,* C-24/19, ECLI:EU:C:2020:503, paragraph 83)

In paragraph 42 of the judgment of 26 July 2017, *Comune di Corridonia and Others* (C-196/16 and C-197/16, EU:C:2017:589), the Court also noted that the facts — first, that the undertakings in question in the case giving rise to that judgment took the necessary steps to arrange for an EIA to be carried out, if necessary, second, that the refusal of the competent authorities to accede to those requests was based on national rules, the incompatibility of which with EU law was only subsequently established, and, third, that the activities of the plants at issue in that case were suspended — appeared to indicate that the regularisations carried out in that case were not permitted under national law in conditions similar to those in the case leading to the judgment of 3 July 2008, *Commission* v *Ireland* (C-215/06, EU:C:2008:380, paragraph 61), and did not attempt to circumvent rules of EU law.

As a result, under those conditions, where a project has not been subject to a preliminary assessment of the need for an EIA pursuant to provisions incompatible with Directive 2011/92, **EU law does not preclude the competent authorities carrying out an assessment of the project, even after its completion**, for the purpose of establishing whether or not it must undergo an EIA, where appropriate, on the basis of **new national legislation, provided that legislation is compatible with the directive**.

(*Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraphs 31 and 32)

As regards Ireland's argument based on the contention that the principle of legal certainty and the principle of the protection of legitimate expectations preclude the consents unlawfully granted to the wind farm's operator from being withdrawn, it must be borne in mind, first, that the infringement procedure is based on the objective finding that a Member State has failed to fulfil its obligations under the Treaty or secondary legislation and, secondly, that while the withdrawal of an unlawful measure must occur within a reasonable time and regard must be had to how far the person concerned might have been led to rely on the lawfulness of the measure, the fact remains that such withdrawal is, in principle, permitted (judgment of 4 May 2006, *Commission* v *United Kingdom*, C-508/03, EU:C:2006:287, paragraphs 67 and 68).

Ireland cannot, therefore, rely on legal certainty and legitimate expectations derived by the operator concerned from acquired rights in order to contest the consequences flowing from the objective finding that Ireland has failed to fulfil its obligations under Directive 85/337 with regard to assessment of the effects of certain projects on the environment (see, to that effect,

judgment of 4 May 2006, *Commission* v *United Kingdom*, C-508/03, EU:C:2006:287, paragraph 69).

(*European Commission v Ireland*, C-261/18, ECLI:EU:C:2019:955, paragraphs -91-92)

Time limits for bringing an action to remedy the failure to carry out an EIA

The Court also considers that it is **compatible with EU law to lay down reasonable time limits** for bringing proceedings in the interests of **legal certainty**, which protects both the individual and the administrative authority concerned. In particular, it finds that such time limits are not liable to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (see, to that effect, judgments of 15 April 2010, Barth, C-542/08, EU:C:2010:193, paragraph 28, and of 16 January 2014, Pohl, C-429/12, EU:C:2014:12, paragraph 29).

Consequently, EU law, which does not lay down any rules on the time limits for bringing proceedings against the consents issued in breach of the obligation first to assess the effects on the environment, set out in Article 2(1) of Directive 85/377, does not preclude, in principle and subject to compliance with the **principle of equivalence**, the Member State concerned from setting a time limit of three years for bringing proceedings, such as that provided for in Paragraph 3(6) of the UVP-G 2000, to which Paragraph 46(20)(4) of the UVP-G 2000 refers.

(*Stadt Wiener Neustadt,* C-348/15, EU:C:2016:882, paragraphs 41-42)

By its argument, Ireland fails to have regard, however, to the case-law of the Court referred to in paragraph 80 above, according to which projects in respect of which the consent can no longer be subject to challenge before the courts, because the time limit for bringing proceedings laid down in national legislation has expired, cannot be purely and simply deemed to be lawfully authorised as regards the obligation to assess their effects on the environment.

It must further be noted that while it is not precluded that an assessment carried out after the plant concerned has been constructed and has entered into operation, in order to remedy the failure to carry out an environmental impact assessment of that plant before the consents were granted, may result in those consents being withdrawn or amended, this is without prejudice to any right of an economic operator, which has acted in accordance with a Member State's legislation that has proven contrary to EU law, to bring against that State, pursuant to national rules, a claim for compensation for the damage sustained as a result of the State's actions or omissions.

(*European Commission v Ireland*, C-261/18, ECLI:EU:C:2019:955, paragraphs 95-96)

The obligation to remedy the failure to carry out a SEA

It is clear from settled case-law that, under the principle of cooperation in good faith laid down in Article 4(3) TEU, **Member States are required to nullify the unlawful consequences of a breach of European Union law** (see, inter alia, Case 6/60 *Humblet* v *Belgian State* [1960] ECR 559, p. 569, and Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 36). Such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned (Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraph 13, and *Wells*, paragraph 64 and the case-law cited).

It follows that where a 'plan' or 'programme' should, **prior to its adoption,** have been subject to an assessment of its environmental effects in accordance with the requirements of Directive 2001/42, the competent authorities are obliged to take all general or particular measures for remedying the failure to carry out such an assessment (see, by analogy, *Wells*, paragraph 68).

National courts before which an action against such a national measure has been brought are also under such an obligation, and, in that regard, it should be recalled that the detailed procedural rules applicable to such actions which may be brought against such 'plans' or 'programmes' are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (principle of effectiveness) (see *Wells*, paragraph 67 and the case-law cited).

Consequently, courts before which actions are brought in that regard must adopt, on the basis of their national law, measures to suspend or annul the 'plan' or 'programme' adopted in breach of the obligation to carry out an environmental assessment (see, by analogy, *Wells*, paragraph 65).

(*Inter-Environnement Wallonie and Terre wallonne,* C-41/11, EU:C:2012:103, paragraphs 42–46, EU:C:2012:103)

In that context, the referring court alludes to the judgment of 28 February 2012 in Inter-Environnement Wallonie and Terre wallonne (C-41/11, EU:C:2012:103).

In paragraph 42 of that judgment, the Court decided that, there being no provisions in Directive 2001/42 on the consequences of infringing the procedural provisions laid down in that directive, it is for the Member States to take, within the sphere of their competence, all the general or particular measures necessary to ensure that all plans or programmes likely to have significant environmental effects within the meaning of that directive are subject to an environmental assessment before being adopted in accordance with the procedural requirements and the criteria laid down by that directive.

In paragraph 43 of that judgment, the Court stated that, in accordance with settled case-law of the Court, **Member States are required to nullify the unlawful consequences of a breach of EU law** and that such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned.

In addition, it follows from paragraphs 44 to 46 of the same judgment that the obligation intended to remedy the failure to carry out an environmental assessment required by Directive 2001/42, including the possible suspension or annulment of the act vitiated by that defect, is also a matter for the national courts hearing an action against an act of domestic law adopted in breach of that directive. Consequently, those courts must take, on the basis of their national law, measures to suspend or annul a plan or programme adopted in breach of the obligation to carry out the environmental assessment required by that directive.

(*Association France Nature Environnement,* C-379/15, EU:C:2016:603, paragraphs 29-32, *L v M*, C-463/11, ECLI:EU:C:2013:247, paragraphs 43-44 ; *A and Others,* C-24/19, ECLI:EU:C:2020:503, paragraph 82)

Under the principle of sincere cooperation provided for in Article 4(3) TEU, Member States are required to eliminate the unlawful consequences of such a breach of EU law. It follows that the

competent national authorities, including national courts hearing an action against an instrument of national law adopted in breach of EU law, are therefore under an obligation to take all the necessary measures, within the sphere of their competence, to remedy the failure to carry out an environmental assessment. That may, for a 'plan' or 'programme' adopted in breach of the obligation to carry out an environmental assessment, consist, for example, in adopting measures to suspend or annul that plan or programme (see, to that effect, judgment of 28 July 2016, *Association France Nature Environnement*, C-379/15, EU:C:2016:603, paragraphs 31 and 32), or in revoking or suspending consent already granted, in order to carry out such an assessment (see, to that effect, judgment of 12 November 2019, *Commission* v *Ireland* (*Derrybrien Wind Farm*), C-261/18, EU:C:2019:955, paragraph 75 and the case-law cited).

It must be added that only the Court of Justice may, in exceptional cases, for overriding considerations of legal certainty, allow temporary suspension of the ousting effect of a rule of EU law with respect to national law that is contrary thereto. If national courts had the power to give provisions of national law primacy in relation to EU law contravened by those provisions, even temporarily, the uniform application of EU law would be undermined (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 177 and the case-law cited).

If it proved to be correct that the construction of the wind farm project has not commenced, the maintenance of the effects of the consent of 30 November 2016 during the period of the environmental assessment prescribed by the Order and the Circular of 2006 would not in any event appear to be necessary (see, to that effect, judgments of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 43, and of 28 February 2018, *Comune di Castelbellino*, C-117/17, EU:C:2018:129, pargraph 30). The referring court would therefore have to annul the consent adopted on the basis of the 'plan' or 'programme' which was itself adopted in breach of the obligation to carry out an environmental assessment (see, by analogy, judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 46).

(*A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraphs 83-84, 88, 90)

Exceptional validity of a plan and programme adopted in breach of the SEA Directive

So far as concerns the concerns expressed by the referring court relating to possible adverse environmental consequences of an annulment of the domestic law provisions held to be incompatible with EU law, it is apparent from paragraphs 66 and 67 of the judgment of 8 September 2010 in Winner Wetten (C-409/06, EU:C:2010:503) that the Court alone may, exceptionally and for overriding considerations of legal certainty, grant a provisional suspension of the ousting effect which a rule of EU law has on national law that is contrary thereto. If national courts had the power to give national provisions primacy in relation to EU law contrary to those national provisions, even provisionally, the uniform application of EU law would be damaged.

Nevertheless, and as regards the sphere under examination, the Court held in paragraph 58 of its judgment of 28 February 2012 in Inter-Environnement Wallonie and Terre wallonne (C-41/11, EU:C:2012:103) that a national court may, in the light of the existence of an overriding consideration linked to environmental protection and provided that certain conditions defined by that judgment are satisfied, exceptionally be authorised to make use of its national provision enabling it to maintain certain effects of an annulled national measure. It is thus apparent from that judgment that the Court intended to afford, case by case and by way of exception, a national court

the power to restructure the effects of annulment of a national provision held to be incompatible with EU law.

As is apparent from Article 3(3) TEU and Article 191(1) and (2) TFEU, the European Union is called upon to ensure a high level of protection and improvement of environmental protection.

From that point of view, in its judgment of 28 February 2012 in Inter-Environnement Wallonie and Terre wallonne (C-41/11, EU:C:2012:103), the Court sought to reconcile the principles of legality and primacy of EU law, on the one hand, and the necessity of protecting the environment stemming from those primary EU law provisions, on the other.

A national court may, when this is allowed by domestic law, exceptionally and case by case, limit in time certain effects of a declaration of the illegality of a provision of national law adopted in disregard of the obligations provided for by Directive 2001/42/EC of the Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, in particular the obligations arising from Article 6(3) of the directive, provided that such a limitation is dictated by an overriding consideration linked to environmental protection and having regard to the specific circumstances of the case pending before it. That exceptional power may, however, be exercised only if all the conditions flowing from the judgment of 28 February 2012 in Inter-Environment Wallonie and Terre Wallonne (C-41/11, EU:C:2012:103) are satisfied, namely:

that the contested provision of national law constitutes a measure correctly transposing EU law on environmental protection;

that the adoption and coming into force of a new provision of national law do not make it possible to avoid the damaging effects on the environment arising from annulment of the contested provision of national law;

that annulment of the contested provision of national law would have the effect of creating a legal vacuum concerning the transposition of EU law on environmental protection which would be more damaging to the environment, in the sense that that annulment would result in lesser protection and would thus run counter to the essential objective of EU law; and

that any exceptional maintaining of the effects of the contested provision of national law lasts only for the period strictly necessary for the adoption of the measures making it possible to remedy the irregularity found.

Given that the exercise of that exceptional power could adversely affect observance of the principle of the primacy of EU law, that national court could be relieved of the obligation to make a reference to the Court for a preliminary ruling only if it is convinced that the exercise of that exceptional power does not give rise to any reasonable doubt. In addition, it must be established in detail that there is no such doubt.

(Association France Nature Environnement, C-379/15, ECLI:EU:C:2016:603, paragraphs 32-36, 43 and 54, Inter-Environnement Wallonie and Terre wallonne, C-41/11, EU:C:2012:103, paragraphs 58-63 ; Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 171-178)

In the second place, in paragraph 179 of the judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622), the Court recognised that the security of electricity supply of the Member State concerned was also an overriding

consideration. The Court nevertheless specified at the same time that considerations as to the security of electricity supply could justify maintaining the effects of national measures adopted in breach of the obligations under EU law only if, in the event that the effects of those measures were annulled or suspended, there was a genuine and serious threat of disruption to the electricity supply of the Member State concerned which could not be remedied by any other means or alternatives, particularly in the context of the internal market.

In any event, any possible the maintenance of the effects of those acts may last only as long as is strictly necessary to remedy the breach found (see, to that effect, judgments of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 62, and of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 181).

(*A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraphs 92 and 94)

It must be added that only the Court of Justice may, in exceptional cases, for overriding considerations of legal certainty, allow temporary suspension of the ousting effect of a rule of EU law with respect to national law that is contrary thereto. If national courts had the power to give provisions of national law primacy in relation to EU law contravened by those provisions, even temporarily, the uniform application of EU law would be undermined (see, to that effect, judgments of 8 September 2010, *Winner Wetten*, C-409/06, EU:C:2010:503, paragraphs 66 and 67, and of 28 July 2016, *Association France Nature*

However, the Court has also held, in paragraph 58 of its judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103), that a national court may, given the existence of an overriding consideration relating to the protection of the environment, as applied in the case giving rise to that judgment, and provided that the conditions specified in that judgment are met, exceptionally be authorised to make use of a provision of its national law empowering it to maintain certain effects of an annulled national measure. It is thus apparent from that judgment that the Court intended to afford, on a case-by-case basis and by way of exception, a national court the power to adjust the effects of annulment of a national provision held to be incompatible with EU law, with due regard to the conditions laid down by the Court's case-law (see, to that effect, judgment of 28 July 2016, *Association France Nature Environnement*, C-379/15, EU:C:2016:603, paragraph 34).

(Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 177-178)

Conditions for claiming compensation

It is on the basis of the rules of national law on liability that the **Member State must make reparation for the consequences of the loss or damage caused**, provided that the **conditions for reparation** of that loss or damage laid down by national law ensure compliance with the principles of equivalence and effectiveness recalled in the previous paragraph (see Joined Cases C-46/93 and C-48/93 Brasserie du Pêcheur and Factortame [1996] ECR I-1029, paragraph 67).

It must, however, be pointed out that European Union law confers on individuals, under certain conditions, a right to compensation for damage caused by breaches of European Union law. According to the Court's settled case-law, the principle of State liability for loss or damage caused to individuals as a result of breaches of European Union law for which the State can be held

responsible is inherent in the system of the treaties on which the European Union is based (see Case C-429/09 Fuß [2010] ECR I-12167, paragraph 45 and the case-law cited).

In that respect, the Court has repeatedly held that individuals who have been harmed have a right to reparation if **three conditions are met**: the **rule of European Union law infringed must be intended to confer rights** on them; the **breach** of that rule must be **sufficiently serious**; and there must be a **direct causal link** between that breach and the loss or damage sustained by the individuals (see, Fuß, paragraph 47, and Case C-568/08 Combinatie Spijker Infrabouw-De Jonge Konstruktie and Others [2010] ECR I-12655, paragraph 87 and the case-law cited).

Those three conditions are necessary and sufficient to found a right in individuals to obtain redress on the basis of European Union law directly, although **this does not mean that the Member State concerned cannot incur liability under less strict conditions on the basis of national law** (see Brasserie du Pêcheur and Factortame, paragraph 66).

It is, in principle, **for the national courts to apply the criteria, directly on the basis of European Union law**, for establishing the liability of Member States for damage caused to individuals by breaches of European Union law, in accordance with the guidelines laid down by the Court for the application of those criteria (see Case C-446/04 Test Claimants in the FII Group Litigation [2006] ECR I-11753, paragraph 210 and the case-law cited).

In that regard, it has already been established, in paragraphs 32 and 36 of the present judgment, that **Directive 85/337 confers on the individuals concerned a right** to have the effects on the environment of the project under examination assessed by the competent services, and that pecuniary damage, in so far as it is a direct economic consequence of the environmental effects of a public or private project, is covered by the objective of protection pursued by Directive 85/337.

However, as indicated in paragraph 41 of the present judgment, the existence of a direct causal link between the breach in question and the damage sustained by the individuals is, in addition to the determination that the breach of European Union law is sufficiently serious, an indispensable condition governing the right to compensation. The existence of that direct causal link is also a matter for the national courts to ascertain, in accordance with the guidelines laid down by the Court.

To that end, the nature of the rule breached must be taken into account. In the present case, that rule prescribes an assessment of the environmental impact of a public or private project, **but does not lay down the substantive rules in relation to the balancing of the environmental effects with other factors or prohibit the completion of projects which are liable to have negative effects on the environment**. Those characteristics suggest that the breach of Article 3 of Directive 85/337, that is to say, in the present case, the failure to carry out the assessment prescribed by that article, does not, in principle, by itself constitute the reason for the decrease in the value of a property.

Consequently, it appears that, in accordance with European Union law, **the fact that an environmental impact assessment was not carried out, in breach of the requirements of Directive 85/337, does not, in principle, by itself confer on an individual a right to compensation for purely pecuniary damage** caused by the decrease in the value of his property as a result of environmental effects. However, **it is ultimately for the national court**, which alone has jurisdiction to assess the facts of the dispute before it, **to determine** whether the requirements of European Union law applicable to the right to compensation, in particular **the existence of a direct causal link** between the breach alleged and the damage sustained, have been satisfied.

(*Leth*, C-420/11, EU:C:2013:166, paragraphs 39-47)

Aarhus Convention as an integral part of the EU legal order

The Aarhus Convention was signed by the Community and subsequently approved by Decision 2005/370. Therefore, according to settled case-law, the provisions of that convention now form an **integral part of the legal order of the European Union** (see, by analogy, Case C-344/04 IATA and ELFAA [2006] ECR I-403, paragraph 36, and Case C-459/03 Commission v Ireland [2006] ECR I-4635, paragraph 82). Within the framework of that legal order the Court therefore has jurisdiction to give preliminary rulings concerning the interpretation of such an agreement (see, inter alia, Case 181/73 Haegeman [1974] ECR 449, paragraphs 4 to 6, and Case 12/86 Demirel [1987] ECR 3719, paragraph 7).

Since the Aarhus Convention was concluded by the Community and all the Member States on the basis of joint competence, it follows that where a case is brought before the Court in accordance with the provisions of the EC Treaty, in particular Article 234 EC thereof, the Court has jurisdiction to define the obligations which the Community has assumed and those which remain the sole responsibility of the Member States in order to interpret the Aarhus Convention (see, by analogy, Joined Cases C-300/98 and C-392/98 Dior and Others [2000] ECR I-11307, paragraph 33, and Case C-431/05 Merck Genéricos – Produtos Farmacêuticos [2007] ECR I-7001, paragraph 33).

Next, it must be determined whether, in the field covered by Article 9(3) of the Aarhus Convention, the European Union has exercised its powers and adopted provisions to implement the obligations which derive from it. If that were not the case, the obligations deriving from Article 9(3) of the Aarhus Convention would continue to be covered by the national law of the Member States. In those circumstances, it would be for the courts of those Member States to determine, on the basis of national law, whether individuals could rely directly on the rules of that international agreement relevant to that field or whether the courts must apply those rules of their own motion. In that case, EU law does not require or forbid the legal order of a Member State to accord to individuals the right to rely directly on a rule laid down in the Aarhus Convention or to oblige the courts to apply that rule of their own motion (see, by analogy, Dior and Others, paragraph 48 and MerckGenéricos – Produtos Farmacêuticos, paragraph 34).

However, if it were to be held that the European Union has exercised its powers and adopted provisions in the field covered by Article 9(3) of the Aarhus Convention, EU law would apply and it would be for the Court of Justice to determine whether the provision of the international agreement in question has direct effect.

Therefore, it is appropriate to examine whether, in the particular field into which Article 9(3) of the Aarhus Convention falls, the European Union has exercised its powers and adopted provisions to implement obligations deriving from it (see, by analogy, MerckGenéricos – Produtos Farmacêuticos, paragraph 39).

In that connection, it must be observed first of all, that, in the field of environmental protection, the European Union has explicit external competence pursuant to Article 175 EC, read in conjunction with Article 174(2) EC (see, Commission v Ireland, paragraphs 94 and 95).

Furthermore, the Court has held that a specific issue which has not yet been the subject of EU legislation is part of EU law, where that issue is regulated in agreements concluded by the European Union and the Member State and it concerns a field in large measure covered by it (see, by analogy, Case C-239/03 Commission v France [2004] ECR I-9325, paragraphs 29 to 31).

The dispute in the main proceedings concerns whether an environmental protection association may be a 'party' to administrative proceedings concerning, in particular, the grant of derogations to the system of protection for species such as the brown bear. That species is mentioned in Annex IV(a) to the Habitats Directive, so that, under Article 12 thereof, it is subject to a system of strict protection from which derogations may be granted only under the conditions laid down in Article 16 of that directive.

It follows that the dispute in the main proceedings falls within the scope of EU law.

The Court has jurisdiction to interpret the provisions of Article 9(3) of the Aarhus Convention and, in particular, to give a ruling on whether or not they have direct effect.

…

It follows that, in so far as concerns a species protected by EU law, and in particular the Habitats Directive, it is for the national court, in order to ensure **effective judicial protection in the fields covered by EU environmental law**, **to interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention.**

Therefore, it is for the referring court to **interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings** in accordance with the objectives of Article 9(3) of the Aarhus Convention and the objective of effective judicial protection of the rights conferred by EU law, so as to enable an environmental protection organisation, such as the zoskupenie, to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law (see, to that effect, Case C432/05 Unibet [2007] ECR I-2271, paragraph 44, and Impact, paragraph 54).

In those circumstances, the answer to the first and second questions referred is that Article 9(3) of the Aarhus Convention does not have direct effect in EU law. It is, however, for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the rights conferred by EU law, in order to enable an environmental protection organisation, such as the zoskupenie, to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law.

(*Lesoochranárske zoskupenie*, C-240/09, EU:C:2011:125, paragraphs 30-38, 43, 50-52)

Part II - The EIA Directive

Article 1	*Article 1 as amended by Directive 2014/52/EU*
1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.	***1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.***
2. For the purposes of this Directive:	***2. For the purposes of this Directive, the following definitions shall apply:***
(a) 'project' means:	***(a) 'project' means:***
— the execution of construction works or of other installations or schemes,	***— 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;	***— other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;***
(b) 'developer' means:	***(b) 'developer' means the applicant for authorisation for a private project or the public authority which initiates a project;***
the applicant for authorization for a private project or the public authority which initiates a project;	
(c) 'development consent' means:	***(c) 'development consent' means the decision of the competent authority or authorities which entitles the developer to proceed with the project;***
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;	***(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.	***(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;***
(f) 'competent authority or authorities' means that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive.	***(f) 'competent authority or authorities' means that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive;***
3. Member States may decide, on a case-by-case basis if so provided under national law, not to apply this Directive to projects serving national defence purposes, if they deem that such application would have an adverse effect on these purposes.	***(g) 'environmental impact assessment' means a process consisting of:***
4. This Directive shall not apply to projects the	***(i) the preparation of an environmental impact assessment report by the developer, as referred to in Article 5(1) and (2);***
	(ii) the carrying out of consultations as referred to in

details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.[1]	***Article 6 and, where relevant, Article 7;*** ***(iii) the examination by the competent authority of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the developer in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;*** ***(iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination; and*** ***(v) the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a.*** ***3. Member States may decide, on a case-by-case basis and if so provided under national law, not to apply this Directive to projects, or parts of projects, having defence as their sole purpose, or to projects having the response to civil emergencies as their sole purpose, if they deem that such application would have an adverse effect on those purposes.***

According to the case-law of the Court:

Purpose of the EIA Directive

It follows from Article 1(1) of, and from the first, third, fifth and sixth recitals in the preamble to, Directive 85/337 that **the purpose of that directive is an assessment of the effects of public and private projects on the environment in order to attain one of the Community's objectives in the sphere of the protection of the environment and the quality of life**. The information which must be supplied by the developer in accordance with Article 5(1) of, and Annex IV to, Directive 85/337, as well as the criteria which enable Member States to determine whether small-scale projects, meeting the characteristics laid down in Annex III to that directive, require a environmental assessment, also relate to that purpose.

(*Leth*, C-420/11, EU:C:2013:166, paragraph 28)

[1] Please note that Directive 2014/52/EU removed Art. 1(4) and the exemptions for projects adopted by specific acts of national legislation are regulated under Art. 2(5).

Project

The term 'project' refers to **works and physical intervetions** in Article 1(2) of Directive 85/337.

(*Abraham and Others*, C-2/07, EU:C:2008:133;, *Brussels Hoofdstedelijk Gewest and Others,* C-275/09, EU:C:2011:154, paragraph 20)

The **renewal of an existing permit** (to operate an airport) cannot, in the absence of any works or interventions involving alterations to the physical aspect of the site, be classified as a 'project' within the meaning of the second indent of Article 1(2) of Directive 85/337.

(Brussels Hoofdstedelijk Gewest and Others, C-275/09, EU:C:2011:154, paragraph 24; Pro-Braine and Others, C-121/11, EU:C:2012:225, paragraph 31; Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 61-62; Friends of the Irish Environment, C-254/19, ECLI:EU:C:2020, paragraph 32)

The evidence available to the Court indicates that the measures at issue in the main proceedings entail major work on the Doel 1 and Doel 2 power stations to upgrade them and ensure that current safety standards are met, as demonstrated by the EUR 700 million investment budget earmarked for those power stations.

According to the order for reference, the Agreement of 30 November 2015 makes provision for a 'rejuvenation' investment plan, which describes that work as what is needed in order to extend the operational life of both power stations and includes, in particular, investment approved by the AFCN under the LTO plan for the replacement of facilities due to ageing and the upgrading of other facilities, along with changes to be introduced under the Fourth Periodical Safety Review and stress tests carried out in the wake of the accident in Fukushima (Japan).

In particular, the documents provided to the Court indicate that work will focus, in particular, on upgrading the containment structures of the Doel 1 and Doel 2 power stations, renewal of the spent fuel pools, building a new pumping station and adaptation of the base to offer better protection to the power stations against flooding. That work would not be limited to improvements to existing structures, but would also involve the construction of three buildings, two to host ventilation systems and a third as a fire protection structure. **Work of that nature is such as to alter the physical aspect of the sites in question, within the meaning of the Court's case-law.**

In the light of those various factors, **measures such as those at issue** in the main proceedings **cannot be artificially dissociated from the work to which they are inextricably linked when assessing, in the present instance, whether they constitute a project within the meaning of the first indent of Article 1(2)(a) of the EIA Directive**. It must therefore be held that such measures and the upgrading work inextricably linked thereto together constitute a single project within the meaning of that provision, subject to findings of fact that are for the referring court to make.

The fact that the implementation of those measures requires the adoption of subsequent acts in respect of one of the power stations concerned, such as issue of a new specific consent for the production of electricity for industrial purposes, does not change that analysis.

(Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 64-66; 71-72)

In its case-law, the Court has given a broad interpretation of the concept of 'construction', accepting that works for the refurbishment of an existing road may be equivalent, due to their size and the manner in which they are carried out, to the construction of a new road (Case C-142/07 Ecologistas en Acción-CODA [2008] ECR I-6097, paragraph 36). Similarly, the Court has interpreted point 13 of Annex II, read in conjunction with point 7 of Annex I, to Directive 85/337 as also encompassing works to alter the infrastructure of an existing airport, without extension of the runway, where they may be regarded, in particular because of their nature, extent and characteristics, as an alteration of the airport itself (Abraham and Others, paragraph 40).

However, it is clear from reading those judgments that each of the cases which gave rise to them involved physical works, which is not the case in the main proceedings according to the information provided by the Raad van State.

As the Advocate General points out at point 28 of his Opinion, while it is established case-law that the scope of Directive 85/337 is wide and its purpose very broad (see, inter alia, Abraham and Others, paragraph 32, and Ecologistas en Acción-CODA, paragraph 28), a purposive interpretation of the directive cannot, in any event, disregard the clearly expressed intention of the legislature of the European Union.

It follows that, in any event, **the renewal of an existing consent to operate an airport cannot, in the absence of any works or interventions involving alterations to the physical aspect of the site, be classified as a 'construction'** within the meaning of point 7(a) of Annex I to Directive 85/377.

(*Brussels Hoofdstedelijk Gewest and Others,* C-275/09, EU:C:2011:154, paragraphs 27-30)

The **definitive decision relating to the carrying on of operations at an existing landfill site**, taken on the basis of a conditioning plan, pursuant to Article 14(b) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, does not constitute a 'consent' within the meaning of Article 1(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, unless that decision authorises a change to or extension of that installation or site, through **works or interventions involving alterations** to its physical aspect, which may have significant adverse effects on the environment within the meaning of point 13 of Annex II to Directive 85/337, and thus constitute a 'project' within the meaning of Article 1(2) of that Directive.

(*Pro-Braine and Others*, C-121/11, EU:C:2012:225, paragraph 38)

Relevance of the definition of "project" under the EIA Directive to interpret the definition of "project" under the Habitats Directive

The Habitats Directive does not define the terms 'plan' or 'project'.

By contrast, 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), the sixth recital in the preamble to which states that development consent for 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, defines 'project' as follows in Article 1(2): – 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.

An activity such as mechanical cockle fishing is within the concept of 'project' as defined in the second indent of Article 1(2) of Directive 85/337.

Such a definition of 'project' is relevant to defining the concept of plan or project as provided for in the Habitats Directive, which, as is clear from the foregoing, seeks, as does Directive 85/337, to prevent activities which are likely to damage the environment from being authorised without prior assessment of their impact on the environment.

Therefore, an activity such as mechanical cockle fishing is covered by the concept of plan or project set out in Article 6(3) of the Habitats Directive.

The fact that the activity has been carried on periodically for several years on the site concerned and that a licence has to be obtained for it every year, each new issuance of which requires an assessment both of the possibility of carrying on that activity and of the site where it may be carried on, does not in itself constitute an obstacle to considering it, at the time of each application, as a distinct plan or project within the meaning of the Habitats Directive.

(*Waddenvereniging and Vogelbeschermingsvereniging,* Case C-127/02, EU:C:2004:482, paragraphs 23-28)

In the first place, it must be noted that, while the Habitats Directive does not define the concept of 'project', it is apparent from the Court's case-law that the definition of 'project' within the meaning of Article 1(2)(a) of the EIA Directive is relevant to defining the concept of project as provided for in the Habitats Directive (see, to that effect, judgment of 14 January 2010, *Stadt Papenburg*, C-226/08, EU:C:2010:10, paragraph 38 and the case-law cited).

In the present case, the referring court is uncertain whether the grazing of cattle and the application of fertilisers on the surface of land or below its surface are to be included in the concept of 'project' within the meaning of Article 6(3) of the Habitats Directive, in so far as the Court has stated, in paragraph 24 of the judgment of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others* (C-275/09, EU:C:2011:154), that the renewal of an existing permit cannot, in the absence of any works or interventions involving alterations to the physical aspect of the site, be classified as a 'project' within the meaning of the provisions preceding Article 1(2)(a) of the EIA Directive

It must be noted that the requirements relating to 'works' or 'interventions involving alterations to the physical aspect' or even an 'intervention in the natural surroundings' are not

to be found in Article 6(3) of the Habitats Directive, that provision requiring an appropriate assessment, inter alia where a project is likely to have a 'significant' effect on a site.

Thus, Article 1(2)(a) of the EIA Directive defines the concept of 'project' for the proposes of that provision, attaching to it conditions that are not specified in the equivalent provision of the Habitats Directive.

In the same vein, it follows from the Court's case-law that, in so far as the definition of the concept of 'project' stemming from Directive 85/337 is more restrictive than that stemming from the Habitats Directive, if an activity is covered by Directive 85/337, it must, a fortiori, be covered the Habitats Directive (see, to that effect, judgment of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, paragraphs 26 and 27).

It follows that, if an **activity is regarded as a 'project' within the meaning of the EIA Directive, it may constitute a 'project' within the meaning of the Habitats Directive. However, the mere fact that an activity may not be classified as a 'project' within the meaning of the EIA Directive does not suffice, in itself, to infer therefrom that the activity may not be covered by the concept of 'project' within the meaning of the Habitats Directive.**

In the second place, in order to determine whether the grazing of cattle and the application of fertilisers on the surface of land or below its surface may be classified as a 'project' within the meaning of Article 6(3) of the Habitats Directive, it is important to examine whether such activities are likely to have a significant effect on a protected site.

As regards the application of fertilisers, such an activity **may alter the properties of the soil** by enriching it with nutrients and **thus constitute an intervention involving alterations to the physical aspect of the site within the meaning of Article 1(2)(a) of the EIA Directive** and, with regard to the grazing of cattle, **establishing grazing land could constitute 'the execution of construction works or of other installations or schemes'** within the meaning of that provision, in particular if such execution involves, in the circumstances of the present case, an unavoidable or planned development of such grazing land, which it is for the referring court to verify.

(Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu, C-293/17 and 294/17 ECLI:EU:C:2018:882, paragraphs 60-61;63-67 and 72; Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen, C-411/17, EU:C:2019:622, paragraph 123; Friends of the Irish Environment, C-254/19, ECLI:EU:C:2020, paragraph 29)

In the light of the foregoing considerations, the answer to the first and second questions referred is that a decision extending the 10-year period originally set for carrying out a project for the construction of a liquefied natural gas regasification terminal is to be regarded as an agreement of a project under Article 6(3) of the Habitats Directive where the original consent for that project, having lapsed, ceased to have legal effect on expiry of the period which it had set for those works and the latter have not been undertaken.

(*Friends of the Irish Environment,* C-254/19, ECLI:EU:C:2020, paragraph 48)

Demolition works and project definition

As regards the question whether demolition works come within the scope of Directive 85/337, as the Commission maintains in its pleadings, or whether, as Ireland contends, they are excluded, it is appropriate to note, at the outset, that the definition of the word 'project' in Article 1(2) of that directive cannot lead to the conclusion that demolition works could not satisfy the criteria of that definition. **Such works can, indeed, be described as 'other interventions in the natural surroundings and landscape'**.

That interpretation is supported by the fact that, if demolition works were excluded from the scope of that directive, the references to 'the cultural heritage' in Article 3 thereof, to 'landscapes of historical, cultural or archaeological significance' in point 2(h) of Annex III to that directive and to 'the architectural and archaeological heritage' in point 3 of Annex IV thereto would have no purpose.

It is true that, under Article 4 of Directive 85/337, for a project to require an environmental impact assessment, it must come within one of the categories in Annexes I and II to that directive. However, as Ireland contends, they make no express reference to demolition works except, irrelevantly for the purposes of the present action, the dismantling of nuclear power stations and other nuclear reactors, referred to in point 2 of Annex I.

However, it must be borne in mind that **those annexes refer rather to sectoral categories of projects, without describing the precise nature of the works provided for**. As an illustration it may be noted, as did the Commission, that 'urban development projects' referred to in point 10(b) of Annex II often involve the demolition of existing structures.

It follows that **demolition works come within the scope of Directive** 85/337 and, in that respect, may constitute a 'project' within the meaning of Article 1(2) thereof.

(*Commission v. Ireland*, C-50/09, ECLI:EU:C:2011:109**,** paragraphs 97-101)

Concept of development consent

While the term **'development consent'** is modelled on certain elements of national law, it remains a Community concept which falls exclusively within Community law. According to settled case-law, the terms used in a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope are normally to be given throughout the Community **an autonomous and uniform interpretation** which must take into account the context of the provision and the purpose of the legislation in question.

Thus the classification of a decision as a '**development consent**' within the meaning of **Article 1(2)** of the EIA Directive must be carried out pursuant to national law in a manner consistent with Community law.

(*Barker*, C-290/03, ECLI:EU:C:2006:286, paragraphs 40-41)

It should be noted that Article 1(2) of Directive 85/337/EEC as amended defines **only a single type of consent**, namely the decision of the competent authority or authorities which entitles the developer to proceed with the project.

(*Commission v. Spain*, C-332/04, ECLI:EU:C:2006:180, paragraph 53)

In a **consent procedure comprising several stages**, that assessment must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment.

(*Wells,* C-201/02, EU:C:2004:12, paragraph 52-53)

It is apparent from settled case-law that an authorisation within the meaning of Directive 85/337 may be formed by the **combination of several distinct decisions** when the national procedure which allows the developer to be authorised to start works to complete his project includes **several consecutive steps** (see, to that effect, Case C-201/02 *Wells* [2004] ECR I-723, paragraph 52, and Case C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, paragraph 102). It follows that, in that situation, the date on which the application for a permit for a project was formally lodged must be fixed as the day on which the developer submitted an application seeking to initiate the first stage of the procedure.

(*Križan and Others,* C-416/10, EU:C:2013:8, paragraph 103)

Articles 2(1) and 4(2) of the EIA Directive are to be interpreted as requiring an environmental impact assessment to be carried out if, in the case of grant of **consent comprising more than one stage**, it becomes apparent, in the course of the **second stage**, that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location.

(*Barker*, C-290/03, ECLI:EU:C:2006:286, paragraph 49)

An **agreement signed between the public authority**, a company in charge of the development and promotion of an airport and an air freight company which provides for certain modifications to the infrastructure of that airport in order to enable it to be used 24 hours per day and 365 days per year is **not a project** within the meaning of the EIA Directive. However, it is for the national court to determine, on the basis of the applicable national legislation, whether such an agreement constitutes a **development consent** within the meaning of **Article 1(2)** of the EIA Directive. It is necessary, in that context, to consider whether that consent forms **part of a procedure carried out in several stages** involving a principal decision and **implementing decisions** and whether account is to be taken of the **cumulative effect** of several projects whose impact on the environment must be assessed globally.

(*Abraham and Others*, C-2/07, EU:C:2008:133, paragraph 28)

Public concerned

Members of the "**public concerned**" within the meaning of **Article 1(2)** and 10a of the EIA Directive must be able to have **access to a review procedure** to challenge the decision by which a body attached to a court of law of a Member State has given a ruling on a request for

development consent, regardless of the role they might have played in the examination of that request by taking part in the procedure before that body and by expressing their views.

Article 10a of the EIA Directive leaves, by its reference to **Article 1(2)** thereof, to national legislatures the task of determining the conditions which may be required in order for a non-governmental organisation which promotes environmental protection to have a right of appeal under the conditions set out above, the national rules thus established must, first, ensure '**wide access to justice**' and, second, render **effective** the provisions of the EIA Directive on judicial remedies. Accordingly, those national rules must not be liable to nullify Community provisions which provide that parties who have a sufficient interest to challenge a project and those whose rights it impairs, which include environmental protection associations, are to be entitled to bring actions before the competent courts. From that point of view, a national law may require that such an association, which intends to challenge a project covered by the EIA Directive through legal proceedings, has as its object the protection of nature and the environment. Furthermore, it is conceivable that the condition that an environmental protection association must have a minimum number of members may be relevant in order to ensure that it does in fact exist and that it is active. However, the number of members required cannot be fixed by national law at such a level that it runs counter to the objectives of Directive and in particular the objective of facilitating judicial review of projects which fall within its scope. Therefore Article 10a of the EIA Directive precludes a provision of national law which reserves the right to bring an appeal against a decision on projects which fall within the scope of that directive solely to environmental NGOs which have at least 2.000 members.

(*Djurgården*, C-263/08, ECLI:EU:C:2009:631, paragraphs 39, 45-47, 52)

Competent authorities

Article 1(2) of Directive 85/337 defines the term 'development consent' as 'the decision of the competent authority or authorities which entitles the developer to proceed with the project'. Article 1(3) [1(2)(f) as per codification] states that the competent authorities are to be that or those which the Member States designate as responsible for performing the duties arising from that directive.

For the purposes of the freedom thus left to them to determine the competent authorities for giving development consent, for the purposes of that directive, the **Member States may decide to entrust that task to several entities**, as the Commission has moreover expressly accepted.

(*Commission v. Ireland*, C-50/09, ECLI:EU:C:2011:109, paragraphs 71-72)

While nothing precludes Ireland's choice to entrust the attainment of that directive's aims to two different authorities, namely planning authorities on the one hand and the Agency on the other, that is subject to those authorities' respective powers and the rules governing their implementation ensuring that an environmental impact assessment is carried out fully and in good time, that is to say before the giving of consent, within the meaning of that directive.

In that regard, the Commission maintains that it has identified, in the Irish legislation, a gap arising from the combination of two factors. The first is the lack of any right on the part of the Agency, where it receives an application for a licence for a project as regards pollution aspects, to require an environmental impact assessment. The second is the possibility that the Agency might receive an application and decide on questions of pollution before an application is made to the planning authority, which alone can require the developer to make an environmental impact statement.

In its defence, Ireland, which does not deny that, generally, the Agency is not empowered to require a developer to produce such a statement, contends that there is no practical benefit for a developer in seeking a licence from the Agency without simultaneously making an application for planning permission to the planning authority, since he needs a consent from both those authorities. However, Ireland has neither established, nor even alleged, that it is legally impossible for a developer to obtain a decision from the Agency where he has not applied to the planning authority for permission.

Admittedly, the EPAR give the Agency the right to notify a licence application to the planning authority. However, it is common ground between the parties that it is not an obligation and, moreover, an authority which has received such notification is not bound to reply to it.

It is therefore not inconceivable that the Agency, as the authority responsible for licensing a project as regards pollution aspects, may make its decision without an environmental impact assessment being carried out in accordance with Articles 2 to 4 of Directive 85/337.

Ireland contends that, in certain cases, relating particularly to licences for the recovery or disposal of waste and integrated pollution control and prevention licences, the Agency is empowered to require an environmental impact statement, which it must take into account. However, such specific rules cannot fill the gap in the Irish legislation identified in the preceding paragraph.

Ireland submits also that planning authorities are empowered, since the amendment of the EPAA by section 256 of the PDA, to refuse, where appropriate, planning permission on environmental grounds and that the concepts of ‘proper planning’ and ‘sustainable development’ confer on those authorities, generally, such power.

Such an extension of the planning authority’s powers may, as Ireland argues, create in certain cases an overlap of the respective powers of the authorities responsible for environmental matters. None the less, it must be held that such an overlap **cannot fill the gap** pointed out in paragraph 81 of the present judgment, **which leaves open the possibility that the Agency will alone decide, without an environmental impact assessment complying with Articles 2 to 4 of Directive 85/337, on a project as regards pollution aspects.**

In those circumstances, it must be held that the Commission’s second complaint in support of its action for failure to fulfil obligations is well founded.

(*Commission v. Ireland*, C-50/09, ECLI:EU:C:2011:109, paragraphs 77-85)

Exemption of Article 1(3) - projects serving national defence purposes

The Directive, as stated in Article 1(4) [1(3) as per codification], does not cover **`projects serving national defence purposes'**. That provision thus excludes from the Directive's scope and, therefore, from the assessment procedure for which it provides, projects intended to safeguard national defence. Such an exclusion introduces an exception to the general rule laid down by the Directive that environmental effects are to be assessed in advance and it must accordingly be interpreted restrictively. **Only projects which mainly serve national defence purposes may therefore be excluded** from the assessment obligation.

It follows that the Directive covers projects, such as that at issue in the main proceedings which, as the file shows, has the principal objective of restructuring an airport in order for it to be capable of commercial use, even though it may also be used for military purposes.

Article 1(4) [1(3) as per codification] of the Directive is to be interpreted as meaning that an airport which may **simultaneously serve both civil and military purposes, but whose main use is commercial, falls within the scope of the Directive**.

(*WWF and Others,* C-435/97, EU:C:1999:418, paragraphs 65-67)

Article 2	*Article 2 as amended by Directive 2014/52/EU*
1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.	***1. 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.***
2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.	***2. The environmental impact assessment may be integrated into the existing procedures for development consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.***
3. Member States may provide for a single procedure in order to fulfil the requirements of this Directive and the requirements of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control[1].	***3. In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC[2] and/or Directive 2009/147/EC[3] of the European Parliament and the Council, Member States shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for.***
4. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.	***In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and Union legislation other than the Directives listed in the first subparagraph, Member States may provide for coordinated and/or joint procedures.***
In this event, the Member States shall:	***Under the coordinated procedure referred to in the first and second subparagraphs, Member States shall endeavour to coordinate the various individual assessments of the environmental impact of a particular project, required by the relevant Union legislation, by designating an authority for this purpose, without prejudice to any provisions to the contrary contained in other relevant Union legislation.***
(a) consider whether another form of assessment would be appropriate;	***Under the joint procedure referred to in the first and second subparagraphs, Member States shall endeavour to provide for a single assessment of the***
(b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the decision granting exemption and the reasons for granting it;	
(c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.	
The Commission shall immediately forward the documents received to the other Member States.	
The Commission shall report annually to the European Parliament and to the Council on the	

[1] OJ L 24, 29.1.2008, p. 8.

[2] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

[3] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

application of this paragraph.	***environmental impact of a particular project required by the relevant Union legislation, without prejudice to any provisions to the contrary contained in other relevant Union legislation.***
	The Commission shall provide guidance regarding the setting up of any coordinated or joint procedures for projects that are simultaneously subject to assessments under this Directive and Directives 92/43/EEC, 2000/60/EC, 2009/147/EC or 2010/75/EU.
	4. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project from the provisions laid down in this Directive, where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met.
	In that event, the Member States shall:
	(a) consider whether another form of assessment would be appropriate;
	(b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the decision granting exemption and the reasons for granting it;
	(c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.
	The Commission shall immediately forward the documents received to the other Member States.
	The Commission shall report annually to the European Parliament and to the Council on the application of this paragraph.
	5. Without prejudice to Article 7, in cases where a project is adopted by a specific act of national legislation, Member States may exempt that project from the provisions relating to public consultation laid down in this Directive, provided the objectives of this Directive are met.
	Member States shall inform the Commission of any application of the exemption referred to in the first subparagraph every two years from 16 May 2017.

According to the case-law of the Court:

The fundamental objective of the EIA

Member States must implement Directive 85/337 in a manner which fully corresponds to its requirements, having regard to its **fundamental objective** which, as is clear from Article 2(1), is 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 sh**ould be made subject to a requirement for development consent and an assessment with regard to their effects**.

(*Linster*, C-287/98, EU:C:2000:468, paragraph 52; *Commission* v *Italy,* C-486/04, EU:C:2006:732, paragraph 36; *Commission* v *Ireland,* C-215/06, EU:C:2008:380, paragraph 49 ; *Prenninger and Others*, Case C-329/17, ECLI:EU:C:2018:640, paragraph 35)

As to those submissions, under Article 2(1) of Directive 85/337 projects likely to have significant effects on the environment, as referred to in Article 4 of the directive read in conjunction with Annexes I and II thereto, must be made subject to an assessment with regard to such effects before consent is given.

(W*ells*, C-201/02, EU:C:2004:12, paragraph 42, and of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 32, *Comune di Castelbellino*, Case C-117/17, ECLI:EU:C:2018:129, paragraph 24, *IL and Others v Land Nordrhein-Westfalen*, Case C-535/18, ECLI:EU:C:2020:391, paragraph 77)

Although the Member States have thus been allowed a measure of discretion in specifying certain types of projects which will be subject to an assessment or to establish the criteria and/or thresholds applicable, **the limits of that discretion are to be found in the obligation set out in Article 2(1)** of the EIA 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 impact assessment.

(*Kraaijeveld and Others,* C-72/95, EU:C:1996:404, paragraph 50; *Abraham and Others*, C-2/07, EU:C:2008:133, paragraph 37; *Mellor,* C-75/08, ECLI:EU:C:2009:279, paragraph 50; *Commission* v *Ireland*, C-427/07, EU:C:2009:457, paragraph 41)

Obligation under Article 2(1)

It also follows from the case-law of the Court relating to Article 2(1) of Directive 2011/92, which provides that 'Member States **shall take the measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment... are subject to an assessment** with regard to their effects', that such an assessment must be carried out as soon as there is a likelihood or likelihood that the project will have such effects (see, to that effect, judgments of 29 April 2004, Commission v Portugal, C 117/02, EU:C:2004:266, paragraph- 85, and of 7 September 2004, Waddenvereniging and Vogelbeschermingsvereniging, C 127/02, EU:C:2004:482, paragraphs 42 and 43).

Taking into account the precautionary principle, which is one of the foundations of the policy of protection of a high standard pursued by the European Union in the field of the environment, in the light of which Directive 2011/92 is to be interpreted, it is considered that such a risk exists if it cannot be excluded on the basis of objective evidence that the project is likely to have significant effects on the environment (see, to that effect, judgments of 24 March 2011, Commission v Belgium, C 435/09, not published-, EU:C:2011:176, paragraph 64, and of 7 September 2004, Waddenvereniging and Vogelbeschermingsvereniging, C 127/02, EU:C:2004:482-, paragraph 44.

(COM informal translation of *Commission v Poland*, Case C-526/16, ECLI:EU:C:2018:356, paragraphs 66-67)

As regards point 24 of Annex I to the EIA Directive, it is evident from the wording and general scheme of that provision that it applies to any change or extension to a project, which by virtue of, inter alia, its nature or scale, presents risks that are similar, in terms of their effects on the environment, to those posed by the project itself.

The measures at issue in the main proceedings, which have the effect of extending, by a significant period of 10 years, the duration of consents to produce electricity for industrial purposes with respect to both power stations in question, which had up until then been limited to 40 years by the Law of 31 January 2003, combined with major renovation works necessary due to the ageing of those power stations and the obligation to bring them into line with safety standards, must be found to be of a scale that is comparable, in terms of the risk of environmental effects, to that when those power stations were first put into service.

The Court therefore finds that those measures and that work fall within the scope of point 24 of Annex I to the EIA Directive. **Such a project carries an inherent risk of significant effects on the environment, within the meaning of Article 2(1) of that directive, and must therefore be subject to an assessment of its environmental impact** under Article 4(1) of that directive.

(Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 78-80)

Link between Articles 2(1) and 3

Even a **small-scale project** can have significant effects on the environment if it is in a location where the environmental factors set out in Article 3 of the EIA Directive, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration.

(*Commission v. Ireland*, C-392/96, EU:C:1999:431, paragraph 66)

Direct effect of Articles 2(1) and 4(2) (a) and (3)

Accordingly, the answer to the second question is that, when a Member State, pursuant to Article 4(2)(b) of Directive 85/337, with regard to projects falling within the scope of Annex II thereto, establishes a threshold which is incompatible with the obligations laid down in Articles 2(1) and 4(3) of that directive, the provisions of **Articles 2(1) and 4(2)(a) and (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.

(*Salzburger Flughafen*, C-244/12, EU:C:2013:203, paragraph 48)

Integration of the environmental impact assessment into the existing procedures for consent

Article 2(2) of Directive 85/337 adds that the environmental impact statement may be integrated into the existing procedures for consent to projects or failing that, into other procedures or into procedures to be established to comply with the aims of that directive.

That provision means that the **liberty left to the Member States** extends to the determination of the rules of procedure and requirements for the grant of the development consent in question.

However, that **freedom may be exercised only within the limits imposed by that directive** and provided that the choices made by the Member States ensure full compliance with its aims.

(*Commission v. Ireland*, C-50/09, ECLI:EU:C:2011:109 , paragraphs 73-75)

Use of an alternative procedure for an EIA

In the case of a project requiring **assessment** under the EIA Directive, Article 2(1) and (2) thereof are to be interpreted as allowing a Member State to use an assessment procedure other than the procedure introduced by the Directive where that alternative procedure is incorporated in a national procedure which exists or is to be established within the meaning of **Article 2(2)** of the EIA Directive. However, an alternative procedure of that kind must satisfy the requirements of Article 3 and Articles 5 to 10 of the EIA Directive, including public participation as provided for in Article 6.

(*WWF and Others,* C-435/97, EU:C:1999:418, paragraphs 50-54; *Commission v Belgium*, C-435/09, ECLI:EU:C:2011:176 paragraph 62)

The obligation to remedy the failure to carry out an EIA

Under Article 10 EC [Article 4(3) TEU] the competent authorities are obliged to take, within the sphere of their competence, all general or particular measures for remedying the failure to carry out an assessment of the environmental effects of a project as provided for in **Article 2(1)** of the EIA Directive.

The detailed procedural rules applicable in that context are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order (principle of effectiveness).

In that regard, it is for the national court to determine whether it is possible under domestic law for a consent already granted to be **revoked or suspended** in order to subject the project to an assessment of its environmental effects, in accordance with the requirements of the EIA Directive, or alternatively, if the individual so agrees, whether it is possible for the latter to claim **compensation** for the harm suffered.

(*Wells*, C-201/02, EU:C:2004:12, paragraph 70)

Member States are required to nullify the unlawful consequences of a breach of Community law under the principle of cooperation in good faith laid down in Article 10 EC [Article 4(3) TEU]. The competent authorities are therefore obliged to take the measures necessary to remedy failure to carry out an environmental impact assessment, for example the revocation or suspension of a consent already granted in order to carry out such an assessment, subject to the limits resulting from the procedural autonomy of the Member States. This cannot be taken to mean that a **remedial environmental impact assessment**, undertaken to remedy the failure to carry out an assessment as provided for and arranged by the EIA Directive, since the project has already been carried out, is equivalent to an environmental impact assessment preceding issue of the development consent, as required by and governed by that directive.

A Member State fails to fulfil its obligations under the EIA Directive, which **after the event** gives to **retention permission**, which can be issued even where **no exceptional circumstances** are proved, the same effects as those attached to a planning permission preceding the carrying out of works and development, when, pursuant to **Articles 2(1)** and 4(1) and (2) of that directive, projects for which an environmental impact assessment is required must be identified and then – before the grant of development consent and, therefore, necessarily before they are carried out – must be subject to an application for development consent and to such an assessment.

(*Commission* v *Ireland*, C-215/06, EU:C:2008:380, paragraphs 59-61)

Consent procedure comprising several stages and EIA

Articles 2(1) and **4(2)** of the EIA Directive are to be interpreted as requiring an environmental impact assessment to be carried out if, in the case of grant of **consent comprising more than one stage**, it becomes apparent, in the course of the second stage, that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location.

(*Barker*, C-290/03, ECLI:EU:C:2006:286, paragraph 49)

In addition, where national law provides that the consent procedure is to be carried out in several stages, the **environmental impact assessment in respect of a project must**, in principle, **be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment** (see Case C-201/02 *Wells* [2004] ECR I-723, paragraph 53). Thus, where one of those stages involves a principal decision and the other involves an implementing decision which cannot extend beyond the parameters set by the principal decision, the effects which a project may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision. It is only

if those effects are not identifiable until the time of the procedure relating to the implementing decision that the assessment should be carried out in the course of the latter procedure (*Wells*, paragraph 52).

(Abraham and Others, C-2/07, EU:C:2008:133, paragraph 26; Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraph 85)

Where one of those stages is a principal decision and another an implementing decision which cannot extend beyond the parameters set by the principal decision, the effects which the project may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision. It is only if those effects are not identifiable until the time of the procedure relating to the implementing decision that the assessment should be carried out in the course of the latter procedure (judgments of 7 January 2004, *Wells*, C-201/02, EU:C:2004:12, paragraph 52, and of 28 February 2008, *Abraham and Others*, C-2/07, EU:C:2008:133, paragraph 26).

In the present case, although it is for the referring court to determine, in the light of the applicable national legislation, whether the Law of 28 June 2015 constitutes development consent for the purposes of Article 1(2)(c) of the EIA Directive, **it must be found that that legislation provides, in a precise and unconditional manner**, first for the restarting of industrial production of electricity, for a period of almost 10 years, at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the date initially set by the national legislature for deactivating and ceasing industrial production of electricity at that power station and, second, for deferral, also by a period of 10 years, of the date initially set by the national legislature at which industrial production of electricity at an active power station would cease.

Consequently, **although further measures are required to implement those acts**, in the context of a complex and regulated process designed, inter alia, to ensure compliance with safety and security standards applicable to industrial production of nuclear electricity, and those measures are subject, in particular, to prior approval by the AFCN, as is apparent from the explanatory memorandum to the Law of 28 June 2015, the fact remains that those measures, once adopted by the national legislature, **define essential characteristics of the project and, a priori, should no longer be a matter for debate or reconsideration**.

Against that background, it would appear, prima facie, that the Law of 28 June 2015 constitutes development consent, within the meaning of Article 1(2)(c) of that directive, or at the very least, a first step in the process of obtaining consent for the project, as regards its essential characteristics.

In the light of all the foregoing, the answer to Question 6(a) to (c) is that the first indent of Article 1(2)(a), Article 2(1) and Article 4(1) of the EIA Directive must be interpreted as meaning that the restarting of industrial production of electricity for a period of almost 10 years at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the deadline initially set by the national legislature for deactivating and ceasing production at that power station, and deferral, also by 10 years, of the date initially set by the legislature for deactivating and ceasing industrial production of electricity at an active power station, measures which entail work to upgrade the power stations in question such as

to alter the physical aspect of the sites, constitute a 'project', within the meaning of that directive, and subject to the findings that are for the referring court to make, an environmental impact assessment must, in principle, be carried out with respect to that project prior to the adoption of those measures. The fact that the implementation of those measures involves subsequent acts, such as the issue, for one of the power stations in question, of a new specific consent for the production of electricity for industrial purposes, is not decisive in that respect. Work that is inextricably linked to those measures must also be made subject to such an assessment before the adoption of those measures if its nature and potential impact on the environment are sufficiently identifiable at that stage, a finding which it is for the referring court to make.

(Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 86-88; 91; 94)

Beginning of works and EIA

Article 2(1) of the EIA Directive must necessarily be understood as meaning that, unless the applicant has applied for and obtained the required development consent and has first carried out the environmental impact assessment when it is required, he cannot commence the works relating to the project in question, if the requirements of the directive are not to be disregarded. That analysis is valid for all projects within the scope of the EIA Directive, whether they fall under Annex I and must therefore systematically be subject to an assessment pursuant to Articles 2(1) and 4(1), or whether they fall under Annex II and, as such, and in accordance with Article 4(2), are subject to an impact assessment only if, in the light of thresholds or criteria set by the Member State and/or on the basis of a case-by-case examination, they are likely to have significant effects on the environment.

A literal analysis of that kind of **Article 2(1)** is moreover consonant with the objective pursued by the EIA Directive, set out in particular in recital 5 of the preamble to the EIA Directive, according to which 'projects for which an assessment is required should be subject to a requirement for development consent [and] the assessment should be carried out before such consent is granted'.

(*Commission* v *Ireland*, C-215/06, EU:C:2008:380, paragraphs 51-53)

If it should prove to be the case that, since the entry into force of Directive 85/337, works or physical interventions which are to be regarded as a project within the meaning of the directive were carried out on the airport site without any assessment of their effects on the environment having been carried out at an earlier stage in the consent procedure, the national court would have to take account of the stage at which the operating permit was granted and ensure that the directive was effective by satisfying itself that such an assessment was carried out at the very least at that stage of the procedure.

(*Brussels Hoofdstedelijk Gewest and Others*, C-275/09, EU:C:2011:154, paragraph 36)

Permitting an exemption – Article 2(4)

Although it is conceivable that the need to ensure the security of the electricity supply to a Member State could amount to an exceptional case, within the meaning of the first subparagraph of Article 2(4) of the EIA Directive, which would justify exempting a project from environmental impact assessment, it should be noted that points (a) to (c) of the second subparagraph of Article 2(4) of that directive impose specific obligations upon Member States wishing to rely on that exemption.

In such a case, the Member States concerned are required to consider whether another form of assessment would be appropriate, make available to the public concerned the information thereby obtained, and inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information, if any, made available to their own nationals.

As noted by the Advocate General in point 150 of her Opinion, these obligations are not mere formal requirements, but conditions designed to ensure that the objectives of the EIA Directive are met, as far as possible.

Moreover, the **exemption of a project** under Article 2(4) of the EIA Directive from the requirement to conduct an environmental impact assessment **is only permissible if the Member State concerned can show that the alleged risk to security of the electricity supply is reasonably probable and that that project is sufficiently urgent to justify not carrying out such an assessment**. Furthermore, as stated in paragraph 96 of the present judgment, the exemption is applicable without prejudice to Article 7 of that directive, on the assessment of projects with transboundary effects.

In the light of the foregoing, the answer to Question 6(d) is that **Article 2(4) of the EIA Directive must be interpreted as meaning that a Member State may exempt a project such as that at issue in the main proceedings from the requirement to conduct an environmental impact assessment in order to ensure the security of its electricity supply only where that Member State can demonstrate that the risk to the security of that supply is reasonably probable and that the project in question is sufficiently urgent** to justify not carrying out the assessment, subject to compliance with the obligations in points (a) to (c) of the second subparagraph of Article 2(4) of that directive. However, that possibility of granting an exemption is without prejudice to the obligations incumbent on the Member State concerned under Article 7 of that directive.

(Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 97-99; 101-102)

Splitting of projects – cumulative effects

The purpose of the EIA Directive cannot be circumvented by the **splitting of projects** and the failure to take account of the **cumulative effect** of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the EIA Directive.

(*Commission v. Ireland*, C-392/96, EU:C:1999:431, paragraphs, 76, 82; *Ecologistas en Acción-CODA,* C-142/07, EU:C:2008:445, paragraph 44; *Umweltanwalt von Kärnten*, C-205/08, ECLI:EU:C:2009:767, paragraph 53; *Abraham and Others*, paragraph 27; *Brussels Hoofdstedelijk Gewest and Others*, C-275/09, EU:C:2011:154, paragraph 36)

Exemption of Article 1(4) - projects adopted in detail by a legislative act[4]

Article 1(5) [1(4) as per codification] of the EIA Directive is to be interpreted as not applying to a project, which, while provided for by a **legislative provision** setting out a programme, has received development consent under a separate administrative procedure. The requirements which such a provision and the process under which it has been adopted must satisfy in order that the objectives of the Directive, including that of supplying information, can be regarded as achieved consist in the adoption of the project by a specific legislative act which includes all the elements which may be relevant to the assessment of the impact of the project on the environment.

(*WWF and Others,* C-435/97, EU:C:1999:418, paragraphs 57; C *Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, paragraphs 37-40 and 42, *Stadt Wiener Neustadt,* C-348/15, EU:C:2016:882, paragraphs 26-30)

Article 1(5) [1(4) as per codification] of the EIA Directive should be interpreted having regard to the objectives of the Directive and to the fact that, since it is a provision limiting the Directive's field of application, it must be interpreted restrictively. It follows from that provision that, where the objectives of the Directive, including that of supplying information, are achieved through a legislative process, the Directive does not apply to the project in question.

It is only where the legislature has available to it information equivalent to that which would be submitted to the competent authority in an ordinary procedure for authorising a project that the objectives of the Directive may be regarded as having been achieved through the legislative process.

As regards the **degree of precision required of the legislative act**, Article 1(5) [1(4) as per codification] of the Directive requires it to be a specific act adopting the details of the project. Its very wording must demonstrate that the objectives of the Directive have been achieved with regard to the project in question.

On a proper construction of Article 1(5) [1(4) as per codification] of the EIA Directive, a measure adopted by a parliament after public parliamentary debate constitutes a specific act of national legislation within the meaning of that provision where the legislative process has enabled the objectives pursued by the EIA Directive, including that of supplying information,

[4] After the 2014 revision of the EIA Directive, Article 2(5) is the provision regulating exemption for projects adopted by acts of national legislation. To this end, see also Commission notice Guidance document regarding application of exemptions under the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU) – Articles 1(3), 2(4) and 2(5) (2019/C386/05).

to be achieved, and the information available to the parliament at the time when the details of the project were adopted was equivalent to that which would have been submitted to the competent authority in an ordinary procedure for granting consent for a project.

(*Linster*, C-287/98, EU:C:2000:468, paragraphs 49-59; *Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, paragraphs 39-43)

The **mere existence of an administrative procedure** cannot have the effect of enabling a project to be regarded as a project the details of which are adopted by a specific legislative act in accordance with Article 1(5) [1(4) as per codification] of Directive 85/337 if that legislative act does not fulfil the two conditions set out in paragraph 37 of the present judgment (The first requires the details of the project to be adopted by a specific legislative act. Under the second, the objectives of the directive, including that of supplying information, must be achieved through the legislative process (see Case C-435/97 WWF and Others [1999] ECR I-5613, paragraph 57)). Thus, a legislative act which does no more than simply 'ratify' a pre-existing administrative act, by merely referring to overriding reasons in the general interest without a substantive legislative process which enabling those conditions to be fulfilled having first been commenced, cannot be regarded as a **specific legislative act** for the purposes of that provision and is therefore not sufficient to exclude a project from the scope of Directive 85/337.

In particular, a **legislative act adopted without the members of the legislative body** having had available to them the information mentioned in paragraph 43 of the present judgment cannot fall within the scope of Article 1(5) [1(4) as per codification] of Directive 85/337.

It is for the national court to determine whether those conditions have been satisfied. For that purpose, it must take account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates.

Article 1(5) [1(4) as per codification] of Directive 85/337 must be interpreted as meaning that only projects the details of which have been adopted by a specific legislative act, in such a way that the objectives of that directive have been achieved by the legislative process, are excluded from the directive's scope. It is for the national court to verify that those two conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates. In that regard, a legislative act which does no more than simply 'ratify' a pre-existing administrative act, by merely referring to overriding reasons in the general interest without a substantive legislative process enabling those conditions to be fulfilled having first been commenced, cannot be regarded as a specific legislative act for the purposes of that provision and is therefore not sufficient to exclude a project from the scope of Directive 85/337.

It follows from Article 2(2) of the Aarhus Convention, read together with Articles 6 and 9 thereof, and from Article 1(5) [1(4) as per codification] of Directive 85/337 **that neither the Convention nor the directive applies to projects adopted by a legislative act** satisfying the conditions set out in paragraph 37.

(*Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667 paragraphs 45-48 and 50; *Solway and Others*, C-182/10, EU:C:2012:82, paragraph 43)

It follows from that provision that, where the objectives of Directive 85/337, including that of supplying information, are achieved through a legislative process, that directive does not apply to the project in question (see Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 51; Joined Cases C-128/09 to C-131/09, C-134/09 and C-135/09 *Boxus and Others* [2011] ECR I-0000, paragraph 36; and Case C-182/10 *Solvay and Others* [2012] ECR I-0000, paragraph 30).

That provision lays down two conditions for the exclusion of a project from the scope of Directive 85/337. The first requires the details of the project to be adopted by a specific legislative act. Under the second, the objectives of the directive, including that of supplying information, must be achieved through the legislative process (see Case C-435/97 *WWF and Others* [1999] ECR I-5613, paragraph 57; *Boxus and Others*, paragraph 37; and *Solvay and Others*, paragraph 31).

The **first condition** entails, first of all, adoption of the project by a specific legislative act. It should be pointed out in this regard that the terms 'project' and 'development consent' are defined in Article 1(2) of Directive 85/337. Thus, a **legislative act adopting a project must**, if it is to come within the scope of Article 1(5) of the directive, **be specific and display the same characteristics as a development consent of that kind. It must in particular grant the developer the right to carry out the project** (see *WWF and Others*, paragraph 58; *Boxus and Others*, paragraph 38; and *Solvay and Others*, paragraph 32).

The project must also be adopted in detail, that is to say, in a sufficiently precise and definitive manner, so that the legislative act adopting the project must include, like a development consent, following their consideration by the legislature, all the elements of the project relevant to the environmental impact assessment (see *WWF and Others*, paragraph 59; *Boxus and Others*, paragraph 39; and *Solvay and Others*, paragraph 33). The legislative act must therefore demonstrate that the objectives of Directive 85/337 have been achieved as regards the project in question (see *Linster*, paragraph 56; *Boxus and Others*, paragraph 39; and *Solvay and Others*, paragraph 33).

It follows that the details of **a project cannot be considered to be adopted by a legislative act, for the purposes of Article 1(5)** [1(4) as per codification] **of Directive 85/337, if that act does not include the elements necessary to assess the environmental impact of the project or if the adoption of other measures is needed in order for the developer to be entitled to proceed with the project** (see *WWF and Others*, paragraph 62; *Linster*, paragraph 57; *Boxus and Others*, paragraph 40; and *Solvay and Others*, paragraph 34).

As regards the **second condition**, it is clear from Article 2(1) of Directive 85/337 that the fundamental objective of the directive is to ensure that 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 environmental effects before consent is given (see *Linster*, paragraph 52; *Boxus and Others*, paragraph 41; and *Solvay and Others*, paragraph 35).

Consequently, the national legislature m**ust have sufficient information at its disposal at the time when the project is adopted**. In accordance with Article 5(3) of Directive 85/337 and Annex IV thereto, the minimum information to be supplied by the developer is to include a description of the project comprising information on the site, design and size of the project, a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects, and the data required to identify and assess the main effects which

the project is likely to have on the environment (see *Boxus and Others*, paragraph 43, and *Solvay and Others*, paragraph 37).

In particular, a legislative act adopted **without the members of the legislative body having had available to them the information mentioned in paragraph 85 of this judgment cannot fall within the scope of Article 1(5)** [1(4) as per codification] **of Directive 85/337** (see *Boxus and Others*, paragraph 46, and *Solvay and Others*, paragraph 40).

(*Nomarchiaki Aftodioikisi Aitoloakarnanias and Others,* C-43/10, paragraphs 78-82, paragraph 85, paragraph 89)

In that regard, Article 1(4) of the EIA Directive, which reproduced the content of Article 1(5) of Directive 85/337, requires two conditions to be met if a project is to be excluded from the scope of the EIA Directive.

The first condition is that the project must be adopted by a specific act of legislation that has the same characteristics as a development consent. In particular, that act must grant the developer the right to proceed with the project (see, to that effect, judgment of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 32 and the case-law cited).

In addition, the project must be adopted in detail, that is to say, in a sufficiently precise and definitive manner, so that the legislative act adopting the project must include, like a development consent, following their consideration by the legislature, all the elements of the project relevant to the environmental impact assessment. The legislative act must demonstrate that the objectives of the EIA Directive have been achieved as regards the project in question (see, to that effect, judgment of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 33 and the case-law cited).

It follows that the details of a project cannot be considered to have been adopted by a legislative act, for the purposes of Article 1(4) of the EIA Directive, if that act does not include the elements necessary to assess the environmental impact of the project or if the adoption of other measures is needed in order for the developer to be entitled to proceed with the project (see, to that effect, judgment of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 34 and the case-law cited).

The second condition laid down in Article 1(4) of the EIA Directive is that the objectives of that directive, including that of making available information, are achieved through the legislative process. It follows from Article 2(1) of that directive that the essential objective of the directive is to ensure that projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are subject to an assessment with regard to their environmental effects before consent is given (see, to that effect, judgment of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 35 and the case-law cited).

Consequently, the legislature must have sufficient information at its disposal at the time when the project concerned is adopted. In that regard, it follows from Article 5(3) of the EIA Directive that the minimum information to be supplied by the developer is to include a description of the project comprising information on the site, design and size of the project, a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects, the data required to identify and assess the main effects which the project is likely to have on the environment, an outline of the main alternatives studied by the

developer and an indication of the main reasons for his choice, taking into account the environmental effects, and a non-technical summary of the above information (see, to that effect, judgments of 18 October 2011, *Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, paragraph 43, and of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 37).

In the present case, it is for the referring court to determine whether those conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates (see, to that effect, judgments of 18 October 2011, *Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, paragraph 47, and of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 41).

(Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 104-110)

Judicial control for projects adopted in detail by a legislative act

By virtue of their procedural autonomy, the Member States have a discretion in implementing Article 9(2) of the Aarhus Convention and Article 10a [11 as per codification] of Directive 85/337, subject to compliance with the **principles of equivalence and effectiveness**. It is for them, in particular, to determine, in so far as the abovementioned provisions are complied with, which court of law or which independent and impartial body established by law is to have jurisdiction in respect of the review procedure referred to in those provisions and what procedural rules are applicable.

However, Article 9 of the Aarhus Convention and Article 10a [11 as per codification] of Directive 85/337 would lose all effectiveness if the mere fact that a project is adopted by a legislative act which does not fulfil the conditions set out in paragraph 37 of the present judgment[5] were to make it immune to any review procedure for challenging its substantive or procedural legality within the meaning of those provisions.

The requirements flowing from Article 9 of the Aarhus Convention and Article 10a [11 as per codification] of Directive 85/337 presuppose in this regard that, when a project falling within the scope of Article 6 of the Aarhus Convention or of Directive 85/337 is adopted by a legislative act, the **question whether that legislative act satisfies the conditions laid down in Article 1(5) [1(4) as per codification] of that directive and set out in paragraph 37 of the present judgment must be amenable to review,** under the national procedural rules, by a court of law or an independent and impartial body established by law.

If no review procedure of the nature and scope set out above were available in respect of such an act, any national court before which an action falling within its jurisdiction is brought

[5] *Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, , paragraph 37: The first requires the details of the project to be adopted by a specific legislative act. Under the second, the objectives of the directive, including that of supplying information, must be achieved through the legislative process (see Case C-435/97 WWF [1999] ECR I-5613, paragraph 57).

would have the task of carrying out the review described in the previous paragraph and, as the case may be, drawing the necessary conclusions by disapplying that legislative act.

(*Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, paragraphs 52-55, 57; *Solway and Others*, C-182/10, EU:C:2012:82, paragraph 52)

Information gathered during an administrative procedure used by the legislature

Having regard to the characteristics of procedures for the approval of a plan in more than one phase, Directive 85/337 does not preclude a single project from being approved by two acts of national law which are considered, as a whole, to be a development consent within the meaning of Article 1(2) thereof (see, to that effect, Case C-508/03 Commission v United Kingdom [2006] ECR I-3969, paragraph 102). Consequently, the legislature can, when adopting the final act authorising a project, take advantage of the **information gathered during a prior administrative procedure**.
(*Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, paragraph 44)

Article 3	*Article 3 as amended by Directive 2014/52/EU*
The environmental impact assessment shall 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:	***1. 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) human beings, fauna and flora;	***(a) population and human health;***
(b) soil, water, air, climate and the landscape;	***(b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;***
(c) material assets and the cultural heritage;	***(c) land, soil, water, air and climate;***
(d) the interaction between the factors referred to in points (a), (b), and (c).	***(d)material assets, cultural heritage and the landscape;***
	(e) the interaction between the factors referred to in points (a) to (d).
	2. The effects referred to in paragraph 1 on the factors set out therein shall include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

According to the case-law of the Court:

Article 3 is a fundamental provision

Whilst Article 3 of Directive 85/337 provides that the environmental impact assessment is to take place 'in accordance with Articles 4 to 11' thereof, the obligations referred to by those articles differ from that under Article 3 itself.

In order to satisfy the obligation imposed on it by Article 3, the competent environmental authority may not confine itself to identifying and describing a project's direct and indirect effects on certain factors, but must also assess them in an appropriate manner, in the light of each individual case.

That assessment obligation is distinct from the obligations laid down in Articles 4 to 7, 10 and 11 of Directive 85/337, which are, essentially, obligations to collect and exchange information, consult, publicise and guarantee the possibility of challenge before the courts. They are procedural provisions which do not concern the implementation of the **substantial obligation laid down in Article 3** of that directive.

Admittedly, Article 8 of Directive 85/337 provides that the results of the consultations and the information gathered pursuant to Articles 5 to 7 must be taken into consideration in the development consent procedure.

However, that obligation to take into consideration, at the conclusion of the decision-making process, information gathered by the competent environmental authority must not be confused with the **assessment obligation** laid down in Article 3 of Directive 85/337. Indeed, that assessment, which must be carried out before the decision-making process (Case C-508/03 Commission v United Kingdom [2006] ECR I-3969, paragraph 103), involves an **examination of the substance of the information gathered as well as a consideration of the expediency of supplementing it**, if appropriate, with additional data. That competent environmental authority must thus undertake both an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effects of the project concerned on the factors set out in the first three indents of Article 3 and the interaction between those factors.

It follows therefore both from the wording of the provisions at issue of Directive 85/337 and from its general scheme that **Article 3 is a fundamental provision**. The transposition of Articles 4 to 11 alone cannot be regarded as automatically transposing Article 3.

(*Commission v. Ireland*, C-50/09, ECLI:EU:C:2011:109, paragraphs 35, 37-41)

Difference between Article 3 and Article 8

As regards section 173 of the PDA, according to which the planning authority, where it receives an application for planning permission accompanied by an environmental impact statement, must take that statement into account as well as any additional information provided to it, it is clear from the very wording of that article that it is confined to laying down an obligation similar to that provided for in Article 8 of Directive 85/337, namely that of taking the results of the consultations and the information gathered for the purposes of the consent procedure into consideration. That obligation does not correspond to the broader one, imposed by Article 3 of Directive 85/337 on the competent environmental authority, to carry out itself an environmental impact assessment in the light of the factors set out in that provision.

(*Commission v. Ireland*, C-50/09, ECLI:EU:C:2011:109, paragraph 44)

Nature of the rules set by the EIA

Directive 85/337 prescribes an assessment of the environmental impact of a public or private project, but does **not lay down the substantive rules in relation to the balancing of the environmental effects with other factors or prohibit the completion of projects which are liable to have negative effects on the environment.** Those characteristics suggest that the breach of Article 3 of Directive 85/337, that is to say, in the present case, the failure to carry out the assessment prescribed by that article, does not, in principle, by itself constitute the reason for the decrease in the value of a property.

(*Leth*, C-420/11, EU:C:2013:166, paragraph 46)

Scope and content of the EIA

The scope of that obligation to assess impacts on the environment follows from the provision contained in Article 3 of Directive 85/337 as amended, according to which the environmental

impact assessment is to identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11 of that directive, 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, and the interaction between those factors.

Given the extended scope and very broad objective of Directive 85/337 as amended, which are apparent from Articles 1(2), 2(1) and 3 of the latter (see, to that effect, Case C-72/95 Kraaijeveld and Others [1996] ECR I-5403, paragraphs 30 and 31), the mere fact that there may have been uncertainty as to the exact meaning of the use of the conditional in the expression '[t]his description should cover' used in a note to point 4 of Annex IV to Directive 85/337 as amended, even if that also appears in other language versions of that directive, cannot prevent a broad interpretation from being given to Article 3 of the latter.

Therefore, that provision should be taken as meaning that, where the assessment of the environmental impacts must, in particular, identify, describe and assess in an appropriate manner the indirect effects of a project, that **assessment must also include an analysis of the cumulative effects** on the environment which that project may produce if considered jointly with other projects, in so far as such an analysis is necessary in order to ensure that the assessment covers examination of all the notable impacts on the environment of the project in question.

(*Commission* v *Spain,*C-404/09, EU:C:2011:768, paragraphs 78-80)

It should be noted that Article 3 of Directive 85/337/EEC as amended refers to the contents of the environmental impact assessment, which includes a **description of direct and indirect effects of a project on factors listed** in the first three indents of this Article **and the interaction between them**. The task of carrying out such an assessment falls to the competent environmental authority.

As far as Spanish law is concerned, it should be noted, firstly, that Article 2(1) of Legislative Royal Decree No 1302/1986 as amended does not mention the interaction between the factors listed in the first to third indents of Article 3 of the EIA Directive.

Furthermore, Article 7 of Royal Decree No 1131/1988 establishes the list of documents that should be included in the environmental impact study entrusted to the developer, which includes an environmental inventory not specified in the relevant information to be made available under Article 5(3) of Directive 85/337/EEC as amended. This document, whose content is specified in Article 9 of the Royal Decree, must indeed describe the key environmental and ecological interactions.

However, although the environmental inventory is intended to describe the condition of the site on which the project is to be built as well as its environmental characteristics, including key ecological interactions, it nonetheless does not evaluate the effects of the project on the different environmental factors specifically mentioned in Article 3 of Directive 85/337/EEC as amended or the interaction between them. It appears that even if the administrative practice is to assess this interaction, this would not mean that Article 3 of Directive 85/337/EEC as amended was properly transposed. According to established case-law, the transposition of a directive into domestic law must be completed by provisions capable of creating a situation which is sufficiently precise, clear and transparent to enable individuals to ascertain their rights and obligations.

(*Commission v. Spain*, C-332/04, ECLI:EU:C:2006:180, paragraphs 33-36, 38, *Commission v. Ireland*, C-50/09, ECLI:EU:C:2011:109, paragraph 36)

Pursuant to Article 3 of Directive 85/337, it is necessary to examine the direct and indirect effects of a project on, inter alia, human beings and material assets and, in accordance with the fourth indent of that article, it is also necessary to examine such effects on the interaction between those two factors. Therefore, it is necessary to examine, in particular, the **effects of a project on the use of material assets by human beings**.

It follows that, in the assessment of projects such as those at issue in the main proceedings, which are liable to result in increased aircraft noise, it is necessary to assess the effects of the latter on the use of buildings by human beings.

However, as has correctly been pointed out by Land Niederösterreich and by several of the governments which have submitted observations to the Court, **an extension of the environmental assessment to the pecuniary value of material assets cannot be inferred from the wording of Article 3** of Directive 85/337 and would also not be in accordance with the purpose of that directive.

It follows from Article 1(1) of, and from the first, third, fifth and sixth recitals in the preamble to, Directive 85/337 that **the purpose of that directive** is an assessment of the effects of public and private projects on the environment in order to attain one of the Community's objectives in the sphere of the protection of the environment and the quality of life. The information which must be supplied by the developer in accordance with Article 5(1) of, and Annex IV to, Directive 85/337, as well as the criteria which enable Member States to determine whether small-scale projects, meeting the characteristics laid down in Annex III to that directive, require a environmental assessment, also relate to that purpose.

Consequently, it **is necessary to take into account only those effects on material assets which, by their very nature, are also likely to have an impact on the environment**. Accordingly, pursuant to Article 3 of that directive, an environmental impact assessment carried out in accordance with that article is one which identifies, describes and assesses the direct and indirect effects of noise on human beings in the event of use of a property affected by a project such as that at issue in the main proceedings.

It must therefore be held that the environmental impact assessment, as provided for in **Article 3 of Directive 85/337, does not include the assessment of the effects which the project under examination has on the value of material assets**.

That finding, however, does not necessarily imply that Article 3 of Directive 85/337 must be interpreted as meaning that the fact that an environmental impact assessment has not been carried out, contrary to the requirements of that directive, in particular an assessment of the effects on one or more of the factors set out in that provision other than that of material assets, does not entitle an individual to any compensation for pecuniary damage which is attributable to a decrease in the value of his material assets.

In circumstances where exposure to noise resulting from a project covered by Article 4 of Directive 85/337 has significant effects on individuals, in the sense that a home affected by that noise is rendered less capable of fulfilling its function and the individuals' environment, quality of life and, potentially, health are affected, **a decrease in the pecuniary value of that**

house may indeed be a direct economic consequence of such effects on the environment, this being a matter which must be examined on a case-by-case basis.

It must therefore be concluded that the **prevention of pecuniary damage, in so far as that damage is the direct economic consequence of the environmental effects of a public or private project, is covered by the objective of protection pursued by Directive 85/337**. As such economic damage is a direct consequence of such effects, it must be distinguished from economic damage which does not have its direct source in the environmental effects and which, therefore, is not covered by the objective of protection pursued by that directive, such as, inter alia, certain competitive disadvantages.

(*Leth*, C-420/11, EU:C:2013:166, paragraphs 25-30, 31, 35-36)

Overall environmental assessment

The EIA Directive adopts an **overall assessment of the effects** of projects or the alteration thereof on the environment. It would be simplistic and contrary to that approach to take account, when assessing the environmental impact of a project or of its modification, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable to result from the use and exploitation of the end product of those works.

(*Abraham and Others*, C-2/07, EU:C:2008:133 paragraphs 42-43; *Ecologistas en Acción-CODA*, C-142/07, EU:C:2008:445, paragraph 39)

The EIA Directive adopts an **overall assessment of the effects** of projects on the environment, irrespective of whether the project might be **transboundary** in nature.

(*Umweltanwalt von Kärnten,* C-205/08, ECLI:EU:C:2009:767, paragraph 51)

As regards the content of the assessment of environmental effects, Article 3 of Directive 85/337 lays down that it must include a **description of the direct and indirect environmental impact of a project**.

(*Abraham and Others*, C-2/07, EU:C:2008:133, paragraphs 43-45; *Ecologistas en Acción-CODA*, C-142/07, EU:C:2008:445 paragraph 39; *Commission* v *Spain,* C-560/08, EU:C:2011:835, paragraph 98)

The **list laid down in Article 3 of the EIA Directive of the factors to be taken into account**, such as the effect of the project on human beings, fauna and flora, soil, water, air or the cultural heritage, shows, in itself, that the environmental impact whose assessment the EIA Directive is designed to enable is **not only the impact of the works** envisaged but also, and above all, the **impact of the project to be carried out**.

(*Abraham and Others*, C-2/07, EU:C:2008:133, paragraph 44)

Even a **small-scale project can have significant effects** on the environment if it is in a location where the environmental factors set out in Article 3 of the EIA Directive, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration.

(*Commission v. Ireland*, C-392/96, EU:C:1999:431, paragraph 66, *Commission v Belgium*, C-435/09, ECLI:EU:C:2011:176, paragraph 50)

Article 4	*Article 4 as amended by Directive 2014/52/EU*
1. Subject to Article 2 (4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.	***1. Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.***
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. Members States shall make that determination through:	***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,	***(a) a case-by-case examination;***
or	***or***
(b) thresholds or criteria set by the Member State.	***(b) thresholds or criteria set by the Member State.***
Member States may decide to apply both procedures referred to in points (a) and (b).	***Member States may decide to apply both procedures referred to in points (a) and (b).***
3. When 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.	***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. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.	***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.

6. Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required pursuant to paragraph 4. In exceptional cases, for instance relating to the nature, complexity, location or size of the project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected.

According to the case-law of the Court:

Screening

It follows that the competent national authorities, when they receive a request for development consent for an Annex II project, must carry out a **specific evaluation** as to whether, **taking account of the criteria set out in Annex III** to that directive, an environmental impact assessment should be carried out (see, to that effect, judgment in Mellor, C-75/08, EU:C:2009:279, paragraph 51).

(*Marktgemeinde Straßwalchen and Others*, C-531/13, ECLI:EU:C:2015:79, paragraph 42, C-141/14, *Commission v Bulgaria* (Kaliakra), paragraph 94)

Criteria/thresholds

Even a **small-scale project** can have significant effects on the environment if it is in a location where the environmental factors set out in Article 3 of the EIA Directive, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration.

(*Commission v. Ireland,* C-392/96, EU:C:1999:431, paragraph 66; *Commission v Belgium*, C-435/09, ECLI:EU:C:2011:176, paragraph 50)

As regards the **cumulative effect** of projects, it is to be remembered that **the criteria and/or thresholds** mentioned in **Article 4(2)** are designed to facilitate the examination of the actual characteristics exhibited by a given project in order to determine whether it is subject to the requirement to carry out an assessment, and not to exempt in advance from that obligation certain **whole classes of projects** listed in Annex II which may be envisaged on the territory of a Member State (C-133/94, Commission v Belgium, paragraph 42; C-72/95 Kraaijeveld and Others, paragraph 51; and Case C-301/95 Commission v Germany, paragraph 45).

(*Commission v. Ireland,* C-392/96, EU:C:1999:431 , paragraph 73, *WWF and Others,* C-435/97, EU:C:1999:418, paragraph 37, *Salzburger Flughafen*, C-244/12, EU:C:2013:203, paragraph 30, *Marktgemeinde Straßwalchen and Others* ,C-531/13, ECLI:EU:C:2015:79, paragraph 41, C-141/14, *Commission v Bulgaria (Kaliakra*), paragraph 93)

Level of thresholds – type of criteria to be taken into consideration

A Member State which has established thresholds and/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 exceeds the limits of that discretion, unless all the projects excluded could, when viewed as a whole, be regarded as not likely to have significant effects on the environment

(*Commission v. Ireland,* C-392/96, EU:C:1999:431,, paragraph 53; C *Kraaijeveld and Others,* C-72/95, EU:C:1996:404, paragraph 53; *WWF and Others,* C-435/97, EU:C:1999:418, paragraph 38; C-392/96 Commission v. Ireland, paragraph 75; *Commission v. Ireland,* C-66/06, EU:C:2008:637, paragraph 65; *Commission* v *Ireland*, C-427/07, EU:C:2009:457, paragraph 42, *Salzburger Flughafen*, C-244/12, EU:C:2013:203, paragraph 31; *Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraph 39)

A Member State which, on the basis of **Article 4(2)** of the EIA Directive, has established thresholds and/or criteria taking account **only the size of projects**, without taking into consideration **all the criteria listed in Annex III [**i.e. nature and location of projects], exceeds the **limits of its discretion** under Articles 2(1) and **4(2)** of the EIA Directive.
(*Commission v. Ireland,* C-392/96, paragraphs 65, 72; *Commission v. Ireland,* C-66/06, EU:C:2008:637, paragraph 64; *Commission v. Netherlands*, *Commission v Netherlands*, C-255/08, ECLI:EU:C:2009:630, paragraphs 32-39; *Commission v Belgium*, C-435/09, ECLI:EU:C:2011:176, paragraphs 52, 55)

By limiting the environmental impact assessment for urban development projects exclusively to projects located on non-urban land, the Spanish Government is **confining itself to applying the criterion of location**, which is only one of three criteria set out in Article 2(1) of the EIA Directive, and is **failing to take account of the other two criteria, namely the nature and size of a project**.

Moreover, insofar as Spanish law provides for environmental impact assessment only in respect of urban development projects outside urban areas, it fails to apply completely the criterion of location. Indeed, densely populated areas and landscapes of historical, cultural or archaeological significance in points 2(g) and (h) of Annex III of the EIA Directive are among the selection criteria to be taken into account by Member States, under Article 4(3) of

the Directive, in the event of a case-by-case examination or of setting thresholds or criteria for the purpose of Article 4(2) to determine whether a project should be subject to an assessment. These selection criteria relate more often to urban areas.

(*Commission v. Spain*, C-332/04, ECLI:EU:C:2006:180, paragraphs 75-79)

Pursuant to Article 4(3) of Directive 85/337, when establishing the criteria and/or thresholds in question, the Member States are required to **take into account the relevant selection criteria** listed in Annex III to the Directive.

(*Commission v. Ireland,* C-66/06, EU:C:2008:637, paragraph 62, *Commission v Netherlands*, C-255/08, ECLI:EU:C:2009:630, paragraph 33; *Commission v Belgium*, C-435/09, ECLI:EU:C:2011:176, paragraph 53, *Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraph 38)

Limits of discretion

Article 4(2) of the EIA Directive mentions, by way of indication, methods to which the Member States may have recourse when determining which of the projects falling within Annex II are to be subject to an assessment within the meaning of the EIA Directive. Consequently, the EIA Directive confers a **measure of discretion** on the Member States and does not therefore prevent them from using **other methods** to specify the projects requiring an environmental impact assessment under the Directive. So the EIA Directive excludes in no way the method consisting in the designation, on the basis of an individual examination of each project concerned or pursuant to national legislation, of a particular project falling within Annex II to the EIA Directive as not being subject to the procedure for assessing its environmental effects.

However, whatever the method adopted by a Member State to determine whether or not a specific project needs to be assessed, be it by legislative designation or following an individual examination of the project, the method adopted **must not undermine the objective of the Directive**, which is that no project likely to have significant effects on the environment, within the meaning of the Directive, should be exempt from assessment, unless the specific project excluded could, on the basis of a comprehensive screening, be regarded as not being likely to have such effects.

(*WWF and Others,* C-435/97, EU:C:1999:418, paragraphs 42, 43, 45; *Commission v. Italian Republic*, C-87/02, paragraphs 41, 42, 44)

As regards the establishment of thresholds or criteria, it must be borne in mind that, indeed, Article 4(2)(b) of Directive 85/337 confers a measure of discretion on the Member States in that regard. However, **that discretion is limited by the obligation set out in Article 2(1)** of the directive to make projects likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment subject to an impact assessment (judgment in Salzburger Flughafen, C-244/12, EU:C:2013:203, paragraph 29).

(*Salzburger Flughafen*, C-244/12, EU:C:2013:203, paragraph 29, *Marktgemeinde Straßwalchen and Others*, C-531/13, ECLI:EU:C:2015:79, paragraph 40, C-141/14, *Commission v Bulgaria (Kaliakra)*, paragraph 92)

Next, it follows from the settled case-law of the Court that, where Member States have decided to have recourse to the establishment of thresholds or criteria in accordance with Article 4(2) of Directive 2011/92, 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 for projects likely, by virtue inter alia of their nature, size or location, to have significant effects on the environment, to be subject to an impact assessment before consent is given (see, to that effect, judgment of 20 November 2008, *Commission* v *Ireland*, C-66/06, not published, EU:C:2008:637, paragraph 61 and the case-law cited).

(*Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraph 37; *Commission v Poland*, Case C-526/16, ECLI:EU:C:2018:356, paragraph 60)

Infringement of national general rules for screening

Where a Member State defines **general rules** for determining whether projects falling within **Article 4(2)** of the EIA Directive must be made subject to **prior assessment of their effects on the environment** before consent is given, the infringement of those rules necessarily constitutes an infringement of the combined provisions of Articles 2(1) and **4(2)** of the EIA Directive.

(*Commission v. Italy*, C-83/03, ECLI:EU:C:2005:339, paragraph 20)

Splitting of projects – cumulative effects

The purpose of the EIA Directive cannot be circumvented by the **splitting of projects** and the failure to take account of the **cumulative effect** of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the EIA Directive.

(*Commission v. Ireland,* C-392/96, EU:C:1999:431, paragraphs, 76 and 82; *Ecologistas en Acción-CODA*, C-142/07, EU:C:2008:445, paragraph 44; *Umweltanwalt von Kärnten,* C-205/08, ECLI:EU:C:2009:767, paragraph 53; *Abraham and Others,* C-2/07, EU:C:2008:133, paragraph 27; *Brussels Hoofdstedelijk Gewest and Others,* C-275/09, EU:C:2011:154, paragraph 36)

It follows from **Annex III, No 1**, that the characteristics of a project must be assessed, inter alia, in relation to its cumulative effects with other projects. Failure to take account of the cumulative effect of one project with other projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment (see, to that effect, judgment in Brussels Hoofdstedelijk Gewest and Others, EU:C:2011:154, paragraph 36).

That requirement must be construed in the light of **Annex III, No 3**, to Directive 85/337, under which the potential significant effects of a project must be considered in relation to criteria set out under Nos 1 and 2 of that annex, having regard in particular to the probability, magnitude, duration and reversibility of the impact.

It follows that a national authority, in ascertaining whether a project must be made subject to an environmental impact assessment, must examine its potential impact jointly with other

projects. Moreover, where nothing is specified, **that obligation is not restricted only to projects of the same kind**. As observed by the Advocate General in point 71 of her Opinion, the preliminary assessment must also consider whether, on account of the effects of other projects, the environmental effects of the exploratory drillings may be greater than they would be in their absence.

(*Marktgemeinde Straßwalchen and Others*, C-531/13, ECLI:EU:C:2015:79, paragraphs 43-45, C-141/14, *Commission v Bulgaria (Kaliakra)*, paragraphs 95-96)

Content of the screening decisions[1]

A decision by which the national competent authority takes the view that a project's characteristics do not require it to be subjected to an assessment of its effects on the environment **must contain or be accompanied** by all the **information** that makes it possible to check that it is based on **adequate screening**, carried out in accordance with the requirements of the EIA Directive.

(Commission v. Italian Republic, C-87/02, paragraph 49)

Article 4 of the EIA Directive must be interpreted as **not requiring** that a determination, that it is unnecessary to subject a project falling within Annex II to that directive to an environmental impact assessment, should **itself contain the reasons** for the competent authority's decision that the latter was unnecessary. However, if an interested party so requests, the competent administrative authority is obliged to communicate to him the reasons for the determination or the relevant information and documents. If a negative screening decision of a Member State states the reasons on which it is based, that **determination is sufficiently reasoned** where the reasons which it contains (added to factors which have already been brought to the attention of interested parties, and supplemented by any necessary additional information that the competent national administration is required to provide to those interested parties at their request) can enable the interested parties to decide whether to appeal against that decision.

(*Mellor,* C-75/08, ECLI:EU:C:2009:279, paragraphs 61, 66)

[1] Following the amendments introduced by Directive 2014/52/EU the screening decisions have to state the main reasons for requiring (or not) an environmental impact assessment with a reference to the relevant criteria listed in Annex III.

Article 5	*Article 5 as amended by Directive 2014/52/EU*
1. In the case of projects which, pursuant to Article 4, are to be made subject to an environmental impact assessment in accordance with this Article and Articles 6 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:	***1. Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report. The information to be provided by the developer shall include at least:***
(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;	***(a) a description of the project comprising information on the site, design, size and other relevant features of the project;***
(b) the Member States consider that a developer may reasonably be required to compile this information having regard, inter alia, to current knowledge and methods of assessment.	***(b) a description of the likely significant effects of the project on the environment;***
2. Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6 (1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.	***(c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;***
Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.	***(d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;***
3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:	***(e) a non-technical summary of the information referred to in points (a) to (d); and***
(a) a description of the project comprising information on the site, design and size of the project;	***(f) any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.***
(b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;	***Where an opinion is issued pursuant to paragraph 2, the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. The developer shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report.***
(c) the data required to identify and assess the main effects which the project is likely to have on the environment;	***2. Where requested by the developer, the competent authority, taking into account the information provided by the developer in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment, shall issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report in accordance with paragraph 1 of this Article. The competent authority***
(d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects;	

(e) a non-technical summary of the information referred to in points (a) to (d).	***shall consult the authorities referred to in Article 6(1) before it gives its opinion.***
4. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, shall make this information available to the developer.	***Member States may also require the competent authorities to give an opinion as referred to in the first subparagraph, irrespective of whether the developer so requests.***
	3. In order to ensure the completeness and quality of the environmental impact assessment report:
	(a) the developer shall ensure that the environmental impact assessment report is prepared by competent experts;
	(b) the competent authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental impact assessment report; and
	(c) where necessary, the competent authority shall seek from the developer supplementary information, in accordance with Annex IV, which is directly relevant to reaching the reasoned conclusion on the significant effects of the project on the environment.
	4. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, make this information available to the developer.

According to the case-law of the Court:

Overall environmental assessment – information to be provided by the developer

The EIA Directive adopts an **overall assessment** of the effects of projects or the alteration thereof on the environment. It would be simplistic and contrary to that approach to take account, when assessing the environmental impact of a project or of its modification, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable to result from the use and exploitation of the end product of those works.

(*Abraham and Others*, C-2/07, EU:C:2008:133, paragraphs 42-43; *Ecologistas en Acción-CODA*, C-142/07, EU:C:2008:445, paragraph 39)

The EIA Directive adopts an **overall assessment of the effects** of projects on the environment, irrespective of whether the project might be **transboundary** in nature.

(*Umweltanwalt von Kärnten*, C-205/08, ECLI:EU:C:2009:767, paragraph 51)

As observed by the Advocate General in points 84 and 85 of her Opinion, it follows from those provisions that **the obligation** imposed does **not extend to all effects on all species present, but is restricted to the significant effects, a concept** to be interpreted in the light

of Article 1(1) and Article 2(1) of the EIA Directive, **according to which projects that are likely to have significant effects on the environment must be subject to an assessment of their effects.**

In the light of the foregoing, the answer to the fourth question is that Article5 (1) and (3) of, and Annex IV to, the EIA Directive must be interpreted as meaning that **the developer is obliged to supply information that expressly addresses the significant effects of its project** on all species identified in the statement that is supplied pursuant to those provisions.

(*Holohan and Others,* C-461/17, EU:C:2018:883, paragraphs 58-59)

En outre, il ressort de l'article 5, paragraphe 1, de la directive 2011/92 que les États membres doivent adopter les mesures nécessaires pour s'assurer que le maître d'ouvrage fournit, sous une forme appropriée, les informations spécifiées à l'annexe IV de cette directive, dans la mesure où ces informations sont pertinentes pour évaluer les incidences d'un projet donné, et dans la limite de ce qui peut être raisonnablement exigé d'un opérateur privé. Ces informations comportent, conformément au point 4 de cette annexe, une description des effets directs, indirects, secondaires, cumulatifs, à court, à moyen et à long terme, permanents et temporaires, positifs et négatifs du projet qui résultent, notamment, de l'utilisation des ressources naturelles et de l'émission de polluants.

L'ensemble des informations ainsi recueillies doivent, conformément à l'article 6, paragraphe 3, de la directive 2011/92, être mises à la disposition du public concerné dans des délais raisonnables.

Eu égard aux considérations qui précèdent, il y a lieu de conclure que, en vertu de la directive 2011/92 et, en particulier, de ses articles 3, 5 et 6, les informations mises à la disposition du public à des fins de consultation avant l'autorisation d'un projet doivent comporter les données nécessaires à l'évaluation des incidences de ce dernier sur l'eau au regard des critères et obligations prévus, notamment, à l'article 4, paragraphe 1, de la directive 2000/60.

Par ailleurs, s'il ne saurait être déduit des articles 5 et 6 de la directive 2011/92 que les données permettant d'évaluer les incidences d'un projet sur l'eau doivent nécessairement figurer dans un seul document, tel un rapport ou une étude technique, le public concerné doit, ainsi que l'exige l'article 6, paragraphes 4 et 6, de cette directive, avoir la possibilité effective de participer au processus décisionnel et de se préparer dûment à cette fin.

Partant, il importe que les éléments du dossier mis à la disposition du public permettent à ce dernier d'obtenir une vue précise de l'impact du projet en cause sur l'état des masses d'eau concernées, afin qu'il puisse vérifier le respect des obligations qui découlent, notamment, de l'article 4 de la directive 2000/60. En particulier, les données fournies doivent être de nature à faire apparaître si, eu égard aux critères établis par cette directive, le projet en cause est susceptible d'aboutir à une détérioration d'une masse d'eau.

En tout état de cause, un dossier incomplet ou des données réparties, sans cohérence, dans une multitude de documents ne sont pas de nature à permettre au public concerné de participer utilement au processus décisionnel et, dès lors, ne remplissent pas les exigences qui découlent de l'article 6 de la directive 2011/92.

En outre, conformément à l'article 5, paragraphe 3, sous e), de cette directive, il incombe au maître d'ouvrage d'établir un « résumé non technique » des informations visées aux points a) à d) de ce paragraphe 3, ce qui inclut les données nécessaires pour identifier et évaluer les effets principaux que le projet est susceptible d'avoir sur l'environnement. Ce résumé doit, en vertu de l'article 6, paragraphe 3, sous a), de ladite directive, également être mis à la disposition du public.

En l'occurrence, il appartient à la juridiction de renvoi de vérifier si le dossier auquel le public avait accès avant l'autorisation du projet en cause remplit l'ensemble des exigences qui découlent de l'article 6, paragraphe 3, de la directive 2011/92, lu en combinaison avec l'article 5, paragraphes 1 et 3, de cette directive, telles que précisées par le présent arrêt.

Au vu de l'ensemble des considérations qui précèdent, il convient de répondre à la deuxième question posée que :

l'article 4 de la directive 2000/60 doit être interprété en ce sens qu'il s'oppose à ce que le contrôle par l'autorité compétente du respect des obligations qu'il prévoit, au nombre desquelles celle de prévenir la détérioration de l'état des masses d'eau, tant de surface que souterraines, concernées par un projet, puisse n'intervenir qu'après qu'il a été autorisé, et

l'article 6 de la directive 2011/92 doit être interprété en ce sens que les informations à mettre à la disposition du public au cours de la procédure d'autorisation d'un projet doivent inclure les données nécessaires afin d'évaluer les incidences de ce dernier sur l'eau au regard des critères et obligations prévus, notamment, à l'article 4, paragraphe 1, de la directive 2000/60.

(*IL and Others v Land Nordrhein-Westfalen*, Case C-535/18, ECLI:EU:C:2020:391, paragraphs 82-90)

Alternatives studied by the developer

In particular, Article5(3)(d) of the EIA Directive states that the developer must provide at least 'an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects'.

It is stated explicitly in the wording of that provision that the developer is obliged to supply to the competent authorities an outline of the main alternatives studied by him and an indication of the main reasons for his choice, taking into account the environmental effects.

In that regard, first, it must be observed that the EIA Directive contains no definition of the concept of 'main alternatives', as referred to in Article 5(3)(d) of the EIA Directive. The Court must, however, hold, as did the Advocate General in points 94 and 95 of her Opinion, that **the decisive factor, in order to identify those alternatives that should be regarded as 'main' alternatives, is whether or not those alternatives influence the environmental effects of the project**. In that regard, the time when an alternative is rejected by the developer is of no relevance.

Further, since, according to Article 5(3)(d) of the EIA Directive, only an outline of those alternatives must be supplied, it must be held that that provision does not require the main alternatives studied to be subject to an impact assessment equivalent to that of the approved project. That said, that provision requires the developer to indicate the reasons for his choice, taking into account at least the environmental effects. One of the aims of imposing on the

developer the obligation to outline the main alternatives is that reasons for his choice should be stated.

That obligation on the developer ensures that, thereafter, the competent authority is able to carry out a comprehensive environmental impact assessment that catalogues, describes and assesses, in an appropriate manner, the effects of the approved project on the environment, in accordance with Article 3 of the EIA Directive.

Last, it must be observed that the outline referred to in that provision must be supplied with respect to all the main alternatives that were studied by the developer, whether those were initially envisaged by him or by the competent authority or whether they were recommended by some stakeholders.

In the light of the foregoing, the answer to the fifth, sixth and seventh questions is that **Article 5(3)(d) of the EIA Directive must be interpreted** as meaning that **the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage.**

(*Holohan and Others*, C-461/17, EU:C:2018:883, paragraphs 63-69)

Indirect and cumulative environmental effects to be assessed

As regards the content of the assessment of environmental effects, Article 3 of Directive 85/337 lays down that it must include a description of the **direct and indirect** environmental impact of a project (see Case C-322/04 Commission v Spain [2006], paragraph 33; Case C-2/07 Abraham and Others [2008] ECR I-1197, paragraphs 43-45 and Ecologistas en Acción-CODA, paragraph 39). Besides, Annex IV to the Directive includes a description of the **cumulative environmental** impact of the project in the information to be provided by the developer pursuant to Article 5(1). Likewise, when determining if a Member State must, pursuant to Article 4(2) of the Directive, subject a project listed in Annex II to an assessment because it is likely to have significant effects on the environment within the meaning of Article 2(1) of the Directive, Annex III to the Directive specifies that cumulation with other projects is one of the selection criteria.

The Commission's allegation concerning the absence of concrete elements concerning the criteria used for evaluating the indirect impact of the doubling of section 1 in the environmental impact declaration of 2 April 1998 has not been seriously contradicted by the Kingdom of Spain. Indeed, the latter merely alleged that the impact declaration in question required that the necessary measures be taken to prevent any environmental impact, even when induced.

(*Commission* v *Spain*, C-560/08, EU:C:2011:835, paragraphs 98-99)

Article 6	*Article 6 as amended by Directive 2014/52/EU*
1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To that end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.	***1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent, taking into account, where appropriate, the cases referred to in Article 8a(3). To that end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.***
2. The public shall be informed, whether by public notices or by other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:	***2. In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed electronically and by public notices or by other appropriate means, of the following matters early in the environmental decision- making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:***
(a) the request for development consent;	***(a) the request for development consent;***
(b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;	***(b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;***
(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;	***(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;***
(d) the nature of possible decisions or, where there is one, the draft decision;	***(d) the nature of possible decisions or, where there is one, the draft decision;***
(e) an indication of the availability of the information gathered pursuant to Article 5;	***(e) an indication of the availability of the information gathered pursuant to Article 5;***
(f) an indication of the times and places at which, and the means by which, the relevant information will be made available;	***(f) an indication of the times and places at which, and the means by which, the relevant information will be made available;***
(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.	***(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.***
3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:	***3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:***
(a) any information gathered pursuant to Article 5;	***(a) any information gathered pursuant to Article 5;***
(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned	

is informed in accordance with paragraph 2 of this Article;

(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ([1]), information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

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

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

6. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.

(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;

(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information[2], information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

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

5. The detailed arrangements for informing the public, for example by bill posting within a certain radius or publication in local newspapers, and for consulting the public concerned, for example by written submissions or by way of a public inquiry, shall be determined by the Member States. Member States shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.

6. Reasonable time-frames for the different phases shall be provided for, allowing sufficient time for:

(a) informing the authorities referred to in paragraph 1 and the public; and

(b) the authorities referred to in paragraph 1 and the public concerned to prepare and participate effectively in the environmental decision- making, subject to the provisions of this Article.

7. The time-frames for consulting the public concerned on the environmental impact assessment report referred to in Article 5(1) shall not be shorter than 30 days.

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[1] OJ L 41, 14.2.2003, p. 26.

[2] OJ L 41, 14.2.2003, p. 26.

According to the case-law of the Court:

Timing of the consultations – status of the opinions

While Article 6(1) and (2) of the EIA Directive require Member States to hold a consultation procedure, in which the authorities likely to be concerned by the project and the public are invited, respectively, to give their opinion, the fact remains that such a procedure is carried out, necessarily, before consent is granted. Such **opinions** – and further opinions which Member States may stipulate – **form part of the consent process** and are aimed at assisting the competent body's decision on granting or refusing development consent. They are therefore **preparatory in nature and not, generally, subject to appeal.**

(*Commission v. Spain*, C-332/04, ECLI:EU:C:2006:180, paragraph 54)

Participation in the decision-making procedure and access to justice

Article 6(4) of Directive 85/337 guarantees the public concerned effective participation in environmental decision-making procedures as regards projects likely to have significant effects on the environment. Participation in the decision-making procedure has no effect on the conditions for access to the review procedure. Participation in an environmental decision-making procedure under the conditions laid down in Articles 2(2) and 6(4) of Directive 85/337 is separate and has a different purpose from a legal review, since the latter may, where appropriate, be directed at a decision adopted at the end of that procedure.

(*Djurgården*, C-263/08, ECLI:EU:C:2009:631, paragraphs 36 and 38)

Setting conditions on public participation[3]

The levying of an **administrative fee** is not in itself incompatible with the purpose of the EIA Directive. It is apparent from the sixth recital in the preamble to the EIA Directive, as it is from **Article 6(2)** of that directive, that one of the directive's objectives is to afford the members of the public concerned the opportunity to express their opinion in the course of development consent procedures for projects likely to have significant effects on the environment. In that regard, **Article 6(3)** allows Member States to place certain conditions on participation by members of the public concerned by the project. Thus, under that provision, the Member States may determine the detailed arrangements for public information and consultation and, in particular, determine the public concerned and specify how that public may be informed and consulted.

A fee cannot, however, be fixed at a level which would be such as to prevent the directive from being fully effective, in accordance with the objective pursued by it. This would be the

[3] This ruling is based on Directive 85/337/EEC, as amended by directive 97/11/EC and has not taken into account the modifications of directive 2003/35/EC. Furthermore, the ruling could not take into account the accession of the EU to the Aarhus Convention.

case if, due to its amount, a fee were liable to constitute an **obstacle to the exercise of the rights of participation conferred by Article 6** of the EIA Directive. The amount of the fees at issue here, namely 20€ in procedures before local authorities and 45€ at the Board level, cannot be regarded as constituting such an obstacle.

(*Commission v. Ireland*, C-216/05, ECLI:EU:C:2006:706,, paragraphs 37-38, 42-45)

Arrangements about informing the public and consulting the public concerned

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

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

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

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

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

(*Flausch and Others*, C-280/18, ECLI:EU:C:2019:928, paragraphs 26 ; 31-32 ; 42 and 44).

Article 7	*Article 7 as amended by Directive 2014/52/EU*
1. Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:	***1. Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:***
(a) a description of the project, together with any available information on its possible transboundary impact;	***(a) a description of the project, together with any available information on its possible transboundary impact;***
(b) information on the nature of the decision which may be taken,	***(b) information on the nature of the decision which may be taken.***
The Member State in whose territory the project is intended to be carried out shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.	***The Member State in whose territory the project is intended to be carried out shall give the other Member State a reasonable time in which to indicate whether it wishes to participate in the environmental decision-making procedures referred to in Article 2(2), and may include the information referred to in paragraph 2 of this Article.***
2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information required to be given pursuant to Article 6(2) and made available pursuant to points (a) and (b) of Article 6(3).	***2. If a Member State which receives information pursuant to paragraph 1 indicates that it intends to participate in the environmental decision-making procedures referred to in Article 2(2), the Member State in whose territory the project is intended to be carried out shall, if it has not already done so, send to the affected Member State the information required to be given pursuant to Article 6(2) and made available pursuant to points (a) and (b) of Article 6(3).***
3. The Member States concerned, each insofar as it is concerned, shall also:	***3. The Member States concerned, each insofar as it is concerned, shall also:***
(a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6 (1) and the public concerned in the territory of the Member State likely to be significantly affected; and	***(a) arrange for the information referred to in paragraphs 1 and 2 to be made available, within a reasonable time, to the authorities referred to in Article 6(1) and the public concerned in the territory of the Member State likely to be significantly affected; and***
(b) ensure that the authorities referred to in Article 6(1) and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.	***(b) ensure that the authorities referred to in Article 6(1) and the public concerned are given an opportunity, before development consent for the project is granted, to forward their opinion within a reasonable time on the information supplied to the competent authority in the Member State in whose territory the project is intended to be carried out.***
4. The Member States concerned shall enter into consultations regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time frame	***4. The Member States concerned shall enter into consultations regarding, inter alia, the potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects and shall agree on a reasonable time- frame***

for the duration of the consultation period.	***for the duration of the consultation period.***
5. The detailed arrangements for implementing this Article may be determined by the Member States concerned and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.	***Such consultations may be conducted through an appropriate joint body.*** ***5. The detailed arrangements for implementing paragraphs 1 to 4 of this Article, including the establishment of time-frames for consultations, shall be determined by the Member States concerned, on the basis of the arrangements and time-frames referred to in Article 6(5) to (7), and shall be such as to enable the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedures referred to in Article 2(2) for the project.***

According to the case-law of the Court:

Obligation of transposing Article 7

The Kingdom of Belgium claims that the Walloon Region was not required to transpose Article 7(1)(b) of Directive 85/337, because that provision does not create rights for individuals but only an obligation for Member States to cooperate with each other. However, it follows from paragraphs 49-55 of the Judgment of 2 May 1996, Commission v Belgium (Case C-133/94, ECR I-2323), that Articles 7 and 9 of the Directive must be transposed. Similarly, it follows from paragraphs 61-66 of the Judgment of 16 July 2009, Commission v Ireland (Case C-427/07, ECR I-6277) that Article 7(1) of the Directive must be fully transposed. Therefore the Kingdom of Belgium's arguments cannot be accepted.

(*Commission v Belgium*, C-435/09, ECLI:EU:C:2011:176 paragraph 92)

Transboundary projects

Projects listed in **Annex I** to the EIA Directive which **extend to the territory of a number of Member States** cannot be exempted from the application of the Directive solely on the ground that it does not contain any express provision in regard to them. Such an exemption would seriously interfere with the objective of the EIA Directive. Its effectiveness would be seriously compromised if the competent authorities of a Member State could, when deciding whether a project must be the subject of an environmental impact assessment, leave out of consideration that part of the project which is located in another Member State. That finding is strengthened by the terms of Article 7 of the EIA Directive, which provide for inter-State cooperation when a project is likely to have significant effects on the environment in another Member State.

(*Umweltanwalt von Kärnten,* C-205/08, ECLI:EU:C:2009:767, paragraphs 54-56, *Marktgemeinde Straßwalchen and Others* ,C-531/13, ECLI:EU:C:2015:79, paragraph 46)

Furthermore, given that the Doel 1 and Doel 2 power stations are **located close to the border** of the Kingdom of Belgium and the Kingdom of the Netherlands, **it is indisputable that the**

project could also have significant effects on the environment in the latter Member State, within the meaning of **Article7(1)** of that directive.

(Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 76-81)

Overall environmental assessment for projects which extend to the territory of a number of Member States

The EIA Directive adopts an **overall assessment of the effects** of projects on the environment, irrespective of whether the project might be **transboundary** in nature.

(*Umweltanwalt von Kärnten,* C-205/08, ECLI:EU:C:2009:767, paragraph 51)

Projects listed in Annex I to the EIA Directive which **extend to the territory of a number of Member States** cannot be exempted from the application of the Directive solely on the ground that it does not contain any express provision in regard to them. Such an exemption would seriously interfere with the objective of the EIA Directive. Its effectiveness would be seriously compromised if the competent authorities of a Member State could, when deciding whether a project must be the subject of an environmental impact assessment, leave out of consideration that part of the project which is located in another Member State. That finding is strengthened by the terms of **Article 7** of the EIA Directive, which provide for inter-State cooperation when a project is likely to have significant effects on the environment in another Member State.

(*Umweltanwalt von Kärnten,* C-205/08, ECLI:EU:C:2009:767, paragraphs 54-55)

Article 8	*Article 8 as revised by Directive 2014/52/EU*
The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 shall be taken into consideration in the development consent procedure.	***The results of consultations and the information gathered pursuant to Articles 5 to 7 shall be duly taken into account in the development consent procedure.***

According to the case-law of the Court:

Difference between Articles 3 and 8

Admittedly, Article 8 of Directive 85/337 provides that the results of the consultations and the information gathered pursuant to Articles 5 to 7 must be taken into consideration in the development consent procedure.

However, that obligation to take into consideration, at the conclusion of the decision-making process, information gathered by the competent environmental authority must not be confused with the **assessment obligation laid down in Article 3** of Directive 85/337. Indeed, that assessment, which must be carried out before the decision-making process (Case C-508/03 Commission v United Kingdom [2006] ECR I-3969, paragraph 103), involves an **examination of the substance of the information gathered as well as a consideration of the expediency of supplementing it**, if appropriate, with additional data. That competent environmental authority must thus undertake both an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effects of the project concerned on the factors set out in the first three indents of Article 3 and the interaction between those factors.

It follows therefore both from the wording of the provisions at issue of Directive 85/337 and from its general scheme that Article 3 is a fundamental provision. The transposition of Articles 4 to 11 alone cannot be regarded as automatically transposing Article 3.

As regards section 173 of the PDA, according to which the planning authority, where it receives an application for planning permission accompanied by an environmental impact statement, must take that statement into account as well as any additional information provided to it, it is clear from the very wording of that article that it is confined to laying down an obligation similar to that provided for in Article 8 of Directive 85/337, namely that **of taking the results of the consultations and the information gathered for the purposes of the consent procedure into consideration**. That obligation does not correspond to the broader one, imposed by Article 3 of Directive 85/337 on the competent environmental authority, to carry out itself an environmental impact assessment in the light of the factors set out in that provision.

(*Commission v. Ireland*, C-50/09, ECLI:EU:C:2011:109, paragraphs 39-41, 44)

Article 8a introduced by Directive 2014/52/EU

1. The decision to grant development consent shall incorporate at least the following information:

(a) the reasoned conclusion referred to in Article 1(2)(g)(iv);

(b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.

2. The decision to refuse development consent shall state the main reasons for the refusal.

3. In the event Member States make use of the procedures referred to in Article 2(2) other than the procedures for development consent, the requirements of paragraphs 1 and 2 of this Article, as appropriate, shall be deemed to be fulfilled when any decision issued in the context of those procedures contains the information referred to in those paragraphs and there are mechanisms in place which enable the fulfilment of the requirements of paragraph 6 of this Article.

4. In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.

The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment.

Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.

5. Member States shall ensure that the competent authority takes any of the decisions referred to in paragraphs 1 to 3 within a reasonable period of time.

6. The competent authority shall be satisfied that the reasoned conclusion referred to in Article 1(2)(g)(iv), or any of the decisions referred to in paragraph 3 of this Article, is still up to date when taking a decision to grant development consent. To that effect, Member States may set time-frames for the validity of the reasoned conclusion referred to in Article 1(2)(g)(iv) or any of the decisions referred to in paragraph 3 of this Article.

Article 9	*Article 9 as amended by Directive 2014/52/EU*
1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:	***1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall promptly inform the public and the authorities referred to in Article 6(1) thereof, in accordance with the national procedures, and shall ensure that the following information is available to the public and to the authorities referred to in Article 6(1), taking into account, where appropriate, the cases referred to in Article 8a(3):***
(a) the content of the decision and any conditions attached thereto;	***(a) the content of the decision and any conditions attached thereto as referred to in Article 8a(1) and (2);***
(b) having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process;	***(b) the main reasons and considerations on which the decision is based, including information about the public participation process. This also includes the summary of the results of the consultations and the information gathered pursuant to Articles 5 to 7 and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Member State referred to in Article 7.***
(c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.	
2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article.	***2. The competent authority or authorities shall inform any Member State which has been consulted pursuant to Article 7, forwarding to it the information referred to in paragraph 1 of this Article.***
The consulted Member States shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory.	***The consulted Member States shall ensure that that information is made available in an appropriate manner to the public concerned in their own territory.***

According to the case-law of the Court:

Publication of the decision to grant or refuse development consent

Under Article 9 of the EIA Directive the public is to be informed once the decision to grant or refuse development consent has been taken. The purpose of issuing this information is not merely to inform the public but also to enable persons who consider themselves harmed by the project to exercise their right of appeal within the appointed deadlines.

It follows from the foregoing that the publication by a Member State of an environmental impact statement issued by a competent administrative authority in environmental matters, an action not required under Community law, is no substitute for the obligation, under Article 9

of Directive 85/337/EEC as amended, to inform the public of the granting or refusal of consent to proceed with a project under Article 1(2) of the Directive.

This interpretation is supported by the purpose of Directive 85/337/EEC, in its original version, which is, according to the first recital, to prevent the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects. This purpose was confirmed by Directive 97/11/EC, which recalls, in its second recital, that, pursuant to Article 130r(2) of the EC Treaty (Article 174(2) in the amended Treaty), Community policy on the environment is based on the precautionary principle and the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

By imposing, in Article 9, the obligation on Member States to inform the public when a decision granting or refusing development consent is adopted, the amended Directive 85/337/EEC is intended to involve the public concerned in supervising the implementation of these principles. Informing the public only of the content of the opinion which is to be taken into account by the competent authority before adopting its decision is a less effective way of involving the public in supervision than informing the public of the final decision which concludes the consent procedure.

Inasmuch as national law does not require the publication of the decision to grant or refuse consent for the project, Article 9(1) of Directive 85/337/EEC as amended has not been correctly implemented.

(*Commission v. Spain*, C-332/04, ECLI:EU:C:2006:180, paragraphs 55-59)

Reasons for the competent authority's decision[1]

Article 6(9) of the Aarhus Convention and Article 9(1) of Directive 85/337 must be interpreted as not requiring that the decision should itself contain the reasons for the competent authority's decision that it was necessary. However, if an interested party so requests, the competent authority is obliged to communicate to him the reasons for that decision or the relevant information and documents in response to the request made.

(*Solway and Others*, C-182/10, EU:C:2012:82, paragraph 64)

[1] Following the amendments introduced by Directive 2014/52/EU the decision to grant or refuse development consent shall include the main reasons on which the decision is based (see also Art. 8a).

Article 9a introduced by Directive 2014/52/EU

Member States shall ensure that the competent authority or authorities perform the duties arising from this Directive in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.

Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.

Article 10	*Article 10 as amended by Directive 2014/52/EU*
The provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national laws, regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest. ***Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.***	***Without prejudice to Directive 2003/4/EC, the provisions of this Directive shall not affect the obligation on the competent authorities to respect the limitations imposed by national laws, regulations and administrative provisions, and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.*** ***Where Article 7 applies, the transmission of information to another Member State and the receipt of information by another Member State shall be subject to the limitations in force in the Member State in which the project is proposed.***

Article 10a introduced by Directive 2014/52/EU

Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive.

Article 11

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively;

(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

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

3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2), shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.

4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. In order to further the effectiveness of the provisions of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

According to the case-law of the Court:

Direct effect of Article 9(3) of the Aarhus Convention

A provision in an agreement concluded by the European Union with a non-member country must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see, in particular, Case C-265/03 Simutenkov [2005] ECR I-2579, paragraph 21, and Case C-372/06 Asda Stores [2007] ECR I-11223, paragraph 82).

It must be held that the provisions of Article 9(3) of the Aarhus Convention **do not contain any clear and precise obligation capable of directly regulating the legal position of individuals**. Since only members of the public who meet the criteria, if any, laid down by national law are entitled to exercise the rights provided for in Article 9(3), that provision is subject, in its implementation or effects, to the adoption of a subsequent measure.

However, it must be observed that those provisions, although drafted in broad terms, are intended to ensure effective environmental protection.

In the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, in this case the Habitats Directive, since the Member States are responsible for ensuring that those rights are effectively protected in each case (see, in particular, Case C-268/06 Impact [2008] ECR I-2483, paragraphs 44 and 45).

On that basis, as is apparent from well-established case-law, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness) (Impact, paragraph 46 and the case-law cited).

Therefore, if the **effective protection of EU environmental law is not to be undermined**, it is inconceivable that Article 9(3) of the Aarhus Convention be interpreted in such a way as to make it in practice impossible or excessively difficult to exercise rights conferred by EU law.

It follows that, in so far as concerns a species protected by EU law, and in particular the Habitats Directive, it is for the national court, **in order to ensure effective judicial protection in the fields covered by EU environmental law**, to interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention.

Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 **does not have direct effect** in European Union law. It is, **however,** for **the referring court to interpret, to the fullest extent possible**, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings **in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the rights conferred by European Union law**, in order to enable an environmental protection organisation, such as the *Lesoochranárske zoskupenie*, to challenge before a court a decision taken following administrative proceedings liable to be contrary to European Union environmental law.

(*Lesoochranárske zoskupenie,* C-240/09, EU:C:2011:125, paragraphs 44-50 and 54)

Temporal application of Article 11

In those circumstances, even though the Member States, by virtue of their procedural autonomy and subject to observance of the principles of equivalence and effectiveness, enjoy discretion in implementing Article 10a [11 as per codification] of Directive 85/337 (Case C-182/10 Solvay and Others [2012] ECR, paragraph 47), they **may not, for all that, restrict the application of that provision exclusively to administrative development consent procedures initiated after 25 June 2005 alone**.

It follows from the foregoing considerations that the answer to Question 1 must be that, by providing that it was to be transposed into national law by 25 June 2005 at the latest,

Directive 2003/35, which inserted Article 10a into Directive 85/337, is to be interpreted as meaning that the rules of national law adopted in order to transpose that article into the national legal order ought **also to apply to administrative development consent procedures initiated before 25 June 2005 when they resulted in the granting of development consent after that date.**

(*Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraphs 30-31; *Klohn*, C-167/17, ECLI:EU:C:2018:833, paragraph 42)

Participation in an environmental decision-making procedure as a condition to have access to a review procedure

Article 10a [11 as per codification] of the EIA, taking account of the amendments introduced by Directive 2003/35 which is intended to implement the **Aarhus Convention**, provides for members of the public concerned who fulfil certain conditions to have access to a review procedure before a court of law or another independent body in order to challenge the substantive or procedural legality of decisions, acts or omissions which fall within its scope. Thus, according to the wording of that provision, persons who are members of the public concerned and either have sufficient interest, or if national law so requires, maintain that one of the projects covered by Directive 85/337 impairs their rights, are to have access to a review procedure. It is also apparent therefrom that any non-governmental organisations which promote environmental protection and meet the conditions which may be required by national law satisfy the criteria, with respect to the public concerned who may bring an appeal, laid down in Article 1(2) of Directive 85/337 read in conjunction with Article 10a.

The right of access to a review procedure within the meaning of Article 10a of Directive 85/337 does not depend on whether the authority which adopted the decision or act at issue is an administrative body or a court of law. Second, **participation in an environmental decision-making procedure** under the conditions laid down in Articles 2(2) and 6(4) of Directive 85/337 **is separate and has a different purpose from a legal review**, since the latter may, where appropriate, be directed at a decision adopted at the end of that procedure. Therefore, participation in the decision-making procedure has no effect on the conditions for access to the review procedure.

Members of the "**public concerned**" within the meaning of Article 1(2) and **10a [**11 as per codification] of the EIA Directive must be able to have **access to a review procedure** to challenge the decision by which a body attached to a court of law of a Member State has given a ruling on a request for development consent, regardless of the role they might have played in the examination of that request by taking part in the procedure before that body and by expressing their views.

(*Djurgården*, C-263/08, ECLI:EU:C:2009:631, paragraphs 32-39)

No restriction of pleas

As regards the first part of the second complaint concerning the restriction of the review by the courts of administrative decisions to those situations alone where there is a total absence of the mandatory environmental impact assessment or pre-assessment, it must be noted that the Court recalled, in paragraph 36 of the judgment in Gemeinde Altrip and Others (C-72/12,

EU:C:2013:712), that it had already ruled, in paragraph 37 of its judgment in Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen (C-115/09, EU:C:2011:289), that **Article 11 of Directive 2011/92 has in no way restricted the pleas that may be put forward** in support of the actions covered by that provision.

Furthermore, in paragraph 37 of that judgment, the Court held that the provisions of national law transposing Article 11 of Directive 2011/92 **may not limit their applicability solely to cases in which the legality of a decision is challenged on the ground that no environmental impact assessment has been carried out**. Excluding that applicability in cases in which, having been carried out, an environmental impact assessment is found to be vitiated by defects — even serious defects — would render largely nugatory the provisions of Directive 2011/92 relating to public participation. Such exclusion would therefore run counter to the objective of ensuring wide access to courts of law as mentioned in Article 11 of that directive.

(*Commission v Germany*, C-137/14, ECLI:EU:C:2015:683, paragraphs 47-48; *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraphs 36-37)

Period for bringing proceedings

First of all, it should be pointed out that Article 11 of the EIA Directive, to which this question relates in part, has been interpreted as meaning that its scope is limited to the aspects of a dispute which concern the right of the public concerned to participate in decision-making in accordance with the detailed rules laid down by that directive. On the other hand, challenges based on any other rules set out in that directive and, a fortiori, on any other legislation, whether of the European Union or the Member States, do not fall within that article (see, to that effect, judgment of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy*, C-470/16, EU:C:2018:185, paragraphs 36 and 39).

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

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

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

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

As to time limits for bringing proceedings, the Court has recognised **that it is compatible with the principle of effectiveness to lay down reasonable time limits for bringing proceedings in the interests of legal certainty which protects both the individual and the**

authorities concerned, even if the expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought (see, to that effect, judgment of 20 December 2017, *Caterpillar Financial Services*, C-500/16, EU:C:2017:996, paragraph 42).

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

It would, on the other hand, be **incompatible with the principle of effectiveness** to rely on a period against a person **if the conduct of the national authorities in conjunction with the existence of the period had the effect of totally depriving him of the opportunity to enforce his rights before the national courts, that is to say, if the authorities, by their conduct, were responsible for the delay in the application** (see, to that effect, judgment of 19 May 2011, *Iaia and Others*, C-452/09, EU:C:2011:323, paragraph 21).

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

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

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

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

(Flausch and Others, C-280/18, ECLI:EU:C:2019:928, paragraphs 46-49; 51; 54-60).

Restriction of pleas v legal certainty and efficiency of legal proceedings

The Court has previously held that 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 (see, to that effect, judgment in Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, C-115/09, EU:C:2011:289, paragraph 37). That consideration meets the objective pursued by that provision of ensuring broad access to justice in the area of environmental protection.

Such a restriction laid on the applicant as to the nature of the pleas in law which he is permitted to raise before the court reviewing the legality of the administrative decision which concerns him **cannot be justified by considerations of compliance with the principle of legal certainty**. It is in no way established that a full review by the courts of the merits of that decision would undermine that principle.

As regards the argument concerning the efficiency of administrative procedures, although it is true that the fact of raising a plea in law for the first time in legal proceedings may, in certain cases, hinder the smooth running of that procedure, it is sufficient to recall that the very objective pursued by Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 is not only to ensure that the litigant has the broadest possible access to review by the courts but also to ensure that that review covers both the substantive and procedural legality of the contested decision in its entirety.

None the less, **the national legislature may lay down specific procedural rules, such as the inadmissibility of an argument submitted abusively or in bad faith, which constitute appropriate mechanisms for ensuring the efficiency of the legal proceedings**.

(*Commission v Germany*, C-137/14, ECLI:EU:C:2015:683, paragraphs 77, 79-81)

Cost of the review procedure

It is clear from **Article 10a** [11 as per codification] of the EIA Directive that the procedures **must not be prohibitively expensive**. That covers only the costs arising from participation in such procedures. Such a condition does not prevent the courts from making an order for costs provided that the amount of those costs complies with that requirement. A national practice under which the courts may decline to order an unsuccessful party to pay the costs and can, in addition, order expenditure incurred by the unsuccessful party to be borne by the other party is merely a discretionary practice on the part of the courts. Such a practice on the part of the court which cannot, by definition, be certain, cannot be regarded as valid implementation of the obligations arising from those articles.

(*Commission v Ireland*, C-427/07, EU:C:2009:457, paragraphs 92-95)

As the Court has already held, it should be recalled, first of all, that the requirement, under the fifth paragraph of Article 10a of Directive 85/337 and the fifth paragraph of Article 15a of Directive 96/61, that judicial proceedings should not be prohibitively expensive does not prevent the national courts from making an order for costs (see, to that effect, Case C-427/07 Commission v Ireland [2009] ECR I-6277, paragraph 92).

It follows from the foregoing that the requirement, under the fifth paragraph of Article 10a of Directive 85/337 and the fifth paragraph of Article 15a of Directive 96/61, that judicial proceedings should not be prohibitively expensive means that the **persons covered by those provisions should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of those articles by reason of the financial burden**

that might arise as a result. Where a national court is called upon to make an order for costs against a member of the public who is an unsuccessful claimant in an environmental dispute or, more generally, where it is required – as courts in the United Kingdom may be – to state its views, at an earlier stage of the proceedings, on a possible capping of the costs for which the unsuccessful party may be liable, it must satisfy itself that that requirement has been complied with, taking into account both the interest of the person wishing to defend his rights and the public interest in the protection of the environment.

(*Edwards and Pallikaropoulos,* C-260/11, EU:C:2013:221, paragraphs 25 and 35, *Commission* v *United Kingdom*, C-530/11, EU:C:2014:67, paragraphs 44-45)

[It] must be pointed out that the requirement that litigation should not be prohibitively expensive concerns all the costs arising from participation in the judicial proceedings (see, to that effect, *Commission* v *Ireland*, paragraph 92).

The prohibitive nature of costs must therefore be assessed as a whole, taking into account all the costs borne by the party concerned.

(*Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:221, paragraphs 27 and 28; *North East Pylon Pressure Campaign and Sheeh*y, C-470/16, ECLI:EU:C:2018:185, paragraph 30)

It follows that, where national procedural law provides that **leave** must be sought before bringing a challenge covered by the requirement laid down by Article 11(4) of Directive 2011/92, the **costs incurred in a procedure for obtaining that leave must also be covered**.

That is a fortiori the case where, as in the main proceedings, since the applicable national legislation has not determined the stage at which a challenge may be brought, as required by Article 11(2) of Directive 2011/92, that procedure is intended to assess whether the challenge was brought at the appropriate stage.

It is irrelevant, in that regard, that the application for leave to apply for judicial review was submitted in the course of a process which may lead to the grant of development consent, and not against a final decision closing that process. As pointed out by the Advocate General in points 101 to 108 of his Opinion, Directive 2011/92 neither requires nor prohibits that challenges covered by the guarantee against prohibitive expense be brought against decisions definitively closing a consent process, given the wide range of different environmental decision-making processes, but only stipulates that Member States must determine the stage at which a challenge may be brought.

(*North East Pylon Pressure Campaign and Sheehy,* C-470/16, ECLI:EU:C:2018:185, paragraph 31-33)

In the light of the foregoing considerations, the answer to the first question is that the fifth paragraph of Article 10a of Directive 85/337 as amended must be interpreted as meaning that a Member State's courts are under an obligation to interpret national law in conformity with that directive, when deciding on the allocation of costs in judicial proceedings which were ongoing as at the date on which the time limit for transposing the not prohibitively expensive rule laid down in the fifth paragraph of Article 10a expired, irrespective of the date on which those costs were incurred during the proceedings concerned.

(*Klohn,* C-167/17, ECLI:EU:C:2018:833, paragraph 55)

Criteria for assessing the requirement that the cost be 'not prohibitively expensive'

It follows that, as regards the methods likely to secure the objective of **ensuring effective judicial protection without excessive cost in the field of environmental law**, account must be taken of all the relevant provisions of national law and, in particular, of any national legal aid scheme as well as of any costs protection regime, such as that referred to in paragraph 16 of the present judgment. Significant differences between national laws in that area do have to be taken into account.

Furthermore, as previously stated, the national court called upon to give a ruling on costs must satisfy itself that that requirement has been complied with, **taking into account both the interest of the person wishing to defend his rights and the public interest in the protection of the environment**.

That assessment cannot, therefore, be carried out solely on the basis of the financial situation of the person concerned but must also be based on an objective analysis of the amount of the costs, particularly since, as has been stated in paragraph 32 of the present judgment, members of the public and associations are naturally required to play an active role in defending the environment. To that extent, the cost of proceedings must not appear, in certain cases, to be objectively unreasonable. Thus, **the cost of proceedings must neither exceed the financial resources of the person concerned nor appear, in any event, to be objectively unreasonable**.

As regards the analysis of the financial situation of the person concerned, the assessment which must be carried out by the national court cannot be based exclusively on the estimated financial resources of an 'average' applicant, since such information may have little connection with the situation of the person concerned.

The court may also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure and the potentially frivolous nature of the claim at its various stages (see, by analogy, Case C-279/09 DEB [2010] ECR I-13849, paragraph 61).

It must also be stated that the fact, put forward by the Supreme Court of the United Kingdom, that the claimant has not been deterred, in practice, from asserting his or her claim is not in itself sufficient to establish that the proceedings are not, as far as that claimant is concerned, prohibitively expensive for the purpose (as set out above) of Directives 85/337 and 96/61.

The requirement that judicial proceedings should not be prohibitively expensive cannot, therefore, be assessed differently by a national court depending on whether it is adjudicating at the conclusion of first-instance proceedings, an appeal or a second appeal.

(*Edwards and Pallikaropoulos*, C-260/11, EU:C:2013:22, paragraphs 38-43 and 45, *Commission* v *United Kingdom*, C-530/11, EU:C:2014:67, paragraphs 46-51)

Scope of challenges that should not be 'prohibitively expensive'

In that regard, it should be noted that it is clear from the very wording of Article 11(1) of Directive 2011/92 that the challenges covered by the protection against prohibitive expense are those directed against the decisions, acts or omissions 'subject to the public participation provisions of this Directive'. A literal interpretation of that provision thus indicates that its scope is limited to costs relating only to the aspects of a dispute which concern the public's right to participate in decision-making in accordance with the detailed rules laid down by the directive.

That conclusion is confirmed by a contextual reading of Article 11(1) of Directive 2011/92.

That directive not only contains rules relating to information, public participation in decision-making and access to justice, but also, more generally, rules harmonising the assessment of the effects of certain public and private projects on the environment.

Thus, by making, in Article 11(1) of Directive 2011/92, an express reference solely to the public participation provisions of that directive, the EU legislature must be regarded as having intended to exclude from the guarantee against prohibitive expense challenges based on any other rules set out in that directive and, a fortiori, on any other legislation, whether of the European Union or the Member States.

That interpretation is also not called into question by the objective of Directive 2011/92, which consists, inter alia, as is apparent from recitals 19 to 21 thereto, in transposing the provisions of Article 9(2) and (4) of the Aarhus Convention into secondary legislation.

Indeed, these provisions themselves refer, in order to define the scope of the challenges which should not be prohibitively expensive, to challenges directed against any decision, act or omission 'subject to the provisions of Article 6' of that Convention, that is to say, subject to certain rules on public participation in decision-making in environmental matters, without prejudice to the possibility for national law to provide otherwise by extending that guarantee to other relevant provisions of that Convention.

Thus, since the EU legislature intended simply to transpose into EU law the requirement that certain challenges not be prohibitively expensive, as defined in Article9(2) and (4) of the Aarhus Convention, **any interpretation** of that requirement, within the meaning of Directive 2011/92, **which extended its application beyond challenges** brought against decisions, acts or omissions relating to the public participation process defined by that directive **would exceed the legislature's intent.**

Where, as is the case of the leave application which led to the main proceedings concerning the determination of costs, a challenge brought against a process covered by Directive 2011/92 combines legal submissions concerning the rules on public participation with arguments of a different nature, it is for the national court to distinguish — on a fair and equitable basis and in accordance with the applicable national procedural rules — between the costs relating to each of the two types of arguments, so as to ensure that the requirement that costs not be prohibitive is applied to the part of the challenge based on the rules on public participation.

(*North East Pylon Pressure Campaign and Sheehy,* C-470/16, ECLI:EU:C:2018:185, paragraphs 36-43)

Access to justice for non-governmental organisations (NGOs) which promote environmental protection – minimum number of members

It is clear from Directive 85/337 that it distinguishes between the public concerned by one of the projects falling within its scope in a general manner and, on the other hand, a sub-group of natural or legal persons within the public concerned who, in view of their particular position vis-à-vis the project at issue, are, in accordance with **Article 10a** [11 as per codification], **to be entitled to challenge the decision** which authorises it. The directive leaves it to national law to determine the conditions for the admissibility of the action. Those conditions may be having 'sufficient interest' or 'impairment of a right', and national laws generally use one or other of those two concepts.

As regards non-governmental organisations which promote environmental protection, Article 1(2) of Directive 85/337, read in conjunction with Article 10a thereof, requires that those organisations 'meeting any requirements under national law' are to be regarded either as having 'sufficient interest' or as having a right which is capable of being impaired by projects falling within the scope of that directive.

While it is true that Article 10a [11 as per codification] of the EIA Directive, by its reference to Article 1(2) thereof, leaves to national legislatures the task of determining the conditions which may be required in order for a non-governmental organisation which promotes environmental protection to have a right of appeal under the conditions set out above, the national rules thus established must, first, ensure **'wide access to justice'** and, second**, render effective the provisions of the EIA Directive on judicial remedies.** Accordingly, those national rules must not be liable to nullify Community provisions which provide that parties who have a sufficient interest to challenge a project and those whose rights it impairs, which include environmental protection associations, are to be entitled to bring actions before the competent courts.

From that point of view, a national law may require that such an association, which intends to challenge a project covered by the EIA Directive through legal proceedings, has as its object the protection of nature and the environment.

Furthermore, it is conceivable that the condition that an environmental protection association must have a minimum number of members may be relevant in order to ensure that it does in fact exist and that it is active. However, **the number of members required cannot be fixed by national law at such a level that it runs counter to the objectives of the EIA Directive and in particular the objective of facilitating judicial review of projects which fall within its scope**.

In that connection, it must be stated that, although the EIA Directive provides that members of the public concerned who have a sufficient interest in challenging projects or have rights which may be impaired by projects are to have the right to challenge the decision which authorises it, that directive in no way permits access to review procedures to be limited on the ground that the persons concerned have already been able to express their views in the participatory phase of the decision-making procedure established by Article 6(4) thereof. Thus, the fact that the national rules offer extensive opportunities to participate at an early stage in the procedure in drawing up the decision relating to a project is no justification for the fact that judicial remedies against the decision adopted at the end of that procedure are available only under very restrictive conditions.

Furthermore, the EIA Directive does not exclusively concern projects on a regional or national scale, but also projects more limited in size which locally based associations are better placed to deal with. As the Advocate General notes, in point 78 of her Opinion, the rule of the Swedish legislation at issue is such as to deprive local associations of any judicial remedy. The Swedish Government, which acknowledges that at present only two associations have at least 2 000 members and thereby satisfy the condition laid down in relevant national law, has in fact submitted that local associations could contact one of those two associations and ask them to bring an appeal. However, that possibility in itself is not capable of satisfying the requirements of Directive 85/337 as, first, the associations entitled to bring an appeal might not have the same interest in projects of limited size and, second, they would be likely to receive numerous requests of that kind which would have to be dealt with selectively on the basis of criteria which would not be subject to review. Finally, **such a system would give rise, by its very nature, to a filtering of appeals directly contrary to the spirit of the directive which is intended to implement the Aarhus Convention**.

Consequently, **Article 10a** [11 as per codification] of the EIA Directive precludes a provision of national law which reserves the right to bring an appeal against a decision on projects which fall within the scope of that directive solely to environmental NGOs which have at least 2.000 members.

(*Djurgården*, C-263/08, ECLI:EU:C:2009:631, paragraphs 42-52)

Access to justice for non-governmental organisations (NGOs) which promote environmental protection – interests protected

With regard to legislation such as that at issue in the main proceedings, although the national legislature is entitled to confine to individual public-law rights the rights whose infringement may be relied on by an individual in legal proceedings contesting one of the decisions, acts or omissions referred to in Article 10a of Directive 85/337, such a limitation cannot be applied as such to environmental protection organisations without disregarding the objectives of the last sentence of the third paragraph of Article 10a of Directive 85/337.

Non-governmental organisations promoting environmental protection, as referred to in Article 1(2) of that directive, can derive from the last sentence of the third paragraph of Article 10a of Directive 85/337 a right to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of the rules of national law flowing from Article 6 of the Habitats Directive, even where, on the ground that the rules relied on protect only the **interests of the general public and not the interests of individuals**, national procedural law does not permit this.

(Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen ('Trianel'), C-115/09, EU:C:2011:289, paragraphs 45 and 59; IL and Others v Land Nordrhein-Westfalen, Case C-535/18, ECLI:EU:C:2020:391, paragraph 57)

Absence of EU rules on actions for safeguarding rights

Where, in the absence of EU rules governing the matter, **it is for the legal system of each Member State** to designate the courts and tribunals having jurisdiction and to lay down the

detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, those detailed rules must not be less favourable than those governing similar domestic actions **(principle of equivalence)** and must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law **(principle of effectiveness)**.

Thus, although it is for the Member States to determine, when their legal system so requires and within the limits laid down in Article 10a [11 as per codification] of Directive 85/337, what rights can give rise, when infringed, to an action concerning the environment, they cannot, when making that determination, deprive environmental protection organisations which fulfil the conditions laid down in Article 1(2) of that directive of the opportunity of playing the role granted to them both by Directive 85/337 and by the Aarhus Convention.

(Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen ('Trianel'), C-115/09, EU:C:2011:289 paragraphs 43-44)

'Rights capable of being impaired'

The last sentence of the third paragraph of Article 10a [11 as per codification] of Directive 85/337 must be read as meaning that the 'rights capable of being impaired' which the environmental protection organisations are supposed to enjoy must necessarily include the rules of national law implementing EU environment law and the rules of EU environment law having direct effect.

(Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen ('Trianel'), C-115/09, EU:C:2011:289, paragraph 48)

Causal link between the procedural defect and the decision – burden of proof

It appears, however, with regard to the national law applicable in the case in the main proceedings, that it is in general incumbent on the applicant, in order to establish impairment of a right, to prove that the circumstances of the case make it conceivable that the **contested decision would have been different without the procedural defect** invoked. That **shifting of the burden of proof onto the person bringing the action, for the application of the condition of causality, is capable of making the exercise of the rights conferred on that person by Directive 85/337 excessively difficult**, especially having regard to the complexity of the procedures in question and the technical nature of environmental impact assessments.

Therefore, the new requirements thus arising under Article 10a of that directive mean that impairment of a right cannot be excluded unless, in the light of the condition of causality, the court of law or body covered by that article is in a position to take the view, without in any way making the burden of proof fall on the applicant, but by relying, where appropriate, on the evidence provided by the developer or the competent authorities and, more generally, on the case-file documents submitted to that court or body, that the contested decision would not have been different without the procedural defect invoked by that applicant.

In the making of that assessment, it is for the court of law or body concerned to take into account, inter alia, the seriousness of the defect invoked and to ascertain, in particular, whether that defect has deprived the public concerned of one of the guarantees introduced with a view to allowing that public to have access to information and to be empowered to participate in decision-making in accordance with the objectives of Directive 85/337.

(*Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraphs 52-54, Commission v Germany, C-137/14, ECLI:EU:C:2015:683 , paragraphs 59-60)

To refuse annulment of an administrative decision adopted in breach of a procedural rule on the sole ground that the applicant is unable to establish the effect that defect has on the merits of that decision renders that provision of EU law **totally ineffective**.

(*Commission v Germany*, C-137/14, ECLI:EU:C:2015:683, paragraph 57)

What constitutes 'sufficient interest' or 'impairment of a right'

Article 10a [11 as per codification] of Directive 85/337 leaves the Member States a significant discretion both to determine what constitutes impairment of a right and, in particular, to determine the **conditions for the admissibility** of actions and the bodies before which such actions may be brought.

The same is not true, however, of the provisions laid down in the **last two sentences of the third paragraph of Article 10a** [11 as per codification] of Directive 85/337. By providing that the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) of Directive 85/337 are to be deemed sufficient and that such organisations are also to be deemed to have rights capable of being impaired, **those provisions lay down rules which are precise and not subject to other conditions**.

(Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen ('Trianel'), C-115/09, EU:C:2011:289, paragraphs 55-57)

Accordingly, **Member States have a significant discretion to determine what constitutes 'sufficient interest' or 'impairment of a right'** (see, to that effect, judgments in Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, C-115/09, EU:C:2011:289, paragraph 55, and Gemeinde Altrip and Others, C-72/12, EU:C:2013:712, paragraph 50).

However, it is apparent from the wording of Article 11(3) of Directive 2011/92 and the second paragraph of Article 9(2) of the Aarhus Convention, that that **discretion is limited by the need to respect the objective of ensuring wide access to justice for the public concerned**.

(*Gruber*, C-570/13, EU:C:2015:231, paragraphs 38-39; *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraph43)

Nevertheless, it is unarguable that not every procedural defect will necessarily have consequences that can possibly affect the purport of such a decision and it cannot, therefore, be considered to impair the rights of the party pleading it. In that case, it does not appear that the objective of Directive 85/337 of giving the public concerned wide access to justice would be compromised if, under the law of a Member State, an applicant relying on a defect of that kind had to be regarded as not having had his rights impaired and, consequently, as not having standing to challenge that decision.

In that regard, it should be borne in mind that Article 10a of that directive leaves the Member States significant discretion to determine what constitutes impairment of a right (see, to that

effect, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, paragraph 55).

In those circumstances, it could be permissible for national law not to recognise impairment of a right within the meaning of subparagraph (b) of Article 10a of that directive if it is established that it is conceivable, in view of the circumstances of the case, that the contested decision would not have been different without the procedural defect invoked.

(*Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraphs 49-51; *IL and Others v Land Nordrhein-Westfalen*, Case C-535/18, ECLI:EU:C:2020:391, paragraph 59).

Partant, une réglementation nationale, qui subordonne la recevabilité des recours des particuliers à la condition qu'ils fassent valoir une atteinte à un droit et qui, dans le même temps, permet aux particuliers d'invoquer un vice de procédure affectant la participation du public au processus décisionnel, alors même que ce vice n'a pas eu d'impact sur le sens de la décision en cause, ouvre une voie de recours également dans des cas où l'article 11, paragraphe 1, sous b), de la directive 2011/92 ne l'exige pas.

Il est, dès lors, loisible au législateur national de subordonner la recevabilité d'un recours en annulation de la décision d'autorisation d'un projet pour vice de procédure, lorsque ce dernier n'est pas de nature à modifier le sens de cette décision, à la condition qu'il ait effectivement privé les requérants de leur droit de participer au processus décisionnel.

À toutes fins utiles, il convient encore d'indiquer que, ainsi qu'il est souligné au point 90, second tiret, du présent arrêt, en l'absence, dans le dossier mis à la disposition du public, des données nécessaires afin d'évaluer les incidences d'un projet sur l'eau, le public n'est pas mis en mesure de participer utilement au processus décisionnel.

Au vu de l'ensemble des considérations qui précèdent, il convient de répondre à la première question posée que l'article 11, paragraphe 1, sous b), de la directive 2011/92 doit être interprété en ce sens qu'il permet aux États membres de prévoir que, lorsqu'un vice de procédure qui entache la décision d'autorisation d'un projet n'est pas de nature à en modifier le sens, la demande d'annulation de cette décision n'est recevable que si l'irrégularité en cause a privé le requérant de son droit de participer au processus décisionnel en matière d'environnement, garanti par l'article 6 de cette directive.

(*IL and Others v Land Nordrhein-Westfalen*, Case C-535/18, ECLI:EU:C:2020:391, paragraphs 60-63)

Neighbours as 'public concerned'

Therefore, although the national legislature is entitled, inter alia, to confine the rights whose infringement may be relied on by an individual in legal proceedings contesting one of the decisions, acts or omissions referred to in Article 11 of Directive 2011/92 to individual public-law rights, that is to say, individual rights which, under national law, can be categorised as individual public-law rights (see, to that effect, judgment in Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen, C-115/09, EU:C:2011:289, paragraphs 36 and 45), the provisions of that article relating to the rights to bring actions of members of the public concerned by the decisions, acts or omissions which fall within that directive's scope cannot be interpreted restrictively.

In the present case, it appears from the order for reference that Ms Gruber is a 'neighbour', within the meaning of Paragraph 75(2) of the Gewerbeordnung, a concept which includes persons to whom the construction, continued existence or operation of a facility might pose a risk or cause a nuisance or whose property or other rights in rem might be put at risk.

Having regard to that provision's terms, it appears that **persons falling within the concept of 'neighbour' may be part of the 'public concerned'**, within the meaning of Article 1(2) of Directive 2011/92. Those 'neighbours' can bring an action only against a consent granted for the construction and operation of a facility. Since they are not parties to the procedure examining whether an EIA need be carried out, they cannot challenge that decision in the context of an action against the development consent decision. Thus, by restricting the right to bring an action against decisions examining whether an EIA need be carried out in relation to a project only to the project applicants, the participating authorities, the ombudsman for the environment (Umweltanwalt) and the municipality concerned, the UVP-G 2000 deprives a large number of individuals from exercising that right to bring an action, including, in particular, 'neighbours' who may meet the conditions laid down in Article 11(1) of Directive 2011/92.

That near general exclusion restricts the scope of Article 11(1) and is accordingly incompatible with Directive 2011/92.

(*Gruber*, C-570/13, EU:C:2015:231, paragraphs, paragraphs 40-43; *IL and Others v Land Nordrhein-Westfalen*, Case C-535/18, ECLI:EU:C:2020:391, paragraph 57)

Interim relief

In addition, it is apparent from settled case-law that a **national court** seised of a dispute governed by European Union law **must be in a position to grant interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under European Union law** (see, to this effect, Case C-416/10 Križan and Others [2013], paragraph 107 and the case-law cited), including in the area of environmental law (see Križan and Others, paragraph 109).

Subject to this reservation, the conditions under which the national court grants such interim relief are, in principle, a matter for national law alone, provided that the **principles of equivalence and effectiveness** are observed. The requirement that proceedings not be prohibitively expensive cannot be interpreted as immediately precluding the application of a financial guarantee such as that of the cross-undertakings where that guarantee is provided for by national law. The same is true of the financial consequences which might, as the case may be, result under national law from an action that constitutes an abuse.

(*Commission v United Kingdom*, C-530/11, EU:C:2014:67 paragraphs 65, 67; *Križan and Others* C-416/10, EU:C:2013:8, paragraphs , paragraph 107)

Availability to the public of practical information on access to justice

It must be borne in mind that one of the underlying principles of Directive 2003/35 is to promote access to justice in environmental matters, along the lines of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters.

In that regard, the obligation to make available to the public practical information on access to administrative and judicial review procedures laid down in the sixth paragraph of Article 10a of Directive 85/337, inserted by Article 3(7) of Directive 2003/35, and in the sixth paragraph of Article 15a of Directive 96/61, inserted by Article 4(4) of Directive 2003/35, amounts to an obligation to obtain a precise result which the Member States must ensure is achieved.

In the absence of any specific statutory or regulatory provision concerning information on the rights thus offered to the public, the mere availability, through publications or on the internet, of rules concerning access to administrative and judicial review procedures and the possibility of access to court decisions cannot be regarded as ensuring, in a sufficiently clear and precise manner, that the public concerned is in a position to be aware of its rights on access to justice in environmental matters.

(*Commission* v *Ireland*, C-427/07, EU:C:2009:457, paragraphs 96-98)

Article 12	*Article 12 as amended by Directive 2014/52/EU*
1. The Member States and the Commission shall exchange information on the experience gained in applying this Directive.	***1. The Member States and the Commission shall exchange information on the experience gained in applying this Directive.***
2. In particular, Member States shall inform the Commission of any criteria and/or thresholds adopted for the selection of the projects in question, in accordance with Article 4 (2).	***2. In particular, every six years from 16 May 2017 Member States shall inform the Commission, where such data are available, of:***
	(a) the number of projects referred to in Annexes I and II made subject to an environmental impact assessment in accordance with Articles 5 to 10;
3. On the basis of that exchange of information, the Commission shall if necessary submit additional proposals to the European Parliament and to the Council, with a view to ensuring that this Directive is applied in a sufficiently coordinated manner.	***(b) the breakdown of environmental impact assessments according to the project categories set out in Annexes I and II;***
	(c) the number of projects referred to in Annex II made subject to a determination in accordance with Article 4(2);
	(d) the average duration of the environmental impact assessment process;
	(e) general estimates on the average direct costs of environmental impact assessments, including the impact from the application of this Directive to SMEs.
	3. On the basis of that exchange of information, the Commission shall if necessary submit additional proposals to the European Parliament and to the Council, with a view to ensuring that this Directive is applied in a sufficiently coordinated manner.

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Article 13

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

Article 14

Directive 85/337/EEC, as amended by the Directives listed in Annex V, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex V, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

Article 15

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 16

This Directive is addressed to the Member States.

Done at Strasbourg, 13 December 2011.

List of time-limits for transposition into national law

Directive	Time-limit for transposition
85/337/EEC	3 July 1988
97/11/EC	14 March 1999
2003/35/EC	25 June 2005
2009/31/EC	25 June 2011
2014/52/EU	16 May 2017

According to the case-law of the Court:

Deadline for transposition

Article 12(1) of the EIA Directive requires the Member States to take the measures necessary to comply with the directive within three years of its notification. Since the directive was notified to the Member States on 3 July 1985, that period expired on 3 July 1988.

(Gedeputeerde Staten van Noord-Holland, C-81/96, paragraph 10)

Criterion for the temporal application of the EIA Directive – transitional rules

The EIA Directive and in particular **Article 12(1)**, must be interpreted as precluding a Member State which has transposed it into its national legal order after 3 July 1988, the time-limit for transposition, from waiving the obligations imposed by the directive in respect of a project consent procedure initiated after that time-limit. The sole criterion which may be used, since it accords with **the principle of legal certainty** and is designed to safeguard the effectiveness of the directive, to determine the date on which the procedure was initiated is the **date when the application for consent was formally lodged**, disregarding informal contacts and meetings between the competent authority and the developer.

(*Commission v. Federal Republic of Germany*, C-431/92, ECLI:EU:C:1995:260, paragraphs , 28-33; *Gedeputeerde Staten van Noord-Holland* C-81/96, EU:C:1998:305, paragraphs 23 to 28; C-301/95, Commission v. Germany, paragraph 29; C-150/97, *Commission v. Portuguese Republic*, paragraphs 18; *Križan and Others* C-416/10, EU:C:2013:8, paragraphs , paragraph 99)

It is settled case-law that there is nothing in the EIA directive which could be construed as authorising the Member States to exempt projects in respect of which the consent procedures were initiated after the deadline of 3 July 1988 from the obligation to carry out an environmental impact assessment (Case C-396/92 Bund Naturschutz in Bayern and Others [1994] ECR I-3717, paragraph 18). Accordingly, in the case of such projects the principle stated in Article 2(1) of the EIA directive applies, according to which projects likely to have significant effects on the environment are subject to an environmental assessment.

However, since the EIA directive does not make provision for transitional rules covering projects in respect of which the consent procedure was initiated before 3 July 1988 and which were still in progress on that date, the Court has held that that principle does not apply where the application for consent for a project was formally lodged before 3 July 1988. It has stated that that formal criterion is the only one which accords with the principle of legal certainty and enables the effectiveness of the directive to be safeguarded (Case C-431/92 Commission v Germany [1995] ECR I-2189, paragraph 32).

The reason for that is that the directive is primarily designed to cover large-scale projects which will most often require a long time to complete. It would therefore not be appropriate for the relevant procedures, which are already complex at national level and which were formally initiated prior to the date of the expiry of the period for transposing the directive, to be made more cumbersome and time-consuming by the specific requirements imposed by the directive, and for situations already established to be affected by it.

(*Gedeputeerde Staten van Noord-Holland,* C-81/96, EU:C:1998:305paragraphs 22-24, *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraphs paragraphs 25-26)

It is apparent from settled case-law that an authorisation within the meaning of Directive 85/337 may be formed by the combination of several distinct decisions when the national procedure which allows the developer to be authorised to start works to complete his project includes several consecutive steps (see, to that effect, Case C-201/02 *Wells* [2004] ECR I-723, paragraph 52, and Case C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, paragraph 102). It follows that, in that situation, **the date on which the application for a permit for a project was formally lodged** must be fixed as the day on which the developer submitted an application seeking to initiate the first stage of the procedure.

(*Križan and Others*,C-416/10, EU:C:2013:8, paragraphs , paragraph 103)

"Fresh" consent procedure

However, the circumstances of this case do not concern a consent procedure for a project which is subject to an assessment, which was formally initiated before 3 July 1988, and which was still in progress on that date. On the contrary, it concerns an application made after 3 July 1988 seeking **fresh consent** for a project listed in Annex I of the directive and incorporating the development provided for in a project for which consent was obtained years or even decades previously, without any environmental assessment being made in accordance with the requirements of the directive. Despite that, scarcely any progress was made in implementing the project, the developer for which is a public authority.

In such a case, the considerations which led the Court to hold that the requirement of an environmental assessment need not apply in case C-431/92 cannot apply in this case, particularly as national legal remedies are available in respect of the **new consent procedure**.

Accordingly, where for reasons inherent in the applicable national rules, a fresh procedure is formally initiated after 3 July 1988, that procedure is subject to the obligations regarding environmental assessments imposed by the directive. Any other solution would run counter to the principle that an environmental assessment must be made of certain major projects, set out in Article 2 of the directive, and would compromise its effectiveness.

The EIA directive is to be interpreted as not permitting Member States to waive the obligations regarding environmental assessments in the case of projects listed in Annex I of the directive where:

- the projects have already been the subject of a consent granted prior to 3 July 1988, the date by which the directive was to have been transposed into national law,

- the consent was not preceded by an environmental assessment in accordance with the requirements of the directive and no use was made of it, and

- a fresh consent procedure was formally initiated after 3 July 1988.

(*Gedeputeerde Staten van Noord-Holland,* C-81/96, EU:C:1998:305, paragraphs 25-28)

ANNEX I

PROJECTS REFERRED TO IN ARTICLE 4 (1)

1. *Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.*

2. *(a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more;*

   (b) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors ([1]) (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3. *(a) Installations for the reprocessing of irradiated nuclear fuel.*

   (b) Installations designed:

   (i) for the production or enrichment of nuclear fuel,

   (ii) for the processing of irradiated nuclear fuel or high-level radioactive waste,

   (iii) for the final disposal of irradiated nuclear fuel,

   (iv) solely for the final disposal of radioactive waste,

   (v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4. *(a) Integrated works for the initial smelting of castiron and steel;*

   (b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5. *Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilization of more than 200 tonnes per year.*

6. *Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are*

[1] Nuclear power stations and other nuclear reactors cease to be such an installation when all nuclear fuel and other radioactively contaminated elements have been removed permanently from the installation site.

functionally linked to one another and which are:

(a) for the production of basic organic chemicals;

(b) for the production of basic inorganic chemicals;

(c) for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilisers);

(d) for the production of basic plant health products and of biocides;

(e) for the production of basic pharmaceutical products using a chemical or biological process;

(f) for the production of explosives.

7. (a) Construction of lines for long-distance railway traffic and of airports ([2]) with a basic runway length of 2 100 m or more;

(b) Construction of motorways and express roads ([3]);

(c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length.

8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes;

(b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.

9. Waste disposal installations for the incineration, chemical treatment as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste ([4]) under heading D9, or landfill of hazardous as defined in point 2 of Article 3 of that Directive.

10. Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.

11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

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[2] For the purposes of this Directive, 'airport' means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organization (Annex 14).

[3] For the purposes of the Directive, 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975.

[4] OJ L 313, 22.11.2008, p 3.

12. (a) Works for the transfer of water resources between river basins where that transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;

(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 % of that flow.

In both cases transfers of piped drinking water are excluded.

13. Waste water treatment plants with a capacity exceeding 150 000 population equivalent as defined in point 6 of Article 2 of Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment([5]).

14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic meters/day in the case of gas.

15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

16. Pipelines with a diameter of more than 800 mm and a length of more than 40 km:

(a) for the transport of gas, oil, chemicals, and,

(b) for the transport of carbon dioxide (CO_2) streams for the purposes of geological storage, including associated booster stations.

17. Installations for the intensive rearing of poultry or pigs with more than:

(a) 85 000 places for broilers, 60 000 places for hens;

(b) 3 000 places for production pigs (over 30 kg); or

(c) 900 places for sows.

18. Industrial plants for the production of:

(a) pulp from timber or similar fibrous materials;

(b) production of paper and board with a production capacity exceeding 200 tonnes per day.

19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat

[5] OJ L 135, 30.5.1991, p. 40.

extraction, where the surface of the site exceeds 150 hectares.

20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.

22. Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide ([6]).

23. Installations for the capture of CO_2 streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Annex, or where the total yearly capture of CO_2 is 1,5 megatonnes or more.

24. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.

According to the case-law of the Court:

Annex I projects present inherent risk of significant effects on the environment

Finally, Article 2(1) and Article 4(1) of the EIA Directive, read together, indicate that projects covered by Annex I to that directive, present an inherent risk of significant effects on the environment and therefore an environmental impact assessment is indispensable in those cases (see, to that effect, on the obligation to conduct an impact assessment, judgments of 24 November 2011, *Commission* v *Spain*, C-404/09, EU:C:2011:768, paragraph 74, and of 11 February 2015, *Marktgemeinde Straßwalchen and Others*, C-531/13, EU:C:2015:79, paragraph 20).

(Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 61-62)

[6] OJ L 140, 5.6.2009, p. 114.

Discretion concerning thresholds

Pursuant to Articles 2(1) and 4(1) of Directive 85/337, and notwithstanding the exceptional cases referred to in Article 2(3), the environmental effects of projects falling within Annex I to the Directive must, as such and prior to authorisation, be evaluated systematically (see, to that effect, Case C-465/04 Commission v Ireland [2006] ECR I-11025[7], paragraph 45, and Case C-255/05 Commission v Italy [2007] ECR I-5767, paragraph 52). It follows that the Member States have no room for discretion in this respect.

Under heading 21.1 of Annex I to the Walloon Decree on industrial plants for the manufacture of paper pulp, the legislation of the Walloon Region establishes an annual threshold of 500 tonnes under which an impact assessment is not necessary. Annex I to Directive 85/337 establishes no such threshold, and therefore point 18(a) of the Annex has not been transposed correctly. Consequently it can be considered that the complaint relating to Article 4(1) of the Directive, read in conjunction with point 18(a) of Annex I thereto, is justified.

(*Commission v Belgium,* C-435/09, ECLI:EU:C:2011:176 ,paragraphs 86 and 88).

Nuclear power stations

Point 2(b) of Annex I to the EIA Directive lists nuclear power stations and other nuclear reactors, including their dismantling and decommissioning, among the projects which under Article 4(1) of that directive are subject to an assessment in accordance with Articles 5 to 10 of that directive.

Consequently, it must be examined whether measures such as those at issue in the main proceedings, along with the work to which those measures are inextricably linked, may fall within the scope of point 24 of Annex I to the EIA Directive, which refers to 'any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex', or of point 13(a) of Annex II to that directive, which refers to 'any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)'.

As regards point 24 of Annex I to the EIA Directive, it is evident from the wording and general scheme of that provision that it applies to any change or extension to a project, which by virtue of, inter alia, its nature or scale, presents risks that are similar, in terms of their effects on the environment, to those posed by the project itself.

The measures at issue in the main proceedings, which have the effect of extending, by a significant period of 10 years, the duration of consents to produce electricity for industrial purposes with respect to both power stations in question, which had up until then been limited to 40 years by the Law of 31 January 2003, combined with major renovation works necessary due to the ageing of those power stations and the obligation to bring them into line with safety

[7] The reference to *Commission v Ireland,* Case C-465/04 paragraph 45 is likely to refer instead *Commission* v *Italy*, C-486/04, EU:C:2006:732, paragraph 45.

standards, must be found to be of a scale that is comparable, in terms of the risk of environmental effects, to that when those power stations were first put into service.

The Court therefore finds that those measures and that work fall **within the scope of point 24 of Annex I to the EIA Directive.** Such a project carries an **inherent risk of significant effects on the environment**, within the meaning of Article 2(1) of that directive, and must therefore be subject to an assessment of its environmental impact under Article 4(1) of that directive.

Furthermore, given that the Doel 1 and Doel 2 power stations are **located close to the border** of the Kingdom of Belgium and the Kingdom of the Netherlands, **it is indisputable that the project could also have significant effects on the environment in the latter Member State**, within the meaning of **Article7(1)** of that directive.

(Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 76-81)

Airport

Works to **modify the infrastructure of an existing airport**, without extension of the runway, may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself and are with regard to this case **subject to a screening**.

Point 12 of Annex II, read in conjunction with **point 7 of Annex I**, to the EIA Directive (in their original version), must be regarded as also encompassing works to **modify an existing airport**. All works relating to the buildings, installations or equipment of an airport must be considered to be works relating to the airport as such. For the application of **point 12 of Annex II**, read in conjunction with **point 7 of Annex I**, to the EIA Directive (in their original version), that means that **works to modify an airport** with a runway length of 2 100 metres or more thus comprise not only works to extend the runway, but all works relating to the buildings, installations or equipment of that airport where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. That is the case in particular for works aimed at **significantly increasing the activity** of the airport and air traffic.

(*Abraham and Others*, C-2/07, EU:C:2008:133, paragraphs 32, 33, 34, 36, 40: That interpretation is not called into question by the fact that the EIA Directive 97/11 has replaced point 12 of Annex II to the EIA Directive 85/337 with a new point 13, *Brussels Hoofdstedelijk Gewest and Others*, C-275/09, EU:C:2011:154, paragraph 35; *Salzburger Flughafen*, C-244/12, EU:C:2013:203, paragraph 28)

The term ‘construction’ used at point 7(a) of Annex I to Directive 85/337 is not in any way ambiguous and is to be understood as having its normal meaning, namely as referring to the carrying out of works not previously existing or of physical alterations to existing installations.

(*Brussels Hoofdstedelijk Gewest and Others*, C-275/09, EU:C:2011:154, paragraph 24)

The renewal of an existing consent to operate an airport cannot, in the absence of any works or interventions involving alterations to the physical aspect of the site, be classified as a 'construction' within the meaning of point 7(a) of Annex I to Directive 85/377.

(*Brussels Hoofdstedelijk Gewest and Others*, C-275/09, EU:C:2011:154, paragraph 30)

Road projects

Therefore, a road development project which, as in the case in the main proceedings, concerns a stretch of **road that is under 10 km in length is not**, solely because of its nature, **among the projects covered by point 7(c) of Annex I** to Directive 2011/92, even though it consists in the widening or development of an existing road with four or more lanes.

This consideration is, however, without prejudice to the application, in the case before the referring court, of Article 4(2) of, and Annex II to, Directive 2011/92 should the case arise.

Accordingly, the answer to Questions 3 and 6 is that **point 7(b) of Annex I** to Directive 2011/92 must be interpreted as meaning that **'express roads'** for the purposes of that provision are roads whose technical characteristics are those set out in the definition in point II.3 of Annex II to the AGR, even if those roads do not form part of the network of main international traffic arteries or are located in urban areas.

Consequently, the answer to Questions 4 and 5 is that the c**oncept of 'construction' for the purposes of point 7(b) of Annex I** to Directive 2011/92 must be interpreted as referring to the carrying-out of works not previously existing or to the physical alteration of existing installations. In order to determine whether such an alteration may be regarded as equivalent, because of its scale and the manner in which it is carried out, to such construction, the referring court must take account of all the characteristics of the work concerned and not only of its length or of the fact that its initial route is retained.

(*Bund Naturschutz in Bayern e.V.*, C-645/15, ECLI:EU:C:2016:898, paragraphs 24-25, 35, 43)

Point 7(b) and (c) of Annex I to the amended directive mentions among the projects which must be made subject to an environmental impact assessment 'motorways', 'express roads' and '[c]onstruction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length'. As to Annex II, it mentions in point 10(e) and the first indent of point 13 respectively '[c]onstruction of roads' and '[a]ny change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment' among the projects for which the Member States may require an environmental impact assessment to be carried out in accordance with Article 4(2) of that directive. In that regard it must be stated, first, as the Commission of the European Communities rightly submits, that the concepts in those annexes are Community law concepts which must be interpreted independently and, second, that it is conceivable that the types of road which are mentioned therein are sited both in and outside built-up areas.

(Ecologistas en Acción-CODA, C-142/07, EU:C:2008:445, paragraph 29; *Prenninger and Others*, Case C-329/17, ECLI:EU:C:2018:640, paragraph 30)

Power lines

Articles 2(1) and 4(1) of the EIA Directive are to be interpreted as meaning that the competent authorities of a Member State must make a project referred to in **point 20 of Annex I** to the Directive, such as the construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km, subject to the environmental impact assessment procedure even where the project is **transboundary** in nature and less than 15 km of it is situated on the territory of that Member State.

(*Umweltanwalt von Kärnten*, C-205/08, ECLI:EU:C:2009:767, paragraph 58)

In the light of the foregoing considerations, the answer to the questions referred must be that the provisions of **Annex I (20) and Annex II (3) (b)** to Directive 85/337 are to be interpreted in the sense that a project such as that at issue in the main proceedings, which relates only to the **extension of a voltage transformer substation**, does not, as such, fall under projects covered by those provisions, unless this extension is part of the construction of overhead electrical power lines, which it is for the referring court to verify.

(DG ENV translation, judgment available only in Spanish and French)
(*Iberdrola DistribuciónEléctrica,* C-300/13, EU:C:2014:188, paragraph 30)

Railway

Annex I.7 of the EIA Directive must be understood to include the **doubling of an existing railway** track. That conclusion is all the more obvious when the execution of the project at issue involves a new track route, even if that applies only to part of the project. Such a construction project is by its nature likely to have significant effects on the environment within the meaning of the EIA Directive.

(*Commission* v *Spain,* C-227/01, EU:C:2004:528, paragraphs 48-50)

Waste disposal

The concept of waste disposal for the purpose of the EIA Directive is an **independent concept** which must be given a meaning which fully satisfies the objective pursued by that measure, which, as is clear from Article 2(1) of the directive, 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 made subject to an assessment with regard to their effects. Accordingly, that concept, which is not equivalent to that of waste disposal for the purpose of Directive 75/442, must be construed in the **wider sense** as covering all operations leading either to waste disposal, in the strict sense of the term, or to waste recovery.

As a result, an establishment, which generates electricity from the incineration of biomass and combustible materials derived from waste and which has a capacity exceeding 100 tonnes per day, comes into the category of disposal installations for the incineration or chemical treatment of non-hazardous waste **in point 10 of Annex I** to the EIA Directive. As such, before being authorised, it should have undergone the environmental impact assessment procedure, since the projects which fall within Annex I must undergo a systematic assessment under Articles 2(1) and 4(1) of that directive.

(*Commission v Italy*, C-486/04, EU:C:2006:732, paragraphs 44-45)

Extraction of petroleum and gas

However, it follows from the context and objective of **Annex I, No 14**, to Directive 85/337 that the scope of that provision **does not extend to exploratory drillings**. In fact, that provision links the obligation to conduct an environmental impact assessment to the quantities of petroleum and natural gas earmarked for extraction. To that end, it provides for thresholds which must be exceeded on a daily basis, which indicates that it aims at projects of a certain duration which enable relatively large-scale quantities of hydrocarbons to be extracted.

(*Marktgemeinde Straβwalchen and Others*, C-531/13, ECLI:EU:C:2015:79, paragraph 23)

Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in Annex I

Point 2(b) of Annex I to the EIA Directive lists nuclear power stations and other nuclear reactors, including their dismantling and decommissioning, among the projects which under Article 4(1) of that directive are subject to an assessment in accordance with Articles 5 to 10 of that directive.

Consequently, it must be examined whether measures such as those at issue in the main proceedings, along with the work to which those measures are inextricably linked, may fall within the scope of point 24 of Annex I to the EIA Directive, which refers to 'any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex', or of point 13(a) of Annex II to that directive, which refers to 'any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)'.

As regards point 24 of Annex I to the EIA Directive, it is evident from the wording and general scheme of that provision that it applies to any change or extension to a project, which by virtue of, inter alia, its nature or scale, presents risks that are similar, in terms of their effects on the environment, to those posed by the project itself.

The measures at issue in the main proceedings, which have the effect of extending, by a significant period of 10 years, the duration of consents to produce electricity for industrial purposes with respect to both power stations in question, which had up until then been limited to 40 years by the Law of 31 January 2003, combined with major renovation works necessary due to the ageing of those power stations and the obligation to bring them into line with safety standards, must be found to be of a scale that is comparable, in terms of the risk of environmental effects, to that when those power stations were first put into service.

The Court therefore finds that those measures and that work fall within the scope of point 24 of Annex I to the EIA Directive. Such a project carries an inherent risk of significant effects on the environment, within the meaning of Article 2(1) of that directive, and must therefore be subject to an assessment of its environmental impact under Article 4(1) of that directive.

Furthermore, given that the Doel 1 and Doel 2 power stations are located close to the border of the Kingdom of Belgium and the Kingdom of the Netherlands, it is indisputable that the

project could also have significant effects on the environment in the latter Member State, within the meaning of Article 7 (1) of that directive.
(Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, paragraphs 76-81)

ANNEX II

PROJECTS REFERRED TO IN ARTICLE 4 (2)

1. *AGRICULTURE, SILVICULTURE AND AQUACULTURE*

   (a) Projects for the restructuring of rural land holdings;

   (b) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;

   (c) Water management projects for agriculture, including irrigation and land drainage projects;

   (d) Initial afforestation and deforestation for the purposes of conversion to another type of land use;

   (e) Intensive livestock installations (projects not included in Annex I);

   (f) Intensive fish farming;

   (g) Reclamation of land from the sea.

2. *EXTRACTIVE INDUSTRY*

   (a) Quarries, open-cast mining and peat extraction (projects not included in Annex I);

   (b) Underground mining;

   (c) Extraction of minerals by marine or fluvial dredging;

   (d) Deep drillings, in particular:

      (i) geothermal drilling,

      (ii) drilling for the storage of nuclear waste material,

      (iii) drilling for water supplies,

      with the exception of drillings for investigating the stability of the soil;

   (e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.

3. *ENERGY INDUSTRY*

   (a) Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I);

   (b) Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);

   (c) Surface storage of natural gas;

   (d) Underground storage of combustible gases;

   (e) Surface storage of fossil fuels;

   (f) Industrial briquetting of coal and lignite;

(g) Installations for the processing and storage of radioactive waste (unless included in Annex I);

(h) Installations for hydroelectric energy production;

(i) Installations for the harnessing of wind power for energy production (wind farms);

(j) Installations for the capture of CO_2 streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Annex I to this Directive.

4. PRODUCTION AND PROCESSING OF METALS

(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;

(b) Installations for the processing of ferrous metals:

(i) hot-rolling mills;

(ii) smitheries with hammers;

(iii) application of protective fused metal coats;

(c) Ferrous metal foundries;

(d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);

(e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;

(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;

(g) Shipyards;

(h) Installations for the construction and repair of aircraft;

(i) Manufacture of railway equipment;

(j) Swaging by explosives;

(k) Installations for the roasting and sintering of metallic ores.

5. MINERAL INDUSTRY

(a) Coke ovens (dry coal distillation);

(b) Installations for the manufacture of cement;

(c) Installations for the production of asbestos and the manufacture of asbestos-products (projects not included in Annex I);

(d) Installations for the manufacture of glass including glass fibre;

(e) Installations for smelting mineral substances including the production of mineral fibres;

(f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.

6. CHEMICAL INDUSTRY (PROJECTS NOT INCLUDED IN ANNEX I)

(a) Treatment of intermediate products and production of chemicals;

(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;

(c) Storage facilities for petroleum, petrochemical and chemical products.

7. FOOD INDUSTRY

(a) Manufacture of vegetable and animal oils and fats;

(b) Packing and canning of animal and vegetable products;

(c) Manufacture of dairy products;

(d) Brewing and malting;

(e) Confectionery and syrup manufacture;

(f) Installations for the slaughter of animals;

(g) Industrial starch manufacturing installations;

(h) Fish-meal and fish-oil factories;

(i) Sugar factories.

8. TEXTILE, LEATHER, WOOD AND PAPER INDUSTRIES

(a) Industrial plants for the production of paper and board (projects not included in Annex I);

(b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;

(c) Plants for the tanning of hides and skins;

(d) Cellulose-processing and production installations.

9. RUBBER INDUSTRY

Manufacture and treatment of elastomer-based products.

10. INFRASTRUCTURE PROJECTS

(a) Industrial estate development projects;

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

(c) Construction of railways and intermodal transhipment facilities, and of intermodal terminals (projects

not included in Annex I);

(d) Construction of airfields (projects not included in Annex I);

(e) Construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I);

(f) Inland-waterway construction not included in Annex I, canalisation and flood-relief works;

(g) Dams and other installations designed to hold water or store it on a long-term basis (projects not included in Annex I);

(h) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;

(i) Oil and gas pipeline installations and pipelines for the transport of CO_2 streams for the purposes of geological storage (projects not included in Annex I);

(j) Installations of long-distance aqueducts;

(k) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;

(l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;

(m) Works for the transfer of water resources between river basins not included in Annex I.

11. OTHER PROJECTS

(a) Permanent racing and test tracks for motorised vehicles;

(b) Installations for the disposal of waste (projects not included in Annex I);

(c) Waste-water treatment plants (projects not included in Annex I);

(d) Sludge-deposition sites;

(e) Storage of scrap iron, including scrap vehicles;

(f) Test benches for engines, turbines or reactors;

(g) Installations for the manufacture of artificial mineral fibres;

(h) Installations for the recovery or destruction of explosive substances;

(i) Knackers' yards.

12. TOURISM AND LEISURE

(a) Ski-runs, ski-lifts and cable-cars and associated developments;

(b) Marinas;

(c) Holiday villages and hotel complexes outside urban areas and associated developments;

(d) Permanent camp sites and caravan sites;

(e) Theme parks.

13. (a) Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I);

(b) Projects in Annex I, undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years.

According to the case-law of the Court:

Airport/existing airport

Point 12 of Annex II, read in conjunction with point 7 of Annex I, to the EIA Directive (in their original version), must be regarded as also encompassing works to **modify an existing airport**. All works relating to the buildings, installations or equipment of an airport must be considered to be works relating to the airport as such. For the application of point 12 of Annex II, read in conjunction with point 7 of Annex I, to the EIA Directive (in their original version), that means that **works to modify an airport** with a runway length of 2 100 metres or more thus comprise not only works to extend the runway, but all works relating to the buildings, installations or equipment of that airport where they may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself. That is the case in particular for works aimed at **significantly increasing the activity** of the airport and air traffic.

(*Abraham and Others*, C-2/07, EU:C:2008:133, paragraphs 33, 34, 36, 40: That interpretation is in no way called into question by the fact that the EIA Directive 97/11 has replaced point 12 of Annex II to the EIA Directive 85/337 with a new point 13)

Groundwater abstraction

A project concerning abstraction of water leaking into a tunnel which houses electric cables and its recharging into the ground or rock in order to compensate for any reduction in the amount of groundwater, and the construction and maintenance of facilities for the abstraction and recharging, are covered by **point 10(l) in Annex II** to the EIA Directive, irrespective of the ultimate destination of the groundwater and, in particular, of whether or not it is put to a subsequent use.

(*Djurgården*, C-263/08, ECLI:EU:C:2009:631, paragraph 31)

Urban development projects outside urban areas

The argument advanced that, in urban areas, the environmental impact of urban development projects would be virtually non-existent cannot be accepted, given the list of factors that may be affected directly or indirectly by projects covered by the EIA Directive.

Indeed, the factors listed in Article 3 of the EIA Directive can be found both in and outside urban areas and the probability of their being affected by one of the aforementioned projects does not necessarily

vary according to the location of these areas. In any event, neither the preamble nor the provisions of Directive 85/337/EEC as amended confirm the interpretation that projects for urban development projects in urban areas are all unlikely to have significant effects on the environment within the meaning of Article 1(1) of the Directive such that they could therefore be exempted from the procedure of applying for authorisation and impact assessment.

(*Commission v. Spain*, C-332/04, ECLI:EU:C:2006:180,, paragraphs 80-81)

Waste disposal

The concept of waste disposal for the purpose of the EIA Directive is an **independent concept** which must be given a meaning which fully satisfies the objective pursued by that measure, which, as is clear from Article 2(1) of the directive, 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 made subject to an assessment with regard to their effects. Accordingly, that concept, which is not equivalent to that of waste disposal for the purpose of Directive 75/442, must be construed in the **wider sense** as covering all operations leading either to waste disposal, in the strict sense of the term, or to waste recovery.

As a result, an establishment, which generates electricity from the incineration of biomass and combustible materials derived from waste and which has a capacity exceeding 100 tonnes per day, comes into the category of disposal installations for the incineration or chemical treatment of non-hazardous waste **in point 10 of Annex I** to the EIA Directive. As such, before being authorised, it should have undergone the environmental impact assessment procedure, since the projects which fall within Annex I must undergo a systematic assessment under Articles 2(1) and 4(1) of that directive.

(*Commission* v *Italy,* C-486/04, EU:C:2006:732, paragraphs 44-45)

Deep drillings

This interpretation is, furthermore, corroborated by the overall scheme of Directive 85/337. Annex II, No 2(d), to that directive is liable to apply to exploratory drillings, with the result that **not all exploratory drillings fall outside the scope of the directive**.

The projects listed in Annex II, No 2(d), include deep drillings, which include, in particular, geothermal drilling, drilling for the storage of nuclear waste material and drilling for water supplies, with the exception of drillings for investigating the stability of the soil.

It is evident from the wording of that provision that it does not contain an exhaustive enumeration of the different types of drilling it covers; rather, it covers all types of deep drillings, with the exception of drillings for investigating the stability of the soil.

Thus, **since exploratory drillings are a form of deep drilling, they fall within the scope of Annex II, No 2(d)**, to Directive 85/337.

(*Marktgemeinde Straßwalchen and Others* ,C-531/13, ECLI:EU:C:2015:79, paragraphs 26, 28-30)

It follows that the Commission's complaint must be regarded as limited to the question whether the Republic of Poland has failed to fulfil its obligations under Directive 2011/92 in that it fixed at a depth of 5 000 metres the threshold below which drilling for exploration and prospecting for shale gas outside sensitive areas is not subject to a screening *procedure*.

It is appropriate, next, to determine whether the bore holes thus excluded fall within the category of ‘deep drillings’, within the meaning of point 2 (d) of Annex II to that directive.

It must be borne in mind in that regard that Annex II to Directive 2011/92 lists the projects referred to in Article 4(2) of that directive in respect of which the Member States are required to determine the extent to which they are likely to have significant effects on the environment and must, as such, be assessed in accordance with Article 2(1) thereof.

Thus, contrary to what the Polish Government maintains, it is necessary to rule first on the question whether drilling falls within the category of ‘deep drillings’ referred to in point 2 (d) of Annex II to Directive 2011/92 and then solely on the question whether, where appropriate, that drilling must be made subject to an assessment, in accordance with Article 2(1) of that directive, if it is likely to have significant effects on the environment.

It is also clear from the general scheme of Directive 2011/92 and from the wording of its provisions that the scope of that directive is extended and that the objective pursued by that directive is very broad (see, by analogy, judgment of 24 October 1996, Kraaijeveld and Others, C 72/95-, EU:C:1996:404, paragraphs 31 and 39).

It is also clear from the wording of point 2 of Annex II to that directive, relating to the extractive industry, which, in addition to deep drilling wells, covers quarries, open-cast mining and peat extraction, but also underground mining operations, extraction of minerals by marine or inland waterway dredging and surface industrial installations for the extraction of coal, oil, natural gas and ores, as well as bituminous shale, which that provision is intended to cover extensively projects related to the extractive industry.

Consequently**, although point 2 (d) of Annex II to Directive 2011/92 does not specify the term ‘deep drillings’, in conjunction with a depth threshold, it is nevertheless apparent from the general scheme of that directive that the EU legislature intended to cover, under that expression, any drilling associated with the extractive industry likely to have an impact on the environment**.

In view of their characteristics, the bore holes for the prospection and exploration of shale gas are therefore, **in principle, ‘deep’ drillings within the meaning of point 2 (d)** of Annex II.This is the case for drilling operations likely to rise to several hundred or thousands of metres in depth, such as those covered by the legislation in question.

Accordingly, **such drillings constitute projects** for which the Member States are under **an obligation to determine, pursuant to Article 4(2) of Directive 2011/92**, either on the basis of a case-by-case examination, or on the basis of thresholds or criteria, whether they must be made subject to an assessment of their effects on the environment. According to that same provision, the Member States may also decide to apply both procedures.

It follows from the foregoing that, by retaining the threshold of 5 000 metres in depth, the Republic of Poland has, in practice, removed almost all projects for the prospection or exploration of shale gas outside the areas sensitive to the application of Directive 2011/92, without it being possible to consider, on the basis of an overall assessment, that those projects are not likely to have significant effects on the environment.It therefore exceeded its discretion under Article 2(1) and Article 4(2) of Directive 2011/92.

In the light of the foregoing, it must be held that, by excluding projects for the prospection or exploration of shale gas deposits with holes up to 5 000 metres, situated outside sensitive

areas, the screening *procedure*, the Republic of Poland has failed to fulfil its obligations under Article 2(1) in conjunction with Article 4 (2) and (3) and Annexes II and III to Directive 2011/92.

(COM informal translation into English of *Commission v Poland,* Case C-526/16, ECLI:EU:C:2018:356, paragraphs 50-58 ; 78-79)

Deforestation

It follows from the wording of point 1(d) of Annex II to the directive that it does not cover any deforestation, but only deforestation operations carried out for the purpose of conferring a new use on the land concerned.

It must be stated that, in so far as the clearance of a path in a forest, such as that at issue in the main proceedings, is planned for the purpose of the construction and operation of an overhead electrical power line, the land concerned is put to new use. Consequently, a clearance, such as that at issue in the main proceedings, is covered by point 1(d) of Annex II to the EIA Directive.

That interpretation is, moreover, borne out by the objective pursued by the EIA Directive.

It would run counter to the fundamental objective of the EIA Directive, and the wide scope which must be attributed to it, to exclude from the scope of Annex II thereto works consisting in the clearance of paths in forests, on the ground that such works are not expressly set out therein. Such an interpretation would effectively enable the Member States to circumvent the obligations imposed on them by the EIA Directive when they consent to a clearance of a path in a forest, regardless of its scale.

It follows that path clearance operations in a forest for the purpose of the construction and operation of an overhead electrical power line are covered by point 1(d) of Annex II to the EIA Directive.

(*Prenninger and Others,* Case C-329/17, ECLI:EU:C:2018:640, paragraphs 31-33; 36-37)

Changes or extensions of projects

Point 2(b) of Annex I to the EIA Directive lists nuclear power stations and other nuclear reactors, including their dismantling and decommissioning, among the projects which under Article 4(1) of that directive are subject to an assessment in accordance with Articles 5 to 10 of that directive.

Consequently, it must be examined whether measures such as those at issue in the main proceedings, along with the work to which those measures are inextricably linked, may fall within the scope of point 24 of Annex I to the EIA Directive, which refers to 'any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex', or of point 13(a) of Annex II to that directive, which refers to 'any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)'.

As regards point 24 of Annex I to the EIA Directive, it is evident from the wording and general scheme of that provision that it applies to any change or extension to a project, which

by virtue of, inter alia, its nature or scale, presents risks that are similar, in terms of their effects on the environment, to those posed by the project itself.

The measures at issue in the main proceedings, which have the effect of extending, by a significant period of 10 years, the duration of consents to produce electricity for industrial purposes with respect to both power stations in question, which had up until then been limited to 40 years by the Law of 31 January 2003, combined with major renovation works necessary due to the ageing of those power stations and the obligation to bring them into line with safety standards, must be found to be of a scale that is comparable, in terms of the risk of environmental effects, to that when those power stations were first put into service.

The Court therefore finds that those measures and that work fall within the scope of point 24 of Annex I to the EIA Directive. Such a project carries an inherent risk of significant effects on the environment, within the meaning of Article 2(1) of that directive, and must therefore be subject to an assessment of its environmental impact under Article 4(1) of that directive.

Furthermore, given that the Doel 1 and Doel 2 power stations are located close to the border of the Kingdom of Belgium and the Kingdom of the Netherlands, it is indisputable that the project could also have significant effects on the environment in the latter Member State, within the meaning of Article 7 (1) of that directive.

(*Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen,* C-411/17, ECLI:EU:C:2019:622, paragraphs 76-81)

ANNEX II.A introduced by Directive 2014/52/EU

INFORMATION REFERRED TO IN ARTICLE 4(4)

(INFORMATION TO BE PROVIDED BY THE DEVELOPER ON THE PROJECTS LISTED IN ANNEX II)

1. A description of the project, including in particular:

(a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;

(b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.

2. A description of the aspects of the environment likely to be significantly affected by the project.

3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:

(a) the expected residues and emissions and the production of waste, where relevant;

(b) the use of natural resources, in particular soil, land, water and biodiversity.

4. The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.

ANNEX III *SELECTION CRITERIA REFERRED TO IN ARTICLE 4 (3)*	*ANNEX III as amended by Directive 2014/52/EU* *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)*
1. CHARACTERISTICS OF PROJECTS *The characteristics of projects must be considered having regard, in particular, to:* *(a) the size of the project;* *(b) the cumulation with other projects;* *(c) the use of natural resources;* *(d) the production of waste;,* *(e) pollution and nuisances;* *(f) the risk of accidents, having regard in particular to substances or technologies used.*	*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;* *(c) the use of natural resources, in particular land, soil, water and biodiversity;* *(d) the production of waste;* *(e) pollution and nuisances;* *(f) the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;* *(g) the risks to human health (for example due to water contamination or air pollution).*
2. LOCATION OF PROJECTS *The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:* *(a) the existing land use;* *(b) the relative abundance, quality and regenerative capacity of natural resources in the area;* *(c) the absorption capacity of the natural environment, paying particular attention to the following areas:* *(i) wetlands;* *(ii) coastal zones;* *(iii) mountain and forest areas;* *(iv) nature reserves and parks;* *(v) areas classified or protected under Member States' legislation; special protection areas designated by Member States pursuant to Directive 2009//147/EC of the European Parliament and of the Council of 30 November 2009 on the ocnseration of*	*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:* *(i) wetlands, riparian areas, river mouths;* *(ii) coastal zones and the marine environment;* *(iii) mountain and forest areas;* *(iv) nature reserves and parks;*

wild birds[8] and to Council Directive 92/43/EECof 21 May 1992 on the conservation of natural habitats and of wild fauna and flora[9];	***(v) areas classified or protected under national legislation; Natura 2000 areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;***
(vi) areas in which the environmental quality standards laid down in Union legislation have already been exceeded;	***(vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure;***
(vii) densely populated areas;	***(vii) densely populated areas;***
(viii) landscapes of historical, cultural or archaeological significance.	***(viii) landscapes and sites of historical, cultural or archaeological significance.***
3. CHARACTERISTICS OF THE POTENTIAL IMPACT	***3. Type and characteristics of the potential impact***
The potential significant effects of projects must be considered in relation to criteria set out in points 1 and 2, and having regard in particular to:	***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 extent of the impact (geographical area and size of the affected population);	***(a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);***
(b) the transfrontier nature of the impact;	***(b) the nature of the impact;***
(c) the magnitude and complexity of the impact;	***(c) the transboundary nature of the impact;***
(d) the probability of the impact;	***(d) the intensity and complexity of the impact;***
(e) the duration, frequency and reversibility of the impact.	***(e) the probability of the impact;***
	(f) the expected onset, duration, frequency and reversibility of the impact;
	(g) the cumulation of the impact with the impact of other existing and/or approved projects;
	(h) the possibility of effectively reducing the impact.

[8] OJ L 20, 26.1.2010, p. 7.

[9] OJ L 206, 22.7.1992, p. 7.

According to the case-law of the Court:

Take into account the relevant selection criteria

Pursuant to Article 4(3) of Directive 85/337, when establishing the criteria and/or thresholds in question, the Member States are required to take into account the **relevant selection criteria** listed in Annex III to the Directive.

(*Commission v. Ireland*, C-66/06, EU:C:2008:637, paragraph 62; *Commission v Netherlands*, C-255/08, ECLI:EU:C:2009:630, paragraph 33; *Commission v Belgium*, C-435/09, ECLI:EU:C:2011:176, paragraph 53; *Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraph 30)

A Member State which, on the basis of Article 4(2) of the EIA Directive, has established thresholds and/or criteria taking account **only the size of projects**, without taking into consideration **all the criteria listed in Annex III [**i.e. nature and location of projects], exceeds the **limits of its discretion** under Articles 2(1) and **4(2)** of the EIA Directive.

(*Commission v. Ireland,* C-392/96, EU:C:1999:431, paragraphs 65 and 72; *Commission v. Ireland,* C-66/06, EU:C:2008:637, paragraph 64; *Commission v Netherlands*, C-255/08, ECLI:EU:C:2009:630, paragraphs 32-39; *Commission v Belgium,* C-435/09, ECLI:EU:C:2011:176, paragraphs 52 and 55)

By limiting the environmental impact assessment for urban development projects exclusively to projects located on non-urban land, the Spanish Government is **confining itself to applying the criterion of location**, which is only one of three criteria set out in Article 2(1) of the EIA Directive, and is **failing to take account of the other two criteria, namely the nature and size of a project**.

Moreover, insofar as Spanish law provides for environmental impact assessment only in respect of urban development projects outside urban areas, it fails to apply completely the criterion of location. Indeed, **densely populated areas and landscapes of historical, cultural or archaeological significance** in points 2(g) and (h) of Annex III of the EIA Directive are among the selection criteria to be taken into account by Member States, under Article 4(3) of the Directive, in the event of a case-by-case examination or of setting thresholds or criteria for the purpose of Article 4(2) to determine whether a project should be subject to an assessment. These selection criteria relate more often to urban areas.

(*Commission v. Spain*, C-332/04, ECLI:EU:C:2006:180, paragraphs 77-79)

Cumulation with other projects – Annex III.1.b

Likewise, when determining if a Member State must, pursuant to Article 4(2) of the Directive, subject a project listed in Annex II to an assessment because it is likely to have significant effects on the environment within the meaning of Article 2(1) of the Directive, Annex III to the Directive specifies that **cumulation with other projects** is one of the selection criteria.

(*Commission* v *Spain,* C-560/08, EU:C:2011:835, paragraph 98)

ANNEX IV *INFORMATION REFERRED TO IN ARTICLE 5 (1)*	*ANNEX IV as amended by Directive 2014/52/EU* *INFORMATION REFERRED TO IN ARTICLE 5(1)* *(INFORMATION FOR THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT)*
1. A description of the project, including in particular: ***(a) a description of the physical characteristics of the whole project and the land-use requirements during the construction and operational phases;*** ***(b) a description of the main characteristics of the production processes, for instance, the nature and quantity of the materials used;*** ***(c) an estimate, by type and quantity, of expected residues and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc.) resulting from the operation of the proposed project.*** ***2. An outline of the main alternatives studied by the developer and an indication of the main reasons for this choice, taking into account the environmental effects.*** ***3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.*** ***4. A description ([10]) of the likely significant effects of the proposed project on the environment resulting from:*** ***(a) the existence of the project;*** ***(b) the use of natural resources;*** ***(c) the emission of pollutants, the creation of nuisances and the elimination of waste,*** ***5. A description by the developer of the forecasting methods used to assess the effects on the environment referred to in point 4 .***	***1. Description of the project, including in particular:*** ***(a) a description of the location of the project;*** ***(b) a description of the physical characteristics of the whole project, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;*** ***(c) a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;*** ***(d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.*** ***2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.*** ***3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.*** ***4. A description of the factors specified in Article 3(1) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction,***

[10] This description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project.

6. A description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment.

7. A non-technical summary of the information provided under the above headings 1 to 6.

8. An indication of any difficulties (technical deficiencies or lack of know-how) encountered by the developer in compiling the required information.

sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the project on the environment resulting from, inter alia:

(a) the construction and existence of the project, including, where relevant, demolition works;

(b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;

(c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;

(d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);

(e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;

(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;

(g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and,

where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council (1) or Council Directive 2009/71/Euratom (2) or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under points 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the report .

According to the case-law of the Court:

Indirect and cumulative effects to be covered

It cannot be inferred from the use of the conditional, in the note concerning point 4 of Annex IV to Directive 85/337 as amended, to the effect that '[t]his description should cover ... any ... cumulative ... effects of the project', that the assessment of the environmental impacts does not necessarily have to cover the cumulative effects of the various projects on the environment, but that such an analysis is merely desirable.

(*Commission* v *Spain,* C-404/09, EU:C:2011:768, paragraph 77)

As regards the content of the assessment of environmental effects, Article 3 of Directive 85/337 lays down that it must include a description of the direct and indirect environmental impact of a project (see Case C-322/04 Commission v Spain [2006], paragraph 33; Case C-2/07 Abraham and Others [2008] ECR I-1197, paragraphs 43-45 and Ecologistas en Acción-CODA, paragraph 39). Besides, Annex IV to the Directive includes a description of the cumulative environmental impact of the project in the information to be provided by the developer pursuant to Article 5(1). Likewise, when determining if a Member State must,

pursuant to Article 4(2) of the Directive, subject a project listed in Annex II to an assessment because it is likely to have significant effects on the environment within the meaning of Article 2(1) of the Directive, Annex III to the Directive specifies that cumulation with other projects is one of the selection criteria.

The Commission's allegation concerning the absence of concrete elements concerning the criteria used for evaluating the indirect impact of the doubling of section 1 in the environmental impact declaration of 2 April 1998 has not been seriously contradicted by the Kingdom of Spain. Indeed, the latter merely alleged that the impact declaration in question required that the necessary measures be taken to prevent any environmental impact, even when induced.

(*Commission* v *Spain,* C-560/08, EU:C:2011:835, paragraphs 98-99)

Part III - The SEA Directive

Article 1

Objectives

The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

According to the case-law of the Court:

The objective of the SEA Directive

First of all, as is apparent from Article 1 of Directive 2001/42, t**he fundamental objective** of that directive is, where plans and programmes are likely to have significant effects on the environment, **to require an environmental assessment to be carried out at the time they are prepared and before they are adopted.**

(*Terre wallonne and Inter-Environnement Wallonie*, C-105/09 & C-110/09, EU:C:2010:355, paragraph 32, *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 37, *Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraph 20, *Inter-Environnement Wallonie and Terre wallonne,* C-41/11, EU:C:2012:103, paragraph 40, *L v M,* C-463/11, ECLI:EU:C:2013:247, paragraph 31, *Associazione Italia Nostra Onlus,* C-444/15, ECLI:EU:C:2016:978, paragraph 47 ; *A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraph 46)

The fundamental objective of Directive 2001/42 would be disregarded if national courts did not adopt in such actions brought before them, and subject to the limits of procedural autonomy, the measures, provided for by their national law, that are appropriate for preventing such a plan or programme, including projects to be realised under that programme, from being implemented in the absence of an environmental assessment.

(*Inter-Environnement Wallonie and Terre wal*lonne, C-41/11, EU:C:2012:103, paragraph 47)

Where such an environmental assessment is required by Directive 2001/42, the directive lays down **minimum rules** concerning the preparation of the environmental report, the carrying out of consultations, the taking into account of the results of the environmental assessment and the communication of information on the decision adopted at the end of the assessment.

(Terre wallonne and Inter-Environnement Wallonie, C-105/09 & C-110/09, EU:C:2010:355, paragraph 33 ; Inter-Environnement Bruxelles and Others, C-567/10, EU:C:2012:159, paragraph 21 ; Inter-Environnement Wallonie and Terre wallonne, C-41/11, EU:C:2012:103, paragraph 41)

The purpose of that directive is, as set out in Article 1, to provide for a high level of protection for the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development.

(*A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraph 45)

Article 2

Definition

For the purposes of this Directive:

(a) 'plans and programmes' shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

- ***which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and***

- ***which are required by legislative, regulatory or administrative provisions;***

(b) 'environmental assessment' shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

(c) 'Environmental report' shall mean the part of the plan or programme documentation containing the information required in Article 5 and Annex I;

(d) 'The public' shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

According to the case-law of the Court:

Broad interpretation of definitions

Consequently, **given the objective of Directive 2001/42**, which is to provide for a high level of protection of the environment, **the provisions which delimit the directive's scope**, in particular those **setting out the definitions of** the measures envisaged by the directive, **must be interpreted broadly**

(*Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraph 37, and of 10 September 2015, *Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 50; *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 40).

Article 2(a)

It follows that an examination of the wording of Article 2(a), second indent, of Directive 2001/42 is inconclusive, since it does not make it possible to determine whether 'plans and programmes' referred to in that provision are exclusively those that national authorities are obliged to adopt under legislative, regulatory or administrative provisions.

Next, as regards the legislative history of the second indent of Article 2(a) of Directive 2001/42, that provision, which was not included in the original European Commission proposal for a directive, nor in the amended version of that proposal, was added by Common Position (EC) No 25/2000 of 30 March 2000 adopted by the Council, acting in accordance

with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a Directive of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment (OJ 2000 C 137, p. 11). As the Advocate General observed in points 62 and 63 of his Opinion, by this addition the EU legislature intended to restrict the obligation to carry out an environmental assessment to certain plans and programmes only, but it is not possible to infer that its intention was to restrict such an assessment only to plans and programmes whose adoption is mandatory.

As regards the context of that provision, it must be noted, first, as the Advocate General observed in points 66 and 67 of his Opinion, that a binary concept which makes a distinction according to whether the adoption of a plan or a programme is compulsory or optional is not capable of covering, in a manner that is sufficiently precise and therefore satisfactory, the diversity of situations that arise or the wide-ranging practices of national authorities. The adoption of plans or programmes, which can occur in a great variety of situations, is often neither imposed as a general requirement, nor left entirely to the discretion of the competent authorities.

Secondly, Article 2(a) of Directive 2012/42 includes not only the preparation and adoption of 'plans and programmes', but also modifications to them (see, to that effect, judgments of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraph 36, and of 10 September 2015, *Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 44). As the Advocate General stated in point 68 of his Opinion, that latter case, in which the modification of the plan or programme concerned is also likely to have significant environmental effects, within the meaning of Article 3(1) of Directive 2001/42, most often arises when an authority decides of its own initiative to carry out such a modification, without being obliged to do so.

Those foregoing considerations are consistent with the purpose and objectives of Directive 2001/42, which itself comes within the framework established by Article 37 of the Charter of Fundamental Rights of the European Union, according to which **a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the European Union and ensured in accordance with the principle of sustainable development**.

Those objectives would be likely to be compromised if Article 2(a) of Directive 2001/42 were interpreted as meaning that only those plans or programmes whose adoption is compulsory are covered by the obligation to carry out an environmental assessment laid down by that directive. First, as has been observed in paragraph 42 above, the adoption of those plans and programmes is often not imposed as a general requirement. Second, such an interpretation would allow a Member State to circumvent easily that requirement for an environmental assessment by deliberately refraining from providing that competent authorities are required to adopt such plans and programmes.

(*A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraphs, 40-43, 44, and 48)

Notion of 'plans and programmes'

Next, and as was stated by the Advocate General in point 34 of her Opinion, **the delimitation of the definition of 'plans and programmes'** in relation to other measures not coming

within the material scope of Directive 2001/42 **must be made with regard to the specific objective laid down in Article 1** of that directive, namely to subject plans and programmes which are likely to have significant effects on the environment to an environmental assessment (see, to that effect, judgment of 28 February 2012, Inter-Environnement Wallonie and Terre wallonne, C-41/11, EU:C:2012:103, paragraph 40 and the case-law cited).

As regards Article 2(a) of Directive 2001/42, the definition of 'plans and programmes' laid down in that provision sets out the **cumulative condition** that they are, first, subject to **preparation and/or adoption by an authority** at national, regional or local level or are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and, secondly, **required by legislative, regulatory or administrative provisions**.

As for the term 'plans and programmes', whilst it is true that it must cover a specific area, the fact nonetheless remains that it is not apparent from the wording of either Article 2(a) of Directive 2001/42 or Article 3(2)(a) of that directive that those plans or programmes must concern planning for a given area. It follows from the wording of those provisions that they cover, in the wider sense, regional and district planning in general.

(*D'Oultremont and Others*, C-290/15, EU:C:2016:81, paragraphs 39, 41, 45)

Article 2(a) of the SEA Directive defines the 'plans and programmes' covered by that provision as being plans and programmes that satisfy two cumulative conditions, namely, first, the condition that they are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government and, second, the condition that they are required by legislative, regulatory or administrative provisions.

It must be added that, pursuant to Article **3(2)(a)** of the SEA Directive, a systematic environmental assessment must be carried out for all plans and programmes which are prepared for certain sectors and which set the framework for future development consent of projects listed in Annexes I and II to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1, 'the EIA Directive').
(*Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraphs 36 and 41 ; *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraphs 42 and 46; *Verdi Ambiente e Società (VAS – Aps Onlus' and Others*, C-305/18, EU:C:2019:384, paragraphs 44 and 47; *Terre wallonne ASBL v Région wallonne*, Case C-321/18, ECLI:EU:C:2019:484, paragraphs 33 and 37; *A and Others,* C-24/19, ECLI:EU:C:2020:503, paragraph 65)

Such an interpretation of the notion of 'plans and programmes', **which not only includes their preparation but also their modification**, is intended to ensure that provisions which are likely to have significant environmental effects are subject to an environmental assessment (see, to that effect, judgment of 7 June 2018, *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraphs 54 and 58.

(Verdi Ambiente e Società (VAS) – Aps Onlus' and Others, C-305/18, EU:C:2019:384, paragraph 52)

Furthermore, and in any event, the objection raised by the Italian Government that the second condition set out in Article 3(2)(a) of the SEA Directive is not satisfied since the national legislation at issue in the main proceedings does not constitute a framework of reference must be rejected. **The fact that national legislation expresses some abstract ideas, and pursues an objective of transforming the existing framework is illustrative of its planning and programming aspect and does not prevent it from being included in the notion of 'plans and programmes**' (see, to that effect, judgment of 7 June 2018, *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraph 60 and the case-law cited).

Such an interpretation is supported, first, by the requirements stemming from Article 6 of the SEA Directive, read in the light of recitals 15 to 18 thereof, to the extent that that directive not only aims to contribute to environmental protection, but also to enable the public to take part in the decision-making process. Second, as is apparent from Article 4(1) of that directive, 'the environmental assessment … shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure'. Similarly, it is apparent from Article 6(2) of that directive that the environmental assessment is supposed to be carried out as soon as possible so that its conclusions may still have an influence on any potential decision-making. Indeed, it is at that stage that the various options may be analysed and strategic choices may be made (see, to that effect, judgments of 20 October 2011, *Seaport (NI) and Others*, C-474/10, EU:C:2011:681, paragraph 45, and of 7 June 2018, *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraph 63).
(*Verdi Ambiente e Società (VAS) – Aps Onlus' and Oth*ers, C-305/18, EU:C:2019:384, paragraph 57 and 58)

Moreover, a broad interpretation of the concept of 'plans and programmes' is consistent with the European Union's international undertakings, such as those resulting, inter alia, from Article 2(7) of the Espoo Convention.

It is also necessary to observe that the general nature of the Order and the Circular of 2006 do not preclude those instruments from being classified as 'plans and programmes' within the meaning of Article 2(a) of Directive 2001/42. While it is clear from the wording of that provision that the concept of 'plans and programmes' can cover normative instruments that are legislative, regulatory or administrative, that directive does not contain any special provisions in relation to policies or general legislation that would call for them to be distinguished from plans and programmes for the purpose of that directive. The fact that a national measure is to some extent abstract and pursues an objective of transforming an existing geographical zone is illustrative of its planning and programming aspect and does not prevent it from being included in the concept of 'plans and programmes' (see, to that effect, judgment of 7 June 2018, *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraph 60 and the case-law cited).

(*A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraphs 49 and 61)

Article 3 of Directive 2001/42 makes the obligation to subject a specific plan or programme to an environmental assessment conditional upon the plan or programme covered by that provision being likely to have significant environmental effects (judgment of 7 June 2018, *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraph 30). More specifically, Article 3(2)(a) of that directive provides that a systematic environmental assessment is to be carried out for all plans and programmes that are prepared for certain

sectors and set the framework for future development consent of projects listed in Annexes I and II to Directive 2011/92 (judgment of 8 May 2019, *'Verdi Ambiente e Società (VAS) — Aps Onlus' and Others*, C-305/18, EU:C:2019:384, paragraph 47).

(*A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraph 65)

In particular, the Court has already held that although such a measure does not, and cannot, lay down positive rules, the possibility which it creates of allowing a derogation from the rules in force to be obtained more easily changes the legal process and consequently brings such a measure within the scope of Article 2(a) of Directive 2001/42 (see, to that effect, judgment of 7 June 2018, *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 58).

(*A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraph 58)

Significant body of criteria and detailed rules

Having regard to that objective [DG ENV insertion: "objective of the Directive"], it should be noted that the notion of 'plans and programmes' relates to **any measure** which establishes, by defining rules and procedures for scrutiny applicable to the sector concerned, **a significant body of criteria and detailed rules for the grant and implementation** of one or more projects likely to have significant effects on the environment. (see, to that effect, judgment of 11 September 2012, Nomarchiaki Aftodioikisi Aitoloakarnanias and Others, C-43/10, EU:C:2012:560, paragraph 95 and the case-law cited).

(*D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 49; *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraph 53; *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 54; *Verdi Ambiente e Società (VAS) – Aps Onlus' and Others*, C-305/18, EU:C:2019:384, paragraph 50; *CFE*, C-43/18, ECLI:EU:C:2019:483, paragraph 61; Terre wallonne ASBL v Région wallonne, Case C-321/18, ECLI:EU:C:2019:484, paragraph 41 ; A and Others, C-24/19, ECLI:EU:C:2020:503, paragraph 67)

Therefore, as was noted by the Advocate General in points 25 and 26 of her Opinion, the concept of 'a significant body of criteria and detailed rules' **must be construed qualitatively and not quantitatively**. It is necessary to avoid strategies which may be designed to circumvent the obligations laid down in the SEA Directive by splitting measures, thereby reducing the practical effect of that directive (see, to that effect, judgment of 27 October 2016, *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 48 and the case-law cited).

(*Inter-Environnement Bruxelles and Others* C-671/16, EU:C:2018:403, paragraph 55; *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 55; *Verdi Ambiente e Società (VAS) – Aps Onlus' and Others*, C-305/18, EU:C:2019:384, paragraph 51 ; *CFE*, C-43/18, ECLI:EU:C:2019:483, paragraph 64 ; *A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraph 70)

In that regard, it should be noted that it is apparent from the actual wording of Article 2(a), first indent, of that directive, borne out by the case-law referred to in paragraph 49 of the present judgment, that the notion of 'plans and programmes' **can cover normative acts** adopted by law or regulation.

(*D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraphs 39, 41, 45, and 52) In that connection, the Court has ruled that the notion of 'plans and programmes' relates to any measure which establishes, by defining rules and procedures, a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment (judgments of 27 October 2016, *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 49 and the case-law cited, and of 8 May 2019, *"Verdi Ambiente e Società (VAS) — Aps Onlus" and Others*, C-305/18, EU:C:2019:384, paragraph 50 and the case-law cited).

In the present case, the Decree of 1 December 2016 does not set out conservation objectives for specific sites, but summarises them for the Walloon region as a whole. Furthermore, it is apparent from the third subparagraph of Article 25a(1) of the Law of 12 July 1973 that the conservation objectives at Walloon Region level have indicative value only, whereas the second subparagraph of Article 25a(2) provides that the conservation objectives applicable at the level of Natura 2000 sites have statutory value.

In the light of those factors, it must be held that a measure, such as that at issue in the main proceedings, **fails to satisfy the condition recalled in paragraph 41** of the present judgment, in that **it does not set a framework for future development consent of projects**, with the effect that it does not come within the scope either of Article 3(2)(a) or Article 3(4) of the SEA Directive.

In the light of the foregoing, the answer to the questions referred is that Article 3(2) and (4) of the SEA Directive must be interpreted as meaning that a decree, such as that at issue in the main proceedings, by which a body of a Member State **establishes, at regional level** for its Natura 2000 network, conservation **objectives which have an indicative value**, whereas the conservation objectives at site level have a statutory value, **is not one of the 'plans and programmes', within the meaning of that directive, for which an environmental impact assessment is mandatory.**
(*Terre wallonne ASBL v Région wallonne*, Case C-321/18, ECLI:EU:C:2019:484, paragraphs 41-44)

Plans and programmes 'required'

It must be stated that an interpretation which would result in excluding from the scope of Directive 2001/42 all plans and programmes, inter alia those concerning the development of land, whose adoption is, in the various national legal systems, regulated by rules of law, solely because their **adoption is not compulsory in all circumstances**, cannot be upheld.

It follows that plans and programmes **whose adoption is regulated** by national legislative or regulatory provisions, which **determine the competent authorities for adopting** them and the **procedure for preparing them**, must be regarded as **'required'** within the meaning, and for the application, of Directive 2001/42 and, accordingly, be subject to an assessment of their environmental effects in the circumstances which it lays down.

(*Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraphs 28 and 31 ; *Inter-Environnement Bruxelles and Others* C-671/16, EU:C:2018:403, paragraph 37 ; *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 43; CFE, C-43/18, ECLI:EU:C:2019:483, paragraph 54; *Verdi Ambiente e Società - Aps Onlus*, C-305/18, ECLI:EU:C:2019:384, paragraph

45 ; *Terre wallonne ASBL v Région wallonne,* Case C-321/18, ECLI:EU:C:2019:484, paragraph 34 ; *A and Others,* C-24/19, ECLI:EU:C:2020:503, paragraph 35)

It follows that, since a strict interpretation, which limits the second condition of Article 2(a) of Directive 2001/42 only to 'plans and programmes' whose adoption is compulsory, could render its scope marginal, the Court favoured the need to ensure the effectiveness of that condition by adopting a broader definition of the term 'required' (see, to that effect, judgment of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraph 30).

(*A and Others,* C-24/19, ECLI:EU:C:2020:503, paragraph 50)

Whilst **not every legislative measure** concerning the protection of water from nitrate pollution from agricultural sources constitutes a plan or a programme within the meaning of Directive 2001/42, the **mere fact that such a measure is adopted by legislative means does not exclude it from the scope** of that directive if it has the characteristics mentioned in paragraph 36 above.

(*Terre wallonne and Inter-Environnement Wallonie,* C-105/09 and C-110/09, EU:C:2010:355-, paragraphe 41)

Excluding from the scope of the SEA Directive those plans and programmes whose adoption is not compulsory would compromise the practical effect of that directive, having regard to its objective, which consists in providing for a high level of protection of the environment (see, to that effect, judgment of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraphs 28 and 30).

(*Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraph 38)

Repeal of a plan and programme – included in the definition

It is to be noted first of all, as the national court has, that Directive 2001/42 refers expressly **not to repealing measures but only to measures modifying** plans and programmes.

However, given the objective of Directive 2001/42, which consists in providing for a high level of protection of the environment, the provisions which delimit the directive's scope, in particular those **setting out the definitions of the measures envisaged by the directive**, must be interpreted **broadly**.

In this regard, it is possible that the **partial or total repeal** of a plan or programme is likely to have significant effects on the environment, since it may involve a modification of the planning envisaged in the territories concerned.

(*Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraphs 36-38, *Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 44)

Article 3

Scope

1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes, (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.

4. Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive.

6. In the case-by-case examination and in specifying types of plans and programmes in accordance with paragraph 5, the authorities referred to in Article 6(3) shall be consulted.

7. Member States shall ensure that their conclusions pursuant to paragraph 5, including the reasons for not requiring an environmental assessment pursuant to Articles 4 to 9, are made available to the public.

8. The following plans and programmes are not subject to this Directive:

- ***plans and programmes the sole purpose of which is to serve national defence or civil emergency,***
- ***Financial or budget plans and programmes.***

9. This Directive does not apply to plans and programmes co-financed under the current respective programming periods (1) for Council Regulations (EC) No 1260/1999 (2) and (EC) No 1257/1999 (3).

According to the case-law of the Court:

Application of Article 3(2)(a)

Article 3(2)(a) of Directive 2001/42 provides that a systematic environmental assessment is to be carried out for all plans and programmes which **(i)** are prepared for certain sectors **and (ii)** set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337.

With regard to the **first condition** contained in Article 3(2)(a) of Directive 2001/42, suffice it to say that it is apparent from the very title of Directive 91/676 that action programmes are prepared for the agricultural sector.

With regard to the **second condition**, in order to establish whether action programmes set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337, it is **necessary to examine the content and purpose of those programmes**, taking into account the **scope of the environmental assessment of projects** as provided for by that directive.

As regards the **content** of action programmes, it is apparent from Article 5 of Directive 91/676, in conjunction with Annex III thereto, that those programmes are to contain **specific, mandatory measures** that cover, in particular, periods during which the spreading of certain types of fertiliser is prohibited, the capacity of storage vessels for livestock manure, spreading methods and the maximum quantity of livestock manure containing nitrogen which can be spread (see, to that effect, Case C-416/02 Commission v Spain [2005] ECR I-7487, paragraph 34). Those measures are to ensure in particular, as point 2 of Annex III to Directive 91/676 provides, that for each farm or livestock unit the amount of livestock manure applied to the land each year, including by the animals themselves, does not exceed a specified amount per hectare, which is the amount of manure containing 170 kilograms of nitrogen.

So far as the **scope** of environmental assessment provided for by Directive 85/337 is concerned, it should be noted first of all that the measures set out in action programmes concern intensive rearing installations listed in point 17 of Annex I and point 1(e) of Annex II to Directive 85/337.
(*Terre wallonne ASBL and Inter-Environnement Wallonie ASBL*, C-105/09 and C-110/09, EU:C:2010:355, paragraphs 43-45, 48-49)

The phrase ‘which set the framework for future development consent’, in Article 3(2)(a) of Directive 2001/42, does not include any reference to national laws and therefore constitutes an autonomous concept of European Union law that must be **interpreted uniformly** throughout the territory thereof.

(*A and Others*, C-24/19, ECLI:EU:C:2020:503, paragraph 75)

Concerning the second of those conditions, in order to establish whether regional town planning regulations, such as those at issue in the main proceedings, set the framework for future development consent of projects listed in Annexes I and II to the EIA Directive, it is necessary to examine the content and purpose of those regulations, taking into account the scope of the environmental assessment of projects as provided for by that directive (see, to that effect, judgment of 17 June 2010, *Terre wallonne and Inter-Environnement Wallonie*, C-105/09 and C-110/09, EU:C:2010:355, paragraph 45).

It should be noted that the contested decree contains rules applicable to all buildings, whatever their nature, and to all their surroundings, including ‘areas of open space’ and ‘areas on which building is permissible’, whether public or private.

In that regard, that measure contains a map which not only sets out the area to which it applies, but also defines various islands to which different rules apply as regards the location and height of buildings.

(*Inter-Environnement Bruxelles and Others* C-671/16, EU:C:2018:403, paragraph 46 and paragraphs 48-49 ; *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 50)

Plans and programmes for a single project

Article 3(2)(a) of Directive 2001/42 must be interpreted as meaning that it also covers a plan which, in only one sector, **sets the framework** for a project which has only **one subject of economic activity**.

The wording of Article 3(2)(a), read in the light of the 10th recital in the preamble to Directive 2001/42, does not lead to the conclusion that its field of application should be limited to plans and programmes that set the framework for projects concerning several subjects in **one or more of the sectors referred to by that provision**.

Furthermore, the words 'all plans and programmes which are prepared for a number of sectors' in that recital confirm that Article 3(2)(a) of Directive 2001/42 concerns all plans and programmes which are prepared for each of **the sectors referred to in that provision**, including **country planning** by itself, and not only the plans and programmes which are prepared concomitantly for several of those sectors.

(*Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraphs 39, 40, and 41)

Relation to the appropriate assessment (Habitats Directive)

With regard to Article 3(2)(b) of the SEA Directive, that provision requires an environmental assessment every time an assessment is required under Articles 6 or 7 of the Habitats Directive. Consequently, the scope of those articles must be examined in order to determine the scope of Article 3(2)(b) of the SEA Directive.

The answer to the question referred is therefore that Article 3(2)(b) of the SEA Directive must be interpreted as meaning that the obligation to make a particular plan subject to an environmental assessment depends on the **preconditions requiring an assessment under the Habitats Directive**, including the condition that the plan may have a significant effect on the site concerned, being met in respect of that plan. The examination carried out to determine whether that latter condition is fulfilled is necessarily limited to the question as to **whether it can be excluded, on the basis of objective information**, that that plan or project will have a significant effect on the site concerned.

(*Sillogos Ellinon Poleodomon kai Khorotakton*, C-177/11, EU:C:2012:378, paragraphs 19 and 24)

That said, the fact that a measure such as that at issue in the main proceedings is not subject to a requirement for a prior environmental assessment under Article 6(3) of the Habitats Directive, in conjunction with Article 3(2)(b) of the SEA Directive, does not mean that it cannot be subject to any requirements in that area, since the possibility remains that it may lay down rules such that it can be regarded as a plan or programme within the meaning of the latter directive, in respect of which an assessment of the effects on the environment may be required.

(*CFE*, C-43/18, ECLI:EU:C:2019:483**,** paragraph 51)

Screening - compatibility of the screening concept with the obligation the to ensure high level of environment protection (Article 191 TFEU)

Therefore, it is necessary to verify whether, in the light of that case-law, Article 3(3) of Directive 2001/42 is valid, in the light of Article 191 TFEU.

In that regard, it should be pointed out that, in view of the need to strike a balance between certain of the objectives and principles mentioned in Article 191 TFEU, and of the complexity of the implementation of those criteria, review by the Court must necessarily be limited to the question whether the European Parliament and the Council of the European Union, by adopting Article 3(3) of Directive 2001/42, committed a manifest error of appraisal (see, to that effect, judgments of 14 July 1998, *Safety Hi-Tech*, C-284/95, EU:C:1998:352, paragraph 37; of 14 July 1998, *Bettati*, C-341/95, EU:C:1998:353, paragraph 35; and of 15 December 2005, *Greece* v *Commission*, C-86/03, EU:C:2005:769, paragraph 88).

As regards Directive 2001/42, it must be recalled that, under Article 1, the objective of that directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with that directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

It is apparent from Article 3(2)(b) of that directive that, subject to paragraph 3 of that article, an environmental assessment is to be carried out for all plans and programmes for which, in view of the effects which they are likely to have on sites, an environmental assessment is required pursuant to Article 6 or 7 of the Habitats Directive.

As regards Article 3(3) of Directive 2001/42, it provides that the plans and programmes which determine the use of small areas at local level and minor modifications to plans and programmes are to require an environmental assessment only where the Member States determine that they are likely to have significant effects on the environment.

Under Article 3(5) of Directive 2001/42, determination of plans or programmes likely to have significant effects on the environment and, accordingly, requiring an environmental assessment pursuant to that directive, is to be carried out through case-by-case examination, or by specifying types of plans or programmes, or by combining both approaches. For this purpose Member States must in all cases take into account the relevant criteria set out in Annex II to that directive, in order to ensure that plans and programmes likely to have significant effects on the environment are covered by that directive.

The mechanisms for reviewing the plans and programmes referred to in Article 3(5) of Directive 2001/42 are **designed to facilitate** the specification of plans that require assessment because they are likely to have significant environmental effects (see judgment of 22 September 2011, Valčiukienė and Others, C-295/10, EU:C:2011:608, paragraph 45).

The **margin of discretion** enjoyed by Member States pursuant to Article 3(5) of Directive 2001/42 to specify certain types of plans or programmes which are likely to have significant environmental effects is **limited by the requirement under Article 3(3) of that directive, in conjunction with Article 3(2)**, to subject the plans or programmes likely to have significant effects on the environment to environmental assessment, in particular on account of their

characteristics, their effects and the areas likely to be affected (see judgment of 22 September 2011, Valčiukienė and Others, C-295/10, EU:C:2011:608, paragraph 46).

Article 3(2), (3) and (5) of Directive 2001/42 thus aims not to exempt any plan or programme likely to have significant effects on the environment from the requirement of environmental assessment (see judgment of 22 September 2011, Valčiukienė and Others, C-295/10, EU:C:2011:608, paragraph 53).

It is appropriate therefore to distinguish that situation from one in which a purely quantitative threshold would lead, in practice, to an entire class of plans or programmes being exempted in advance from the requirement of environmental assessment under Directive 2001/42, even if those plans or programmes are likely to have significant effects on the environment (see, to that effect, judgment of 22 September 2011, Valčiukienė and Others, C-295/10, EU:C:2011:608, paragraph 47 and the case-law cited).

In the light of the foregoing, it must be held that **Article 3(3) of Directive 2001/42, by not excluding any plan or programme likely to have significant effects on the environment from an environmental assessment under that directive, falls within the scope of the objective pursued by that directive of providing a high level of environmental protection**.

The referring court, states that a simple verification of the requirement to subject a plan or programme to an environmental assessment, unlike a mandatory systematic environmental assessment, would be an opportunity for national administrations to circumvent the objectives of protection pursued by the Habitats Directive and by Directive 2001/42.

However, as is clear from Directive 2001/42, as interpreted by the Court, it is for the Member States to take, within the sphere of their competence, all the general or particular measures necessary to ensure that all plans or programmes likely to have significant environmental effects within the meaning of that directive are subject, before adoption, to an environmental assessment in accordance with the procedural requirements and the criteria laid down by that directive (Inter-Environnement Wallonie and Terre wallonne, C-41/11, EU:C:2012:103, paragraph 42 and the case-law cited).

In any event, **the mere risk that the national authorities, through their conduct, could circumvent the application of Directive 2001/42, is not such as to render Article 3(3) of that directive invalid**.

(*Associazione Italia Nostra Onlus,* C-444/15, ECLI:EU:C:2016:978, , paragraphs 45-49, 51-59)

Member States' discretion in screening

Pursuant to Article 3(5) of Article 2001/42, the Member States are to determine, either through case-by-case examination or by specifying types of plans and programmes, whether plans, such as those at issue in the main proceedings, are likely to have significant environmental effects thereby requiring an assessment to be carried out in accordance with that directive. According to that provision, Member States may also decide to combine both approaches.

In that regard, it must be pointed out that the examination methods referred to in Article 3(5) of Directive 2001/42 are designed to facilitate the specification of plans that require assessment because they are likely to have significant environmental effects.

The **margin of discretion enjoyed by Member States** pursuant to Article 3(5) of Directive 2001/42 to specify certain types of plans which are likely to have significant environmental effects **is limited by the requirement under Article 3(3)** of that directive, in conjunction with Article 3(2), to subject the plans likely to have significant effects on the environment to environmental assessment, in particular on account of their characteristics, their effects and the areas likely to be affected.

Consequently, a Member State which establishes a criterion which leads, in practice, to an entire class of plans being exempted in advance from the requirement of environmental assessment **would exceed the limits of its discretion** under Article 3(5) of Directive 2001/42, in conjunction with Article 3(2) and (3), unless all plans exempted could, on the basis of relevant criteria such as, inter alia, their objective, the extent of the territory covered or the sensitivity of the landscape concerned, be regarded as not being likely to have significant effects on the environment (see, to that effect, in respect of the margin of discretion accorded to Member States pursuant to Article 4(2) of Directive 85/337, Case C-427/07 *Commission* v *Ireland* [2009] ECR I-6277, paragraph 42 and the case-law cited).

(*Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraphs 44-47)

Small areas at local level'

The margin of discretion enjoyed by Member States pursuant to Article 3(5) of Directive 2001/42 to specify certain types of plans or programmes which are likely to have significant environmental effects is limited by the requirement under Article 3(3) of that directive, in conjunction with Article 3(2), to subject the plans or programmes likely to have significant effects on the environment to environmental assessment, in particular on account of their characteristics, their effects and the areas likely to be affected (see judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 46).

Article 3(2), (3) and (5) of Directive 2001/42 **thus aims not to exempt** any plan or programme likely to have significant effects on the environment from the requirement of environmental assessment (see judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 53).

It is appropriate therefore to distinguish that situation from one in which a purely quantitative threshold would lead, in practice, to an entire class of plans or programmes being exempted in advance from the requirement of environmental assessment under Directive 2001/42, even if those plans or programmes are likely to have significant effects on the environment (see, to that effect, judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 47 and the case-law cited).

In the light of the foregoing, it must be held that Article 3(3) of Directive 2001/42, by not excluding any plan or programme likely to have significant effects on the environment from an environmental assessment under that directive, falls within the scope of the objective pursued by that directive of providing a high level of environmental protection.

As regards the **term 'small areas at local level'**, for the purposes of Article 3(3) of Directive 2001/42, the **need for a uniform application of EU law** and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the purpose of the legislation in question (see, inter alia, judgments of 18 January 1984, *Ekro*, C-327/82, EU:C:1984:11, paragraph 11, and of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraph 44).

In that regard, it must be pointed out that, according to the wording of that provision, a plan or programme **must fulfil two cumulative conditions**. **First**, that plan or programme must determine the use of a **'small area'** and **secondly**, that area must be '**at local level'.**Since Article 3(3) of Directive 2001/42 does not make any express reference to the law of the Member States for the purpose of determining the meaning and scope of 'small areas at local level'. That determination must be made **in light of the context of that provision and the objectives of the Directive.**

As regards, the term 'local level', it must be pointed out that the expression 'local level' is also used in the first indent of Article 2(a) of Directive 2001/42. Under that provision, 'plans and programmes' means plans and programmes, including those co-financed by the European Union, as well as any modifications to them which are subject to preparation and/or adoption by an authority at national, regional or local level, or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and which are required by legislative, regulatory or administrative provisions.

Consequently, in order for a plan or programme to be qualified as a measure which determines the use of a small area 'at local level', for the purposes of Article 3(3) of Directive 2001/42, that plan or programme must be prepared and/or adopted by a local authority, as opposed to a regional or national authority.

[Article 3(3) of Directive 2001/42], read in conjunction with recital 10 of that directive, must be interpreted to the effect that the term 'small areas at local level' in paragraph 3 must be defined with reference to the size of the area concerned where the following conditions are fulfilled:

the plan or programme is **prepared and/or adopted by a local authority**, as opposed to a regional or national authority, and

that the area inside the territorial jurisdiction of the local authority is **small in size relative to that territorial jurisdiction**.

(*Associazione Italia Nostra Onlus*, C-444/15, ECLI:EU:C:2016:978, paragraphs 53-56, 66-69 ,71, 74)

Screening – thresholds and criteria

Consequently, a Member State which establishes a criterion which leads, in practice, to **an entire class of plans being exempted in advance** from the requirement of environmental assessment would exceed the limits of its discretion under Article 3(5) of Directive 2001/42, in conjunction with Article 3(2) and (3), unless all plans exempted could, on the basis of relevant criteria such as, inter alia, their objective, the extent of the territory covered or the

sensitivity of the landscape concerned, be regarded as not being likely to have significant effects on the environment.

That requirement is not met by the criterion that the land planning document in question mentions only one subject of economic activity. Such a criterion, besides being contrary to Article 3(2)(a) of Directive 2001/42, is not one which can determine whether or not a plan has 'significant effects' on the environment.

(*Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 47, 48)

Under Article 3(5) of the directive, determination of plans or programmes likely to have significant environmental effects and, accordingly, requiring an assessment pursuant to that directive is to be carried out through **case-by-case examination or by specifying types of plans and programmes or by combining both approaches**.

(*L v M,* C-463/11, ECLI:EU:C:2013:247, paragraph 33; *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 44)

Article 4

General obligations

1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.

2. The requirements of this Directive shall either be integrated into existing procedures in Member States for the adoption of plans and programmes or incorporated in procedures established to comply with this Directive.

3. Where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, inter alia, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3).

According to the case-law of the Court:

Hierarchy of plansOn the other hand, it must be made clear that, in principle, that is not the case *[DG ENV insertion: it is not contrary to the objectives of the Directive to exclude a plan from SEA]* if the repealed measure falls within a hierarchy of town and country planning measures, as long as those measures lay down sufficiently precise rules governing land use, they have themselves been the subject of an assessment of their environmental effects and it may reasonably be considered that the interests which Directive 2001/42 is designed to protect have been taken into account sufficiently within that framework.

(*Inter-Environnement Bruxelles and Others,* C-567/10, EU:C:2012:159, paragraph 42, *Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 43)

In that regard, the Court has repeatedly held that the **concept of 'plans and programmes'** not only includes their preparation, but **also their modification**, this being intended to ensure that provisions which are likely to have significant environmental effects are subject to an environmental assessment (judgment of 8 May 2019, *'Verdi Ambiente e Società (VAS) — Aps Onlus' and Others*, C-305/18, EU:C:2019:384, paragraph 52 and the case-law cited).

At the same time, it is important **to avoid the same plan being subject to several environmental assessments covering all the requirements of the SEA Directive** (see, to that effect, judgment of 10 September 2015, *Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 55).

To that end, and provided that the assessment of their effects has already been carried out, a **measure does not fall within the meaning of 'plans and programmes' if it is part of a hierarchy of measures which have themselves been the subject of an assessment of their environmental effects** and it may reasonably be considered that the interests which the SEA Directive is designed to protect have been taken into account sufficiently within that framework (see, to that effect, judgment of 22 March 2012, *Inter-Environnement Brussels and Others*, C-567/10, EU:C:2012:159, paragraph 42 and the case-law cited).
(*CFE,* C-43/18, ECLI:EU:C:2019:483, paragraphs 71-73; *A and Others,* C-24/19, ECLI:EU:C:2020:503, paragraph 57)

Moreover, measures modifying plans and programmes necessarily result in a **modification of the legal reference framework** and are therefore likely to have effects on the environment, in some circumstances, significant ones, which have not yet been the subject of an 'environmental assessment' within the meaning of Directive 2001/42 (see, to that effect, judgment in Inter-Environnement Bruxelles and Others, C-567/10, EU:C:2012:159, paragraph 39).

The mere fact that the modifications made by the contested decree may be intended to give more specific expression to and implement a master plan contained in a measure which, in terms of the legislation, is **hierarchically superior** cannot justify such measures being adopted without being subject to such an assessment.

Indeed, an interpretation to that effect would be **incompatible with the objectives of Directive** 2001/42 and would **undermine its effectiveness**, since it would mean that a potentially broad category of measures modifying plans and programmes likely to give rise to significant environmental effects is, on principle, **excluded from the scope** of that directive even though those measures are expressly covered by the terms of Articles 2(a) and 3(2)(a) of that directive.

That is particularly true as regards a measure such as the contested decree, since it is common ground that the modifications made by it are substantive in nature and that the master plan at issue in the main proceedings, namely the AMP relating to the greater Athens area, even if it could be regarded as laying down sufficiently precise rules governing land use, has not in any event been the subject of an environmental assessment within the meaning of Directive 2001/42.

The rationale for the limitation of the scope of Directive 2001/42 to which the Court referred in paragraph 42 of the judgment in Inter-Environnement Bruxelles and Others (C-567/10, EU:C:2012:159) is **to avoid the same plan being subject to several environmental assessments** covering all the requirements of that directive.

(*Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraphs 51-55 ; *Friends of the Irish Environment*, C-254/19, ECLI:EU:C:2020, paragraph 54)

Article 5

Environmental report

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

3. Relevant information available on environmental effects of the plans and programmes and obtained at other levels of decision-making or through other Community legislation may be used for providing the information referred to in Annex I.

4. The authorities referred to in Article 6(3) shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report.

Article 6

Consultations

1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.

2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.

3. Member States shall designate the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes.

4. Member States shall identify the public for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.

5. The detailed arrangements for the information and consultation of the authorities and the public shall be determined by the Member States.

According to the case-law of the Court:

Functional separation

In such circumstances, where, for part of a Member State's territory that has decentralised powers, **a single authority** is designated under Article 6(3) of Directive 2001/42 and that

authority is, in a particular case, responsible for the preparation of a plan or programme, that provision **does not require** that another authority, located in that Member State or in that part of it, be created or designated to undertake the consultations required by that provision.

Article 6 **does require** that, within the authority usually responsible for consultation on environmental matters, a **functional separation** be organised so that an administrative entity internal to it has **real autonomy**, meaning, in particular, that it is provided **with administrative and human resources of its own** and is thus in a position to fulfil the tasks entrusted to authorities to be consulted as provided for in that directive, and, in particular, to give an objective opinion on the plan or programme envisaged by the authority to which it is attached, which it is for the referring court to verify.

(*Seaport (NI) and Others*, C-474/10, EU:C:2011:681, paragraph 41, 42)

The provisions of Directive 2001/42 would, however, be **deprived of practical effect** if, in circumstances where the authority designated pursuant to Article 6(3) of that **directive is itself also required to prepare or adopt a plan or programme**, there were, in the administrative structure of the Member State in question, no other body empowered to carry out that function of consultation.

(*Seaport (NI) and Others*, C-474/10, EU:C:2011:681, paragraph 39 ; *Association France Nature Environnement,* C-379/15, ECLI:EU:C:2016:603, paragraph 26)

Appropriate time frame for consultations

In order that due account may be taken of those opinions by the authority envisaging the adoption of such a plan or programme, Article 6(2) makes clear, first, that such **opinions must be received before the adoption** of that plan or that programme and, secondly, that the authorities to be consulted and the public affected or likely to be affected **must be given sufficient time to evaluate** the envisaged plan or programme and the environmental report upon it and to express their opinions in that regard.

Article 6(2) of Directive 2001/42 must be interpreted as not requiring that the national legislation transposing the directive lay down precisely the periods within which the authorities designated and the public affected or likely to be affected for the purposes of Article 6(3) and (4) should be able to express their opinions on a particular draft plan or programme and on the environmental report upon it. Consequently, Article 6(2) does not preclude such periods from being laid down on a case-by-case basis by the authority which prepares the plan or programme. However, in that situation, Article 6(2) requires that, for the purposes of consultation of those authorities and the public on a given draft plan or programme, **the period actually laid down, be sufficient to allow them an effective opportunity to express their opinions in good time on that draft plan or programme and on the environmental report upon it.**

(*Seaport (NI) and Others*, C-474/10, EU:C:2011:681, paragraphs 45 and 50)

Member States' discretion regarding information and consultation arrangements

In addition, it is important to note that Article 6(5) of Directive 2001/42 provides that the detailed arrangements for the information and consultation of the authorities and the public are to be determined by the Member States.

(*Seaport (NI) and Others*, C-474/10, EU:C:2011:681, paragraph 47)

Article 7

Transboundary consultations

1. Where a Member State considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other Member State.

2. Where a Member State is sent a copy of a draft plan or programme and an environmental report under paragraph 1, it shall indicate to the other Member State whether it wishes to enter into consultations before the adoption of the plan or programme or its submission to the legislative procedure and, if it so indicates, the Member States concerned shall enter into consultations concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects.

Where such consultations take place, the Member States concerned shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the Member State likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time-frame.

3. Where Member States are required under this Article to enter into consultations, they shall agree, at the beginning of such consultations, on a reasonable timeframe for the duration of the consultations.

Article 8

Decision making

The environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of any transboundary consultations entered into pursuant to Article 7 shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure.

Article 9

Information on the decision

1. Member States shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any Member State consulted under Article 7 are informed and the following items are made available to those so informed:

(a) the plan or programme as adopted;

(b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with, and

(c) the measures decided concerning monitoring in accordance with Article 10.

2. The detailed arrangements concerning the information referred to in paragraph 1 shall be determined by the Member States.

Article 10

Monitoring

1. Member States shall monitor the significant environmental effects of the implementation of plans and programmes in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action.

2. In order to comply with paragraph 1, existing monitoring arrangements may be used if appropriate, with a view to avoiding duplication of monitoring.

Article 11

Relationship with other Community legislation

1. An environmental assessment carried out under this Directive shall be without prejudice to any requirements under Directive 85/337/EEC and to any other Community law requirements.

2. For plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation in order, inter alia, to avoid duplication of assessment.

3. For plans and programmes co-financed by the European Community, the environmental assessment in accordance with this Directive shall be carried out in conformity with the specific provisions in relevant Community legislation.

According to the case-law of the Court:

Relationship with the EIA Directive

It follows that an environmental assessment carried out under Directive 85/337, when required by its provisions, is **in addition** to an assessment carried out under Directive 2001/42.

Similarly, an assessment of the effects on the environment carried out under Directive 85/337 is without prejudice to the specific requirements of Directive 2001/42 and cannot dispense with the obligation to carry out an environmental assessment pursuant to Directive 2001/42 in order to comply with the environmental aspects specific to that directive.

As **assessments** carried out pursuant to Directive 2001/42 and Directive 85/337 **differ for a number of reasons, it is necessary to comply with the requirements of both of those directives concurrently**.

In that regard, it should be pointed out that, on the assumption that a coordinated or joint procedure was provided for by the Member State concerned, it is clear from Article 11(2) of Directive 2001/42 that, in the context of such a procedure, it is mandatory to verify that an environmental assessment has been carried out in accordance with the dispositions of the different directives in question.

It is clear from the wording of Article 11(2) of Directive 2001/42 as well as the 19th recital that **Member States are in no way placed under an obligation to provide for joint or coordinated procedures** for plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from Directive 2001/42 and other directives.

(*Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraphs 58-61, 65)

As assessments carried out pursuant to Directive 2001/42 and Directive 85/337, differ for a number of reasons, it is necessary to **comply with the requirements of both** of those directives concurrently. In that regard, it should be pointed out that, on the assumption that a **coordinated or joint procedure** was provided for by the Member State concerned, it is clear from Article 11(2) of Directive 2001/42 that, in the context of such a procedure, it is mandatory to verify that an environmental assessment has been carried out in accordance with the dispositions of the different directives in question.

It is for the referring court to assess whether the assessment which, in the main proceedings, was carried out pursuant to Directive 85/337 may be considered to be the result of a coordinated or joint procedure and whether it already complies with all the requirements of Directive 2001/42. If that were to be the case, **there would then no longer be an obligation to carry out a new assessment pursuant to Directive 2001/42**.

(*Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraphs 60-62, *Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 58)

Even if the plans and programmes that the contested decree modifies have already been subject to an assessment of their environmental effects under Directive 85/337 or 'any other Community law requirements' as provided for in Article 11(1) of Directive 2001/42 — a point which it is not possible to establish from the documents before the Court — it is, in any event, for **the referring court** to determine whether such an assessment may be regarded as being the **result of a coordinated or joint procedure** within the meaning of Article 11(2) of Directive 2001/42 and whether it already complies with all the requirements of Directive 2001/42, in which case there **would no longer be an obligation to carry out a new assessment** for the purposes of that directive.

(*Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 58)

In addition, while Article 5(3) of the SEA Directive provides for the possibility of using relevant information obtained at other levels of decision-making or through other EU legislation, Article 11(1) of that directive states that an environmental assessment carried out under that directive is to be without prejudice to any requirements under the EIA Directive.

Furthermore, an environmental impact assessment report completed under the EIA Directive cannot be used to circumvent the obligation to carry out the environmental assessment required under the SEA Directive in order to address environmental aspects specific to that directive.

Thus, the fact, raised by the referring court, that the future planning permission applications will be subjected to an impact assessment procedure under the EIA Directive is not capable of calling in question the need to carry out an environmental assessment of a plan or a

programme falling within the scope of Article 3(2)(a) of the SEA Directive and establishing the framework within which those town planning projects will subsequently be authorised, unless an assessment of the environmental effects of that plan or programme, as referred to in paragraph 42 of the judgment of 22 March 2012, *Inter-Environnement Bruxelles and Others* (C-567/10, EU:C:2012:159), has already been carried out.

(*Inter-Environnement Bruxelles and Others,* C-671/16, EU:C:2018:403, paragraphs 64-66 ; *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraphs 63 and 64)

In addition, the fact that an environmental assessment for the purposes of the SEA Directive will be carried out subsequently, when planning at regional level is undertaken, has no bearing on the applicability of the provisions relating to such an assessment. **An assessment of the effects on the environment carried out under the EIA Directive cannot lead to an exemption from the obligation to carry out the environmental assessment required by the SEA Directive for the purposes of addressing the environmental aspects particular to the SEA Directive. An environmental impact assessment report completed under the EIA Directive cannot be used to circumvent the obligation to carry out the environmental assessment required under the SEA Directive in order to address environmental aspects specific to that directive** (judgment of 7 June 2018, *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 64).

(*Verdi Ambiente e Società (VAS) – Aps Onlus' and Others,* C-305/18, EU:C:2019:384, paragraph 56)

Article 12

Information, reporting and review

1. Member States and the Commission shall exchange information on the experience gained in applying this Directive.

2. Member States shall ensure that environmental reports are of a sufficient quality to meet the requirements of this Directive and shall communicate to the Commission any measures they take concerning the quality of these reports.

3. Before 21 July 2006 the Commission shall send a first report on the application and effectiveness of this Directive to the European Parliament and to the Council.

With a view further to integrating environmental protection requirements, in accordance with Article 6 of the Treaty, and taking into account the experience acquired in the application of this Directive in the Member States, such a report will be accompanied by proposals for amendment of this Directive, if appropriate. In particular, the Commission will consider the possibility of extending the scope of this Directive to other areas/sectors and other types of plans and programmes.

A new evaluation report shall follow at seven-year intervals.

4. The Commission shall report on the relationship between this Directive and Regulations (EC) No 1260/1999 and (EC) No 1257/1999 well ahead of the expiry of the programming periods provided for in those Regulations, with a view to ensuring a coherent approach with regard to this Directive and subsequent Community Regulations.rticle 13

Article 13

Implementation of the Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 21 July 2004. They shall forthwith inform the Commission thereof.

2. When Member States adopt the measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3. The obligation referred to in Article 4(1) shall apply to the plans and programmes of which the first formal preparatory act is subsequent to the date referred to in paragraph 1. Plans and programmes of which the first formal preparatory act is before that date and which are adopted or submitted to the legislative procedure more than 24 months thereafter, shall be made subject to the obligation referred to in Article 4(1) unless Member States decide on a case by case basis that this is not feasible and inform the public of their decision.

4. Before 21 July 2004, Member States shall communicate to the Commission, in addition to the measures referred to in paragraph 1, separate information on the types of plans and programmes which, in accordance with Article 3, would be subject to an environmental assessment pursuant to this Directive. The Commission shall make this information available to the Member States. The information will be updated on a regular basis.

Article 14

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 15

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 27 June 2001.

According to the case-law of the Court:

Temporal application of the Directive

The fact that Directive 2001/42 had not yet come into force when that master plan was adopted is irrelevant in the light of the fact that that **directive applies without exception to any modifying measure adopted while the directive was in force**.

(*Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 56)

ANNEX I

Information referred to in Article 5(1)

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;

(b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;

(c) the environmental characteristics of areas likely to be significantly affected;

(d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;

(e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;

(f) the likely significant effects(1) on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;

(g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;

(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;

(i) a description of the measures envisaged concerning monitoring in accordance with Article 10;

(j) a non-technical summary of the information provided under the above headings.

(1) These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects.

ANNEX II

Criteria for determining the likely significance of effects referred to in Article 3(5)

1. The characteristics of plans and programmes, having regard, in particular, to

- the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,

- the degree to which the plan or programme influences other plans and programmes including those in a hierarchy,

- the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,

- environmental problems relevant to the plan or programme,

- the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to

- the probability, duration, frequency and reversibility of the effects,

- the cumulative nature of the effects,

- the transboundary nature of the effects,

- the risks to human health or the environment (e.g. due to accidents),

- the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),

- the value and vulnerability of the area likely to be affected due to:

- special natural characteristics or cultural heritage,

- exceeded environmental quality standards or limit values,

- intensive land-use,

- the effects on areas or landscapes which have a recognised national, Community or international protection status.

According to the case-law of the Court:

Under Article 3(5) of Directive 2001/42, determination of plans or programmes likely to have significant effects on the environment and, accordingly, requiring an environmental assessment pursuant to that directive, is to be carried out through case-by-case examination, or by specifying types of plans or programmes, or by combining both approaches. For this purpose Member States **must in all cases take into account the relevant criteria set out in Annex II to that directive**, in order to ensure that plans and programmes likely to have significant effects on the environment are covered by that directive.

The mechanisms for reviewing the plans and programmes referred to in Article 3(5) of Directive 2001/42 are **designed to facilitate** the specification of plans that require assessment

because they are likely to have significant environmental effects (see judgment of 22 September 2011, Valčiukienė and Others, C-295/10, EU:C:2011:608, paragraph 45).

The **margin of discretion** enjoyed by Member States pursuant to Article 3(5) of Directive 2001/42 to specify certain types of plans or programmes which are likely to have significant environmental effects is **limited by the requirement under Article 3(3) of that directive, in conjunction with Article 3(2)**, to subject the plans or programmes likely to have significant effects on the environment to environmental assessment, in particular on account of their characteristics, their effects and the areas likely to be affected (see judgment of 22 September 2011, Valčiukienė and Others, C-295/10, EU:C:2011:608, paragraph 46).

Article 3(2), (3) and (5) of Directive 2001/42 thus aims not to exempt any plan or programme likely to have significant effects on the environment from the requirement of environmental assessment (see judgment of 22 September 2011, Valčiukienė and Others, C-295/10, EU:C:2011:608, paragraph 53).

(*Associazione Italia Nostra Onlus,* C-444/15, ECLI:EU:C:2016:978, paragraphs, 51-54)

ANNEX –EIA and SEA judgments of the CJEU mentioned in the booklet[1]

EIA Directive

1995

Judgment of the Court of 11 August 1995, Case C-431/92, ECLI:EU:C:1995:260

Commission of the European Communities v Federal Republic of Germany
Failure to fulfil obligations - Failure by public authorities to apply a directive which has not yet been transposed - Council Directaiave 85/337/EEC - Assessment of the effects of projects on the environment - Großkrotzenburg thermal power station - Consent for the construction of a new block.

http://curia.europa.eu/juris/showPdf.jsf?text=&docid=98836&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3141409

1996

Judgment of the Court of 24 October 1996, Case C-72/95, ECLI:EU:C:1996:404

Aannemersbedrijf P.K. Kraaijeveld BV e.a. v Gedeputeerde Staten van Zuid-Holland.
Reference for a preliminary ruling: Raad van State - Netherlands.
Environment - Directive 85/337/EEC - Assessment of the effects of certain public and private projects.

Reference for a preliminary ruling - Community law - Multilingual texts - Uniform interpretation - Differences between the various language versions - Purpose and general scheme of the rules in question to be taken as the basis for reference - "Canalization and flood-relief works" within the meaning of point 10(e) of Annex II - Dyke work along navigable waterways - Definition encompassing modification of existing dykes - Assessment of projects in classes included in Annex II - Member States' discretion - Scope and limits - Duty of national courts - Examination of court' s own motion whether the national authorities have remained within the limits of their discretion - Need to ensure effectiveness of the directive where limits not observed

http://curia.europa.eu/juris/showPdf.jsf?text=&docid=100141&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3142006

By judgment of 8 March 1995, the Nederlandse Raad van State (Netherlands State Council) referred to the Court for a preliminary ruling four questions on the interpretation of Directive 85/337/EEC 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 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

[1] The EIA and SEA judgements are presented in a chronological order.

reinforcement" adopted by the Sliedrecht Municipal Council pursuant to the Wet op de ruimtelijke ordening (Regional Development Law).

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.

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

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 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?

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?"

The Court of Justice ruled that:

"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."

The Nederlandse Raad van State delivered its ruling on 20 October 1997. The Raad van State observed that the situation described by the European Court of Justice, where thresholds concerning the construction of dykes were established at such a level that in practice all such projects are exempted in advance from the requirement of an impact assessment, does not appear. The Raad van State concluded that the transposition of the EIA directive into national law regarding the thresholds for dykes by the Besluit milieu-effectrapportage 1994 (Environmental Impact Assessment Decision) was therefore not incorrect.

1998

Judgment of the Court of 18 June 1998, Gedeputeerde Staten van Noord-Holland, Case C-81/96, [EU:C:1998:305]

Reference for a preliminary ruling - Project for which consent was obtained prior to the deadline for transposing the directive into national law - New consent procedure initiated after that deadline - Project subject to obligations relating to environmental impact assessment.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=43945&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=271975

The reference for a preliminary ruling arose in the course of an action brought by a number of persons concerned challenging the decision of 18 May 1993 whereby the North Holland provincial authorities approved the "Ruigoord 1992" zoning plan, which was adopted by the Municipal Council of Haarlemmerliede en Spaarnwoude on 21 September 1992 under the Wet op de Ruimtelijke Ordening (Staatsblad 1962, p. 286; Town and Country Planning Law). The action was based on the fact that the plan had been authorised without an environmental assessment having been made as required by the directive.

The projects featured in the plan were already contained in the "Landelijk Gebied 1968" zoning plan and in the regional plans known as "Amsterdam-Noordzeekanaalgebied 1979" and "Amsterdam-Noordzeekanaalgebied 1987", the implementation of which never progressed further than raising a portion of the perimeter by sand in the late 1960s. There was no environmental assessment made in connection with those plans prior to consent, as required by the directive. The "Ruigoord 1984" plan drawn up by the Haarlemmerliede en Spaarnwoude Municipal Council on 25 September 1984 designated most of the area in question as being for recreational purposes. The plan was largely turned down by decision of the North Holland provincial authorities on 5 March 1985. The "Ruigoord 1992" plan was intended to replace the "Landelijk Gebied 1968" plan.

The Nederlandse Raad van State (Netherlands State Council) has found that there was no obligation under the relevant national law to make the environmental impact assessment which should in principle have preceded the plan at issue because the latter had been included in earlier development plans. Since it was in doubt as to the compatibility of those national rules with the EIA directive, the Nederlandse Raad van State stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

"Does Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment permit consent to be granted for a project mentioned in Annex I to the directive where, in the course of the preparation of the consent, no environmental impact assessment within the meaning of the directive was conducted in a case in which the consent relates to a project for which consent had been granted before 3 July 1988, no use was made of that consent and no environmental impact assessment satisfying the requirements of the directive was conducted in the course of the preparation of that consent?"

The ECJ ruled that Directive 85/337/EEC *"is to be interpreted as not permitting Member States to waive the obligations regarding environmental assessments in the case of projects listed in Annex I of the directive where*

— *the projects have already been the subject of a consent granted prior to 3 July 1988, the date by which the directive was to have been transposed into national law,*

— *the consent was not preceded by an environmental assessment in accordance with the requirements of the directive and no use was made of it, and*

— *a fresh consent procedure was formally initiated after 3 July 1988".*

Following this ruling, the Dutch authorities have rectified the *"Besluit milieu-effectrapportage 1994"* (Environmental Impact Assessment Decision) regarding the transitional regime.

1999

Judgement of the Court of 21 January 1999, Commission v. Portuguese Republic, Case C-150/97 [ECLI:EU:C:1999:15]

Action for failure to fulfil obligations - National implementing measures, belatedly enacted, waiving the obligation to make an assessment in the case of consent procedures initiated before the entry into force of those measures but after the deadline for transposing the Directive

http://curia.europa.eu/juris/document/document.jsf?text=&docid=44361&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2258452

Judgment of the Court of 16 September 1999, WWF and Others, Case C-435/97 [ECLI:EU:C:1999:418]

Reference for a preliminary ruling - Projects of the classes listed in Annex II to be subject to assessment - Discretion of the Member States - Scope and limits - Possibility for individuals to rely on the relevant provisions to ensure that such discretion is exercised within the proper limits - Assessment procedure - Open to Member States to use an alternative procedure - Projects adopted in detail by specific domestic legislation - Airport which may serve both civil and military purposes but primarily for commercial use

http://curia.europa.eu/juris/document/document.jsf?text=&docid=44707&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=274058

Judgment of the Court of 21 September 1999, Commission v. Ireland, Case C-392/96 [ECLI:EU:C:1999:431]

Action for failure to fulfil obligations - Assessment requirement in respect of projects in the classes listed in Annex II - Setting of thresholds- Discretion of Member States - Failure to take into account the nature, location and cumulative effect of projects - Constitutes a failure to fulfil obligations

http://curia.europa.eu/juris/document/document.jsf?text=&docid=44721&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3329355

2000

Judgment of the Court of 19 September 2000, Case C-287/98, [ECLI:EU:C:2000:468]
Grand Duchy of Luxemburg v Berthe Linster, Aloyse Linster and Yvonne Linster.

Reference for a preliminary ruling: Tribunal d'arrondissement de Luxembourg - Grand Duchy of Luxemburg. Environment - Directive 85/337/EEC - Assessment of the effects of certain public and private projects - Specific act of national legislation - Effect of the directive

http://curia.europa.eu/juris/document/document.jsf?text=&docid=45647&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=273292

2004

Judgment of the Court of 7 January 2004, Delena Wells, Case C-201/02 [ECLI:EU:C:2004:12]

Reference for a preliminary ruling - Obligation on the competent authorities to carry out an assessment before consent is granted – Meaning of consent for the purposes of Article 1(2) – Decision laying down new conditions for a project to resume mining operations – Obligation on the competent authorities to carry out an assessment before consent is granted – Obligation not being directly linked to the performance of another obligation falling, pursuant to the directive, on a third party – Ability of an individual to rely on the directive – Failure to carry out the assessment – Obligation on the authorities to remedy the failure – Scope – Application of the detailed procedural rules under national law

http://curia.europa.eu/juris/document/document.jsf?text=&docid=48824&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=413595

Judgement of the Court of 10 June 2004, Commission v. Italian Republic, Case C-87/02 [ECLI:EU:C:2004:363]

Action for failure to fulfil obligations - Member States – Obligations – Implementation of directives – Failure to implement – Justification based on the fact that failure can be attributed to decentralised authorities – Not permissible - Actions for failure to fulfil obligations – National measures incompatible with Community law – Existence of domestic remedies – No effect on the bringing of an action for failure to fulfil obligations - Projects of the classes listed in Annex II to be made subject to assessment – Member States' discretion – Scope and limits

http://curia.europa.eu/juris/showPdf.jsf?text=&docid=49286&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2258052

Judgement of the Court of 16 September 2004, Commission v. Kingdom of Spain, Case C-227/01 [ECLI:EU:C:2004:528]

Action for failure to fulfil obligations – Community law – Interpretation – Texts in several languages – Uniform interpretation – Differences between the various language versions – General scheme and purpose of the rules in question as the basis for reference – Scope – Doubling of an already existing railway track involving a new track route

http://curia.europa.eu/juris/document/document.jsf?text=&docid=49502&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=274267

2005

Judgment of the Court (Sixth Chamber) of 2 June 2005, Case C-83/03, [ECLI:EU:C:2005:339]

Commission of the European Communities v Italian Republic
Failure of a Member State to fulfil obligations - Environment - Directive 85/337/EEC - Assessment of the effects of projects on the environment - Construction of a marina at Fossacesia.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=60193&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3142412

2006

Judgment of the Court (Third Chamber) of 16 March 2006, Case C-332/04, [ECLI:EU:C:2006:180]

Commission of the European Communities v Kingdom of Spain.

Failure of a Member State to fulfil its obligations - Directive 85/337/EEC as amended by Directive 97/11/EC - Assessment of the effects of projects on the environment - Inter-action between factors likely to be directly and indirectly affected - Obligation to publish the impact statement - Assessment limited to urban development projects outside urban areas - Construction project for a leisure complex at Paterna.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=57691&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=271208

Judgement of the Court of 4 May 2006, Barker - *Crystal Palace*, Case C-290/03 [ECLI:EU:C:2006:286]The Queen, on the application of: Diane Barker v London Borough of Bromley.

Reference for a preliminary ruling: House of Lords - United Kingdom.

Directive 85/337/EEC - Assessment of the effects of certain projects on the environment - Crystal Palace development project - Projects falling within Annex II to Directive 85/337 - Grant of consent comprising more than one stage

http://curia.europa.eu/juris/document/document.jsf?text=&docid=56612&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4406840

Judgement of the Court of 9 November 2006, Commission v. Ireland, Case C-216/05 [ECLI:EU:C:2006:706]

Failure of a Member State to fulfil obligations - Assessment of the effects of certain projects on the environment - Directives 85/337/EEC and 97/11/EC - National legislation - Participation by the public in certain assessment procedures upon payment of fees.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=64675&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4407121

Judgement of the Court of 23 November 2006, Commission v. Italian Republic, Case C-486/04 [ECLI:EU:C:2006:732]

Failure of a Member State to fulfil obligations - Assessment of the effects of certain projects on the environment - Waste recovery - Installation for the production of electricity by the incineration of combustible materials derived from waste and biomass in Massafra (Taranto) - Directives 75/442/EEC and 85/337/EEC.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=65425&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4408752

2008

Judgment of the Court of 28 February 2008, Abraham and Others, Case C-2/07 [ECLI:EU:C:2008:133]

Reference for a preliminary ruling - Airport with a runway more than 2 100 metres in length

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0002:EN:HTML

Judgement of the Court of 3 July 2008, Commission v. Ireland, Case C-215/06 [ECLI:EU:C:2008:380]

Action for failure to fulfil obligations - No assessment of the environmental effects of projects within the scope of Directive 85/337/EEC - Regularisation after the event – retention permission

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0215:EN:HTML

Judgement of the Court of 25 July 2008, Ecologistas en Acción-CODA, Case C-142/07 [ECLI:EU:C:2008:445]

Reference for a preliminary ruling - Refurbishment and improvement works on urban roads

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0142:EN:HTML

Judgement of the Court of 20 November 2008, Commission v. Ireland, Case C-66/06 [ECLI:EU:C:2008:637]

Action for failure to fulfil obligations - Consent given without an assessment

http://curia.europa.eu/juris/document/document.jsf?text=&docid=68787&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3323128

2009

Judgment of the Court of 30 April 2009, Mellor, Case C-75/08 [ECLI:EU:C:2009:279]

Judgment of the Court (Second Chamber) of 30 April 2009

The Queen, on the application of Christopher Mellor v Secretary of State for Communities and Local Government.
Reference for a preliminary ruling: Court of Appeal (England & Wales) (Civil Division) - United Kingdom.
Directive 85/337/EEC - Assessment of the effects of projects on the environment - Obligation to make public the reasons for a determination not to make a project subject to an assessment

http://curia.europa.eu/juris/document/document.jsf?text=&docid=73330&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4405851

Judgement of the Court of 16 July 2009, Commission v. Ireland, Case C-427/07 [ECLI:EU:C:2009:457]

Commission of the European Communities v Ireland.
Failure of a Member State to fulfil obligations - Assessment of the effects of projects on the environment - Directive 85/337/EEC - Access to justice - Directive 2003/35/EC.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=72488&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4406655

Judgment of the Court of 15 October 2009, Commission v Kingdom of the Netherlands, Case C-255/08 [ECLI:EU:C:2009:630]

Action for failure to fulfil obligations - Determination of thresholds - Size of the project - Incomplete transposition

http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en

Judgment of the Court of 15 October 2009, case C-263/08 [ECLI:EU:C:2009:631]

Reference for a preliminary ruling – Public participation in environmental decision-making procedures – Right of access to a review procedure to challenge decisions authorising projects likely to have significant effects on the environment

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0263:EN:HTML

Judgment of the Court of 10 December 2009, Umweltanwalt von Kärnten, Case C-205/08 [ECLI:EU:C:2009:767]

Reference for a preliminary ruling - Concept of national court or tribunal - Construction of overhead electrical power lines - Length of more than 15 km -Transboundary constructions - Transboundary power line -Total length exceeding the threshold - Line mainly situated in the territory of a neighbouring Member State - Length of national section below the threshold

http://curia.europa.eu/juris/document/document.jsf?text=&docid=76786&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=266121

Alpe Adria, an Italian undertaking, was seeking to construct a 220 kV power line with a power rating of 300 MVA to connect the Italian Rete Elettrica Nazionale SpA network and the Austrian VERBUND-Austrian Power Grid AG network. To that end Alpe Adria requested the Province Government as competent EIA authority at first instance (in the relevant case: the *Kärntner Landesregierung*) to state whether an environmental impact assessment needs to be performed for the construction and operation of that project. On **Austrian territory**, the project comprises an overhead power line approximately **7.4 kilometres long** with a switching substation to be constructed in Weidenburg extending up to the State border through the Kronhofgraben via the Kronhofer Törl. The length of the project on **Italian territory** is approximately **41 kilometres**.

The *Kärntner Landesregierung* decided that no environmental impact assessment was required for the project at issue because the length of the Austrian part of the project did not reach the minimum 15 kilometer threshold defined in the relevant provision of the Austrian Federal Act on Environmental Impact Assessment (EIA Act 2000). It added that, if a project is likely to have significant effects on the environment in another Member State, Article 7 of Directive 85/337 requires the Member States in whose territory the project is intended to be carried out to include that other Member State in the environmental impact assessment procedure. However, that article applied only to projects situated entirely in the territory of one Member State and did not apply to transboundary projects. Consequently, in the absence of any specific provision concerning transboundary projects in Directive 85/337, each Member State was required to assess, on the basis solely of its national law, whether a project was subject to Annex I of the Directive. The *Kärntner Landesregierung* went on to state that the EIA Act 2000 did not contain any provision according to which the entire length of transboundary power line routes and other line-based projects was to be taken into consideration.

The ombudsman for the environment filed an appeal against the decision of the *Kärntner Landesregierung* to the Environmental Senate (*Umweltsenat*) as authority of appeal.

It is against that background that the Environmental Senate decided to stay proceedings and refer the following question to the ECJ for a preliminary ruling: *"Is Council Directive 85/337 ... to be interpreted as meaning that a Member State must provide for an obligation to carry out an assessment in the case of types of projects listed in Annex I to the directive, in particular in point 20 (construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km), where the proposed scheme is to extend over the territory*

of two or more Member States, even if the threshold giving rise to the obligation to carry out an assessment (here, a length of 15 km) is not reached or exceeded by the part of the scheme situated on its national territory but is reached or exceeded by adding the parts of the scheme proposed to be situated in a neighbouring State?"

The ECJ ruled that Articles 2(1) and 4(1) of Directive 85/337/EEC, as amended by Directive 2003/35/EC are to be interpreted as meaning that the competent authorities of a Member State must make a project referred to in point 20 of Annex I to the Directive, such as the construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km, subject to the environmental impact assessment procedure even where the project is transboundary in nature and less than 15 km of it is situated on the territory of that Member State.

By decision of 3 March 2010 (US 8B/2008/2-35 - Kötschach-Mauthen) the Environmental Senate decided in favor of the appeal and determined, that an environmental impact assessment is required for the project at issue. The Senate stated therein by taking into account the judgment of the ECJ, the determination, that an EIA is necessary, is not dependent on whether the national defined threshold value for a project is reached or exceeded by the part of the project situated on its national territory or is reached or exceeded by adding the parts of the project proposed to be situated in a neighbouring State.

As a consequence of this decision, Alpe Adria applied on 28 April 2010 for EIA development consent for the project at issue. On 8 July 2010, the Kärntner Landesregierung, as the EIA authority at first instance, opened the environmental impact statement for public inspection and comments for the period of six weeks (beginning on 14 July 2010 ending on 25 August 2010) at the Kärntner Landesregierung, the municipality of Kötschach-Mauthen and the district administration authority Hermagor. A brief project description and a summary of the Environmental Impact Statement are available together with the announcement of public inspection on the Internet (www.uvp.ktn.gv.at). After public inspection the technical experts commissioned by the EIA authority will prepare the environmental impact expertise.

2010

2011

Judgment of the Court (First Chamber) of 3 March 2011, Case C-50/09 [ECLI:EU:C:2011:109]

European Commission v Ireland.

Failure of a Member State to fulfil obligations - Directive 85/337/EEC - Obligation of the competent environmental authority to carry out an assessment of the effects of certain projects on the environment - More than one competent authority - Need to ensure an assessment of the interaction between factors likely to be directly or indirectly affected - Application of the directive to demolition works.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=84209&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1625972

Judgment of the Court (Grand Chamber) of 8 March 2011, Case C-240/09 [ECLI:EU:C:2011:125]

Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky

Reference for a preliminary ruling: Najvyšší súd Slovenskej republiky - Slovakia.
Environment - Aarhus Convention - Public participation in the decision-making process and access to justice in environmental matters - Direct effect.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=80235&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3332957

Judgment of the Court (First Chamber) of 17 March 2011, Case C-275/09 [ECLI:EU:C:2011:154]

Brussels Hoofdstedelijk Gewest and Others v Vlaamse Gewest

Reference for a preliminary ruling: Raad van State - Belgium

Directive 85/337/EEC - Assessment of the effects of certain public and private projects on the environment - Airports with a runway length of 2 100 metres or more - Concept of 'construction' - Renewal of operating consent.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=80450&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3332574

Judgment of the Court (Third Chamber) of 24 March 2011, Case C-435/09 [ECLI:EU:C:2011:176]

European Commission v Kingdom of Belgium

Failure of a Member State to fulfil obligations - Directive 85/337/EEC - Assessment of the effects of certain public and private projects on the environment - Selection criteria - Determination of thresholds - Size of the project.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=80646&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=3331681

Judgment of the Court (Fourth Chamber) of 12 May 2011, Case C-115/09[ECLI:EU:C:2011:289]

Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v Bezirksregierung Arnsberg

Reference for a preliminary ruling:

Directive 85/337/EEC - Environmental impact assessment - Aarhus Convention - Directive 2003/35/EC - Access to justice - Non-governmental organisations for the protection of the environment.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=82053&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3331444

Judgment of the Court (Grand Chamber) of 18 October 2011, Joined cases C-128/09 to C-131/09, C-134/09 and C-135/09 [ECLI:EU:C:2011:667]

Boxus and Others

References for a preliminary ruling: Conseil d'État - Belgium.

Assessment of the effects of projects on the environment - Directive 85/337/EEC - Scope - Concept of 'specific act of national legislation' - Aarhus Convention - Access to justice in environmental matters - Extent of the right to a review procedure in respect of a legislative act.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=111403&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=271068

Judgment of the Court (Fourth Chamber) of 24 November 2011, Case C-404/09 [ECLI:EU:C:2011:768]

European Commission v Kingdom of Spain

Failure of a Member State to fulfil obligations - Directive 85/337/EEC - Assessment of the effects of certain projects on the environment - Directive 92/43/EEC - Conservation of natural habitats - Wild fauna and flora - Open-cast coal mines - 'Alto Sil' site - Special protection area - Site of Community importance - Brown bear (Ursus arctos) - Capercaillie (Tetrao urogallus)

http://curia.europa.eu/juris/document/document.jsf?text=&docid=115208&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=270023

Judgment of the Court (Fifth Chamber) of 15 December 2011, Case C-560/08 [ECLI:EU:C:2011:835]

European Commission v Kingdom of Spain

Failure of a Member State to fulfil its obligations

http://curia.europa.eu/juris/document/document.jsf?text=&docid=116688&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=546112

2012

Judgment of the Court (Fourth Chamber) of 16 February 2012, Case C-182/10 [ECLI:EU:C:2012:82]

Marie-Noëlle Solvay and Others v Région wallonne

Reference for a preliminary ruling: Cour constitutionnelle - Belgium.

Assessment of the effects of projects on the environment - Concept of legislative act - Force and effect of the guidance in the Aarhus Convention Implementation Guide - Consent for a project given without an appropriate assessment of its effects on the environment - Access to justice in environmental matters - Extent of the right to a review procedure - Habitats Directive - Plan or project affecting the integrity of the site - Imperative reason of overriding public interest.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=119510&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=269376

Judgment of the Court (Third Chamber) of 19 April 2012, Case C-121/11 [ECLI:EU:C:2012:225]

Pro-Braine ASBL and Others v Commune de Braine-le-Château, intervener: Veolia es treatment SA

Reference for a preliminary ruling: Conseil d'État - Belgium.

Directive 1999/31/EC - Landfill of waste - Directive 85/337/EEC - Assessment of the effects of certain public and private projects on the environment - Decision relating to the carrying on of operations at an authorised landfill site, in the absence of an Environmental Impact Assessment - Concept of 'consent'.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=121742&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=176680

Judgment of the Court (Fourth Chamber) of 19 December 2012, Case C-279/11 [ECLI:EU:C:2012:834]

European Commission v Ireland

Failure of a Member State to fulfil obligations - Directive 85/337/EEC - Assessment of the effects of certain public and private projects on the environment - Incorrect transposition - Annexe II - Point 1(a) to (c) - Judgment of the Court of Justice - Finding of infringement - Article 260 TFEU - Pecuniary penalties - Lump

sum payment - Member State's ability to pay - Economic crisis - Assessment on the basis of current economic data.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=131984&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=268808

2013

Judgment of the Court (Grand Chamber) of 15 January 2013, Case C-416/10 [ECLI:EU:C:2013:8]

Reference for a preliminary ruling: Najvyšší súd Slovenskej republiky (Slovakia)

Annulment of a judicial decision - Referral back to the court concerned - Obligation to comply with the annulment decision - Reference for a preliminary ruling - Whether possible - Environment - Aarhus Convention - Directive 85/337/EEC - Directive 96/61/EC - Public participation in the decision-making process - Construction of a landfill site - Application for a permit - Trade secrets - Non-communication of a document to the public - Effect on the validity of the decision authorising the landfill site - Rectification -Assessment of the environmental impact of the project - Final opinion prior to accession of the Member State to the European Union - Application in time of Directive 85/337 - Effective legal remedy - Interim measures - Suspension of implementation - Annulment of the contested decision - Right to property - Interference

http://curia.europa.eu/juris/document/document.jsf?text=&docid=132341&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=268740

Judgment of the Court (Fourth Chamber) of 14 March 2013, Case C-420/11 [ECLI:EU:C:2013:166]

Request for a preliminary ruling from the Oberster Gerichtshof (Austria)

Environment – Directive 85/337/EEC – Assessment of the effects of certain public and private projects on the environment – Consent for such a project without an appropriate assessment – Objectives of that assessment – Conditions to which the existence of a right to compensation are subject – Whether protection of individuals against pecuniary damage is included

http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=req&docid=135025&occ=first&dir=&cid=1123765

Judgment of the Court (Fifth Chamber) of 21 March 2013, Case C-244/12 [ECLI:EU:C:2013:203]

Salzburger Flughafen

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria)

Assessment of the effects of certain projects on the environment — Directive 85/337/EEC — Articles 2(1) and 4(2) — Projects listed in Annex II — Extension works to the infrastructure of an airport — Examination on the basis of thresholds or criteria — Article 4(3) — Selection criteria — Annex III, point 2(g) — Densely populated areas

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Judgment of the Court (Fourth Chamber) of 11 April 2013, Case C-260/11 [ECLI:EU:C:2013:221]

Edwards and Pallikaropoulos

Request for a preliminary ruling from the Supreme Court of the United Kingdom

Environment — Aarhus Convention — Directive 85/337/EEC — Directive 2003/35/EC — Article 10a — Directive 96/61/EC — Article 15a — Access to justice in environmental matters — Meaning of 'not prohibitively expensive' judicial proceedings

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Judgment of the Court (Second Chamber) of 7 November 2013, Case C-72/12 [ECLI:EU:C:2013:712]

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany)

Environment — Directive 85/337/EEC — Environmental impact assessment — Århus Convention — Directive 2003/35/EC — Right to challenge a development consent decision — Temporal application — Development consent procedure initiated before the period prescribed for transposing Directive 2003/35/EC expired — Decision taken after that date — Conditions of admissibility of the action — Impairment of a right — Nature of the procedural defect that may be invoked — Scope of the review

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2014

Judgment of the Court (Second Chamber) of 13 February 2014, Case C-530/11 [ECLI:EU:C:2014:67]

Failure of a Member State to fulfil obligations — Public participation in decision-making and access to justice in environmental matters — Concept of 'not prohibitively expensive' judicial proceedings

http://curia.europa.eu/juris/document/document.jsf?text=&docid=147843&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=566608

Judgment of the Court (Seventh Chamber) of 27 March 2014, Case C-300/13 [ECLI:EU:C:2014:188]

Request for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Valenciana (Spain)

Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — Construction of certain overhead electrical power lines — Extension of an electrical substation — Project not made subject to an environmental assessment

http://curia.europa.eu/juris/document/document.jsf?text=&docid=149929&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=566608

2015

Judgment of the Court (Second Chamber) of 11 February 2015, Case C-531/13 [ECLI:EU:C:2015:79]

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria)

Environment — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Projects which must be made subject to an assessment — Exploratory drillings — Annex I, No 14 — Concept of 'extraction of petroleum and natural gas for commercial purposes' — Obligation to conduct an assessment in the case of extraction of a certain quantity of gas — Annex II, No 2(d) — Concept of 'deep drillings' — Annex III, No 1 — Concept of 'cumulation with other projects'

http://curia.europa.eu/juris/document/document.jsf?text=&docid=162221&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=566608

In its judgement of 11th February 2015, the ECJ stated in paragraph 23 that from the context and objective of Annex I, No 14 of the EIA Directive the scope of this provision does not extend to exploratory drillings. In fact, this provision links the obligation to conduct an environmental impact assessment to the quantities of petroleum and natural gas earmarked for extraction.

As a conclusion Article 4(2) of Directive 85/337, as amended by Directive 2009/31, read in conjunction with Annex II, No 2(d), to that directive, must be interpreted as meaning that it may give rise to an obligation to conduct an environmental impact assessment of a deep drilling operation, such as the exploratory drilling at issue in the main proceedings. The competent national authorities must accordingly carry out a specific evaluation as to whether, taking account of the criteria set out in Annex III to that directive, an environmental impact assessment must be carried out. In so doing, they must examine inter alia whether the environmental impact of the exploratory drillings could, due to the impact of other projects, be greater than what it would be without the presence of those other projects. That assessment must not be confined to municipal boundaries.

The Austrian Supreme Administrative Court made in his judgement 2015/04/0001-20 of 22nd June 2015 clear that the competent national authority has to examine, whether an environmental impact assessment is needed. Moreover, the assessment must not be confined to municipal boundaries. Since the national authority did not carry out such a case by case examination, its decision was repealed for its unlawful contents.

With decision of 21st June 2016, the Federal Minister of Science, Research and Economics as well as the Minister of Labour, Social Affairs and Consumer Protection gave their authorisation for the exploratory drilling subject to certain requirements regarding air pollution control, noise control and protection of workers. However, they did not investigate possible cumulative impacts with other projects. Therefore, the Federal Court of Administration (Bundesverwaltungsgericht) decided on 7th October 2016 (W109 2131027-1/ 6E) to repeal this decision. Finally, the EIA authority decided that no environmental impact assessment was necessary for the exploratory drilling, which was by the way not successful.

Judgment of the Court (Fifth Chamber) of 16 April 2015, Case C-570/13 [ECLI:EU:C:2015:231]

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria)

Environment — Directive 2011/92/EU — Assessment of the effects of certain public and private projects on the environment — Construction of a retail park — Binding effect of an administrative decision not to carry out an environmental impact assessment — No public participation

http://curia.europa.eu/juris/document/document.jsf?text=&docid=163723&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=566608

The ECJ ruled in his judgement of 16th April 2015 that Article 11 of Directive 2011/92/EU must be interpreted as precluding national legislation, such as that at issue in the main proceedings pursuant to which an administrative decision declaring that a particular project does not require an environmental impact assessment, which is binding on neighbours who were precluded from bringing an action against that administrative decision, where those neighbours, who are part of the 'public concerned' within the meaning of Article 1(2) of that directive, satisfy the criteria laid down by national law concerning 'sufficient interest' or 'impairment of a right'. It is for the referring court to verify whether that condition is fulfilled in the case before it. Where it is so fulfilled, that court must hold that the administrative decision not to carry out such an assessment is not binding on those neighbours.

The Austrian Supreme Administrative Court followed in judgement 2015/04/0002 of 22nd June 2015 the judgement of the ECJ. Accordingly, the Austrian Supreme Administrative Court decided that the EIA declaratory decision has no binding effect for this neighbour. In the case Ms Gruber meets as a neighbour the requirements as a member of public concerned as she had a sufficient interest in the procedure for authorization of a premise (Paragraph 74 (2) Gewerbeordnung). According to the judgement in the Case C-570/13 of the ECJ neighbours under Paragraph 74 (2) Gewerbeordnung are members of public concerned as in Article 1 (2) of Directive 2011/92/EU. Therefore Ms Gruber needs to have the right to file an appeal in case of a negative EIA declaratory decision. The declaratory decision was repealed for its unlawful contents.

After the judgement of the Austrian Supreme Administrative Court other cases where brought to the Administrative courts for the same reasons as Ms Gruber, neighbours who were precluded from bringing an action against that administrative decision.

As a consequence of this decision Paragraph 3 (7a) of the Austrian EIA act was amended in April 2016, which states that an environmental organization recognized or a neighbour can file an appeal in case of a negative EIA declaratory decision.

Judgment of the Court (Second Chamber) of 15 October 2015, Case C-137/14 [ECLI:EU:C:2015:683]

Failure of a Member State to fulfil obligations — Directive 2011/92/EU — Assessment of the effects of certain public and private projects on the environment — Article 11 — Directive 2010/75/EU — Industrial emissions (integrated pollution prevention and control) — Article 25 — Access to justice — Non-compliant national procedural rules

http://curia.europa.eu/juris/document/document.jsf?text=&docid=169823&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=566608

2016

Judgment of the Court (Third Chamber) of 14 January 2016, Case C-141/14 [ECLI:EU:C:2016:8]

Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Kaliakra and Belite Skali special protection areas — Directive 92/43/EEC — Conservation of natural habitats and wild species — Kompleks Kaliakra site of Community importance — Directive 2011/92/EU — Assessment of the effects of certain projects on the environment — Temporal applicability of the system of protection — Deterioration of natural habitats of species and disturbance of species — Wind power — Tourism

http://curia.europa.eu/juris/document/document.jsf?text=&docid=173520&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=566608

Judgment of the Court (First Chamber) of 17 November 2016, Case C-348/15 [ECLI:EU:C:2016:882]

Stadt Wiener Neustadt

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria)

Assessment of the effects of certain public and private projects on the environment — Directive 85/337/EEC — Directive 2011/92/EU — Scope — Concept of 'specific act of national legislation' — No environmental impact assessment — Definitive authorisation — Legislative regularisation a posteriori of the lack of environmental impact assessment — Principle of cooperation — Article 4 TEU

http://curia.europa.eu/juris/document/document.jsf?text=&docid=185443&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=566608

The ECJ stated in his decision of 17th November 2016 that the details of the project must be adopted by a specific act of legislation. Secondly, the objectives of the directive, including that of supplying information, must be achieved through the legislative process. Although it is for the national court to ascertain whether those conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates, it appears, nonetheless, that a legislative provision such as Paragraph 46(20)(4) of the UVP-G 2000 does not meet those requirements.

Consequently, that ECJ decided, that Article 1(5) 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, as amended by Council Directive 97/11/EC of 3 March 1997, must be interpreted as meaning that it covers a project subject to a legislative provision such as that at issue in the main proceedings, under which a project which has been the subject of a decision taken in breach of the obligation to assess its effects on the environment, in respect of which the time limit for an action for annulment has expired, must be regarded as lawfully authorised. EU law precludes such a legislative provision insofar as it provides that a prior environmental impact assessment must be deemed to have been carried out for such a project. The Austrian Supreme Administrative Court made in his judgement 2014/07/0108-6 of 26th January 2017 clear, that Paragraph 46(20)(4) of the UVP-G 2000 is not applicable as of the primacy of union law. The decision was repealed.

As a consequence the Federal Court of Administration (Bundesverwaltungsgericht) repealed the decision on 23rdMarch 2017 (W104 2010407-1/17E) as an environmental impact assessment was not performed because of Paragraph 46(20) (4) of the UVP-G 2000, an incorrect interpretation of the EIA directive. It needs to be evaluated for the existing plant whether that plant should be subject to an environmental impact assessment in accordance with the UVP-G 2000 or not. Paragraph 46(20) (4) of the UVP-G 2000 was deleted with an amendment of the Act to be compliant with European Union law. Finally, the EIA authority decided that no environmental impact assessment was necessary for this case.

Judgment of the Court (Fifth Chamber) of 24 November 2016, Case C-461/14 [ECLI:EU:C:2016:895]

Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Special protection areas — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Directive 92/43/EEC — Conservation of natural habitats

http://curia.europa.eu/juris/document/document.jsf?text=&docid=185566&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=566608

Judgment of the Court (Sixth Chamber) of 24 November 2016, Case C-645/15 [ECLI:EU:C:2016:898]

Request for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany)

Environment — Assessment of the effects of certain public and private projects on the environment — Directive 2011/92/EU — Project subject to assessment — Annex I, point 7 — European Agreement on Main International Traffic Arteries (AGR) — Widening of a road with four lanes over a length of less than 10 km

http://curia.europa.eu/juris/document/document.jsf?text=&docid=185562&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=566608

2017

Judgment of the Court (First Chamber) of 26 July 2017, Joined Cases C-196/16 and C-197/16 [ECLI:EU:C:2017:589]

References for a preliminary ruling from Tribunale Amministrativo Regionale per le Marche (Italy)

Reference for a preliminary ruling — Environment — Directive 85/337/EEC — Directive 2011/92/EU — Possibility of carrying out, a posteriori, an environmental impact assessment of an operational plant for the production of energy from biogas with a view to obtaining a new consent

http://curia.europa.eu/juris/document/document.jsf?text=&docid=193205&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=566608

2018

Judgment of the Court (Sixth Chamber) of 28 February 2018
Comune di Castelbellino v Regione Marche and Others, Case C-117/17 [ECLI:EU:C:2018:129]

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per le Marche

Reference for a preliminary ruling — Environment — Directive 2011/92/EU — Article 4(2) and (3) and Annexes I to III — Environmental impact assessment — Authorisation to carry out work in a plant for the production of electricity from biogas without preliminary examination of the need for an environmental impact assessment — Annulment — Regularisation after the event of the authorisation on the basis of new provisions of national law without preliminary examination of the need for an environmental impact assessment

http://curia.europa.eu/juris/document/document.jsf?text=&docid=199767&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7243474

Judgment of the Court (First Chamber) of 15 March 2018
North East Pylon Pressure Campaign Limited and Maura Sheehy v An Bord Pleanála and Others, Case C-470/16, [ECLI:EU:C:2018:185]

Request for a preliminary ruling from the High Court (Ireland)
Reference for a preliminary ruling — Assessment of the effects of certain projects on the environment — Directive 2011/92/EU — Right of members of the public concerned to a review procedure — Premature challenge — Concepts of a not prohibitively expensive procedure and of decisions, acts or omissions subject to the public participation provisions of the directive — Applicability of the Aarhus Convention

http://curia.europa.eu/juris/document/document.jsf?text=&docid=200265&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=174675

Judgment of the Court (First Chamber) of 31 May 2018

European Commission v Republic of Poland, Case C-526/16 [ECLI:EU:C:2018:356]

Failure of a Member State to fulfil obligations — Directive 2011/92/EU — Assessment of the effects on the environment of drilling to locate or search for shale gas — Deep drillings — Selection criteria — Determination of thresholds

http://curia.europa.eu/juris/document/document.jsf?text=&docid=202419&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=411795

Judgment of the Court (Eighth Chamber) of 7 August 2018
Gerhard Prenninger and Others v Oberösterreichische Landesregierung and Netz Oberösterreich GmbH, Case C-329/17, [ECLI:EU:C:2018:640]

Request for a preliminary ruling from the Verwaltungsgerichtshof
Reference for a preliminary ruling — Environment — Directive 2011/92/EU — Assessment of the effects of certain projects on the environment — Annex II — Point 1(d) — Concept of 'deforestation for the purposes of conversion to another type of land use' — Clearance of a path in a forest in connection with the construction and operation of an overhead electrical power line

http://curia.europa.eu/juris/document/document.jsf?text=&docid=204739&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=174675ith the construction and operation of an overhead electrical power line

Judgment of the Court (First Chamber) of 17 October 2018

Volkmar Klohn v An Bord Pleanála, Case C-167/17, [ECLI:EU:C:2018:833]

Request for a preliminary ruling from the Supreme Court
Reference for a preliminary ruling — Environment — Assessment of the effects of certain projects on the environment — Right to challenge a development consent decision — Requirement for a procedure which is not prohibitively expensive — Concept — Temporal application — Direct effect — Effect on a national decision on the taxation of costs which has become final

http://curia.europa.eu/juris/document/document.jsf?text=&docid=206856&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2270027

Judgment of the Court (Second Chamber) of 7 November 2018
Coöperatie Mobilisation for the Environment UA and Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and College van gedeputeerde staten van Gelderland, Joined Cases C-293/17 and C-294/17 [ECLI:EU:C:2018:882]

Requests for a preliminary ruling from the Raad van State
Reference for a preliminary ruling — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Special areas of conservation — Article 6 — Appropriate assessment of the implications of a plan or project for a site — National programmatic approach to tackling nitrogen deposition — Concepts of 'project' and 'appropriate assessment' — Overall assessment prior to individual authorisations for farms which cause nitrogen deposition

http://curia.europa.eu/juris/document/document.jsf?text=&docid=207424&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1239243

Judgment of the Court (Second Chamber) of 7 November 2018
Brian Holohan and Others v An Bord Pleanála, Case C-461/17, [ECLI:EU:C:2018:883]
Request for a preliminary ruling from the High Court (Ireland)

Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats — Conservation of wild fauna and flora — Road construction project — Appropriate assessment of effects on the environment — Extent of the obligation to state reasons — Directive 2011/92/EU — Assessment of the implications of certain projects — Annex IV, Point 3 — Article 5(3)(d) — Meaning of the concept of 'main alternatives'

http://curia.europa.eu/juris/document/document.jsf?text=&docid=207428&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2037210

2019

Judgment of the Court (Grand Chamber) of 8 July 2019

European Commission v Kingdom of Belgium, Case C-543/17, ECLI:EU:C:2019:573

Failure of a Member State to fulfil obligations — Article 258 TFEU — Measures to reduce the cost of deploying high-speed electronic communications networks — Directive 2014/61/EU — No transposition and/or no notification of transposing measures — Article 260(3) TFEU — Application for an order to pay a daily penalty payment — Calculation of the amount of the penalty payment

http://curia.europa.eu/juris/document/document.jsf?text=&docid=215902&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=807213

Judgment of the Court (Grand Chamber) of 29 July 2019
Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres, Case C-411/17, ECLI:EU:C:2019:622

Request for a preliminary ruling from the Cour constitutionnelle

Reference for a preliminary ruling — Environment — Espoo Convention — Aarhus Convention — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 6(3) — Definition of 'project' — Assessment of the effects on the site concerned — Article 6(4) — Meaning of 'imperative reasons of overriding public interest' — Conservation of wild birds — Directive 2009/147/EC — Assessment of the effects of certain public and private projects on the environment — Directive 2011/92/EU — Article 1(2)(a) — Definition of 'project' — Article 2(1) — Article 4(1) — Environmental impact assessment — Article 2(4) — Exemption from assessment — Phasing out of nuclear energy — National legislation providing, first, for restarting industrial production of electricity for a period of almost 10 years at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the date initially set by the national legislature for deactivating and ceasing production at that power station, and second, for deferral, also by 10 years, of the date initially set by the legislature for deactivating and ceasing industrial production of electricity at an active power station — No environmental impact assessment

http://curia.europa.eu/juris/document/document.jsf?text=&docid=216539&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2036423

Judgment of the Constitutional Court of Belgium (la Cour constitutionnelle de Belgique)

Arrêt n° 34/2020 du 5 mars 2020 :

https://www.const-court.be/public/f/2020/2020-034f.pdf

Judgment of the Court (First Chamber) of 7 November 2019
Alain Flausch and Others v Ypourgos Perivallontos kai Energeias and Others, Case C-280/18, **[ECLI:EU:C:2019:928]**

Request for a preliminary ruling from the Symvouliotis Epikrateias
Reference for a preliminary ruling — Environment — Assessment of the effects of certain projects on the environment — Public participation in decision-making and access to justice — Date from which the time for bringing proceedings starts to run
http://curia.europa.eu/juris/document/document.jsf?text=&docid=220352&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2737347

Judgment of the Court (Grand Chamber) of 12 November 2019
European Commission v Ireland, (Case C-261/18), **[ECLI:EU:C:2019:955**]

Failure of a Member State to fulfil obligations — Judgment of the Court establishing a failure to fulfil obligations — Non-compliance — Directive 85/337/EEC — Consent for, and construction of, a wind farm — Project likely to have significant effects on the environment — Absence of a prior environmental impact assessment — Obligation to regularise — Article 260(2) TFEU — Application for an order to pay a penalty payment and a lump sum
http://curia.europa.eu/juris/document/document.jsf?text=&docid=222209&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=1468823

2020

Judgment of the Court (First Chamber) of 28 May 2020
IL and Others v Land Nordrhein-Westfalen, Case C-535/18, **[ECLI:EU:C:2020:391]**

Request for a preliminary ruling from the Bundesverwaltungsgericht
Reference for a prelimnary ruling – Environment – Environmental impact assessment – Directive 211/92/EU – Directive 2000/60/EC – EU action in the filed of water policy – Ritght of appearl in the event of procedural errors – National regulations limiting right of appeal in the event of procedural errors)
http://curia.europa.eu/juris/document/document.jsf?text=&docid=226864&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=8875758

Jud
gment of the Court (First Chamber) of 9 September 2020
Friends of the Irish Environment Ltd v An Bord Pleanála, Case 254/19, [**ECLI:EU:C:2020:680]**

Request for a preliminary ruling from the High Court (Irlande)

Reference for a preliminary ruling – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Article 6(3) – Scope – Concepts of 'project' and 'agreement' – Appropriate assessment of the implications of a plan or project for a protected site – Decision extending the duration of a development consent for the construction of a liquefied natural gas regasification terminal – Original decision based on national legislation which did not properly transposed Directive 92/43
http://curia.europa.eu/juris/document/document.jsf?text=&docid=230785&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10229143

SEA Directive

2010

Judgment of the Court (Fourth Chamber) of 17 June 2010, joined cases C-105/09 and C-110/09 [ECLI:EU:C:2010:355]

References for a preliminary ruling from the Conseil d'État (Belgium)

Directive 2001/42/EC - Assessment of the effects of certain plans and programmes on the environment - Directive 91/676/EEC - Protection of waters against pollution caused by nitrates from agricultural sources - Action programmes in respect of vulnerable zones

http://curia.europa.eu/juris/document/document.jsf?text=&docid=83020&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=873353

2011

Judgment of the Court (Fourth Chamber) of 22 September 2011, Case C-295/10 [ECLI:EU:C:2011:608]

Reference for a preliminary ruling from the Vyriausiasis administracinis teismas (Lithuania)

Directive 2001/42/EC - Assessment of the effects of certain plans and programmes on the environment - Plans which determine the use of small areas at local level - Article 3(3) - Documents relating to land planning at local level relating to only one subject of economic activity - Assessment under Directive 2001/42/EC precluded in national law - Member States' discretion - Article 3(5) - Link with Directive 85/337/EEC - Article 11(1) and (2) of Directive 2001/42/EC

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Judgment of the Court (Fourth Chamber) of 20 October 2011, Case C-474/10 [ECLI:EU:C:2011:681]

Reference for a preliminary ruling from the Court of Appeal in Northern Ireland (United Kingdom)

Directive 2001/42/EC - Article 6 - Designation, for consultation purposes, of an authority likely to be concerned by the environmental effects of implementing plans and programmes - Possibility of authority to be consulted conceiving plans or programmes -Requirement to designate a separate authority - Arrangements for the information and consultation of the authorities and the public

http://curia.europa.eu/juris/document/document.jsf?text=&docid=111582&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=873079

2012

Judgment of the Court (Grand Chamber), 28 February 2012, Case C-41/11 [ECLI:EU:C:2012:103]Reference for a preliminary ruling from the Conseil d'État (Belgium)

Protection of the environment — Directive 2001/42/EC — Articles 2 and 3 — Assessment of the effects of certain plans and programmes on the environment — Protection of waters against pollution caused by nitrates from agricultural sources — Plan or programme — No prior environmental assessment — Annulment of a plan or programme — Possibility of maintaining the effects of the plan or programme — Conditions

http://curia.europa.eu/juris/document/document.jsf?text=&docid=119761&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=872773

Judgment of the Court (Fourth Chamber) of 22 March 2012, Case C-567/10 [ECLI:EU:C:2012:159]

Reference for a preliminary ruling from the Cour constitutionnelle (Belgium)

Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Concept of plans and programmes 'which are required by legislative, regulatory or administrative provisions' — Applicability of the directive to a procedure for the total or partial repeal of a land use plan

http://curia.europa.eu/juris/document/document.jsf?text=&docid=120781&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=872803

Judgment of the Court (Eighth Chamber) of 21 June 2012, Case C-177/11 [ECLI:EU:C:2012:378]

Reference for a preliminary ruling: Symvoulio tis Epikrateias (Greece)

Directive 2001/42/CE - Assessment of the effects of certain plans and programmes on the environment - Article 3(2)(b) - Margin of discretion of the Member States

http://curia.europa.eu/juris/document/document.jsf?text=&docid=124188&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3331076

Judgment of the Court (Grand Chamber) of 11 September 2012, Case C-43/10 [ECLI:EU:C:2012:560]

Reference for a preliminary ruling: Symvoulio tis Epikrateias (Greece)

Directives 85/337/EEC, 92/43/EEC, 2000/60/EC and 2001/42/EC - Community action in the field of water policy - Diversion of the course of a river - Meaning of the time-limit for production of river basin management plans.

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2013

Judgment of the Court (Fourth Chamber) of 18 April 2013, Case C-463/11 [ECLI:EU:C:2013:247]

Request for a preliminary ruling from the Verwaltungsgerichtshof Baden Württemberg (Germany)

Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Article 3(4) and (5) — Determination of the type of plans likely to have significant environmental effects — Building plan 'for development within an urban area' exempted from an environmental assessment under national legislation — Incorrect assessment of the qualitative condition of 'inner city development' — No effect on the legal validity of the building plan — Effectiveness of the directive undermined

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2015

Judgment of the Court (Ninth Chamber) of 10 September 2015, Case C-473/14 [ECLI:EU:C:2015:582]

Request for a preliminary ruling from the Symvoulio tis Epikrateias (Greece)

Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Protection regime in respect of the Mount Hymettus area — Modification procedure — Applicability of the directive — Master plan and environmental protection programme for the greater Athens area

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2016

Judgment of the Court (First Chamber) of 28 July 2016, Case C-379/15 [ECLI:EU:C:2016:603]

Request for a preliminary ruling from the Conseil d'État (France)

Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — National measure incompatible with EU law — Legal consequences — Power of the national court to maintain certain effects of that measure provisionally — Third paragraph of Article 267 TFEU — Obligation to make a reference to the Court for a preliminary ruling

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Judgment of the Court (Second Chamber) of 27 October 2016, Case C-290/15 [ECLI:EU:C:2016:816]

Request for a preliminary ruling from the Conseil d'État (Belgium)

Assessment of the effects of certain plans and programmes on the environment — Directive 2001/42/EC — Articles 2(a) and 3(2)(a) — Definition of 'plans and programmes' — Conditions concerning the installation of wind turbines laid down by a regulatory order — Provisions concerning, inter alia, safety, inspection, site restoration and financial collateral and permitted noise levels set having regard to area use

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Judgment of the Court (Third Chamber) of 21 December 2016, Case C-444/15 [ECLI:EU:C:2016:978]

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Veneto (Italy)

Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Article 3(3) — Plans and programmes which require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects — Validity in the light of the TFEU and the Charter of Fundamental Rights of the European Union — Meaning of use of 'small areas at local level' — National legislation referring to the size of the areas concerned

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2018

Judgment of the Court (Second Chamber) of 7 June 2018
Inter-Environnement Bruxelles ASBL and Others v Région de Bruxelles-Capitale, Case C-671/16, [ECLI:EU:C:2018:403]
Request for a preliminary ruling from the Conseil d'État (Belgium)

Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Article 2(a) — Concept of 'plans and programmes' — Article 3 — Assessment of the effects of certain plans and programmes on the environment — Regional town planning regulations relating to the European Quarter, Brussels (Belgium)

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Raoul Thybaut and Others v Région wallonne, Case C-160/17 [EU:C:2018:401]
Request for a preliminary ruling from the Conseil d'État (Belgium)

Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Article 2(a) — Concept of 'plans and programmes' — Article 3 — Assessment of the effects of certain plans and programmes on the environment — Urban land consolidation area — Possibility of derogating from town planning requirements — Modification of the 'plans and programmes'

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2019

Judgment of the Court (Sixth Chamber) of 8 May 2019

Associazione "Verdi Ambiente e Società - Aps Onlus" (VAS) and "Movimento Legge Rifiuti Zero per l'Economia Circolare" Aps v Presidente del Consiglio dei Ministri and Others, Case C-305/18 [ECLI:EU:C:2019:384]
Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio

Reference for a preliminary ruling — Environment — Directive 2008/98/EC — Disposal or recovery of waste — Establishment of an integrated waste management system guaranteeing national self-sufficiency — Construction of incineration facilities or increase in capacity of existing facilities — Classification of incineration facilities as 'strategic infrastructure and installations of major national importance' — Compliance with the 'waste hierarchy' principle — Directive 2001/42/EC — Need to carry out an 'environmental assessment'

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Judgment of the Court (First Chamber) of 12 June 2019
Terre wallonne ASBL v Région wallonne, Case C-321/18, [ECLI:EU:C:2019:484]

Request for a preliminary ruling from the Conseil d'État (Belgium)

Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Decree — Establishment of conservation objectives for the Natura 2000 network, in accordance with Directive 92/43/EEC — Definition of 'plans and programmes' — Obligation to undertake an environmental assessment

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Judgment of the Court (First Chamber) of 12 June 2019
Compagnie d'entreprises CFE SA v Région de Bruxelles-Capitale, Case C-43/18, [ECLI:EU:C:2019:483]

Request for a preliminary ruling from the Conseil d'État (Belgium)
Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Decree — Designation of a special area of conservation pursuant to Directive 92/43/EEC — Setting of conservation objectives and provision of certain preventive measures — Concept of 'plans and programmes' — Obligation to carry out an environmental assessment

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2020

Judgment of the Court (Grand Chamber) of 25 June 2020

A and Others v Gewestelijke stedenbouwkundige ambtenaar van het departement Ruimte Vlaanderen, afdeling Oost-Vlaanderen, Case C-24/19, [ECLI:EU:C:2020:503]

Request for a preliminary ruling from the Raad voor Vergunningsbetwistingen

Reference for a preliminary ruling — Directive 2001/42/EC — Environmental impact assessment — Development consent for the installation and operation of wind turbines — Article 2(a) — Concept of 'plans and programmes' — Conditions for granting consent laid down by an order and a circular — Article 3(2)(a) — National instruments setting the framework for future development consent of projects — Absence of environmental assessment — Maintenance of the effects of national instruments, and of consents granted on the basis of those instruments, after those instruments have been declared not to comply with EU law — Conditions

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