European Commission

ENVIRONMENTAL ASSESSMENT OF CERTAIN PLANS AND PROGRAMMES

Directive 2001/42/EC ('SEA' Directive)

RULINGS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

Environment

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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)[4] and the Strategic Environmental Assessment Directive (SEA Directive)[5] are founded on the Fundamental treaties' provision concerning environmental actions to be taken by the EU Article 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] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

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

[4] 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.

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

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, 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.

Scope and objective of the SEA 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.

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.[6] 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*'.[7]

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.[8]

About the Court of Justice of the European Union

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

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

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[9] (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[10] 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

[9] 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.

[10] 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 17 May 2022) .

Commission, it may propose that the Court impose a pecuniary penalty on the Member State concerned, once the initial 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.[11]

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 instance. The 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)

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

[11] See *Commission of the European Communities v French Republic*, C-121/07, paragraph 77 and *European Commission v Ireland*, Case-279/11, paragraph 72.

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)

About this booklet[12]

The CJEU plays an important role in implementation and interpretation of the SEA Directive. 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 **SEA Directive**.

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 the SEA Directive.

The **second 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.

[12] Last update of this booklet – 7th June 2022.

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[13], 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).

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 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.

[13] COM (2019) 343 – 17.7.2019.

(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, paragraphs 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)

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, 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 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)

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)

The 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 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 wallonne, 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, 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, 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, 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, paragraphs 36 and 41 ; Thybaut and Others, C-160/17, Eparagraphs 42 and 46; Verdi Ambiente e Società (VAS – Aps Onlus' and Others, C-305/18, paragraphs 44 and 47; Terre wallonne ASBL v Région wallonne, Case C-321/18, paragraphs 33 and 37; A and Others, C-24/19, paragraph 65; Bund Naturschutz in Bayern, C-300/20, paragraph 49).

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, 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 Others, C-305/18, 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, paragraphs 49 and 61; Bund Naturschutz in Bayern, C-300/20, paragraph)

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, 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, 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, paragraph 49; Inter-Environnement Bruxelles and Others, C-671/16, paragraph 53; Terre wallonne ASBL v Région wallonne, Case C-321/18, paragraph 41 ; A and Others, C-24/19, paragraph 67; Bund Naturschutz in Bayern, C-300/20, paragraph 60).

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, paragraph 55; Thybaut and Others, C-160/17, paragraph 55; Verdi Ambiente e Società (VAS) – Aps Onlus' and Others, C-305/18, paragraph 51 ; CFE, C-43/18, paragraph 64 ; A and Others, C-24/19, 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, paragraphs 41-44)

The requirement laid down in Article 3(2)(a) of Directive 2001/42, according to which the plan or programme concerned must set the framework for future development consent of projects listed in Annexes I and II to Directive 2011/92, must therefore be regarded as met where that plan or programme establishes a significant body of criteria and detailed rules for the grant and implementation of one or more of those projects, inter alia with regard to the location, nature, size and operating conditions of such projects, or the allocation of resources connected with those projects.
By contrast, that requirement is not met in the case of a plan or programme which, while targeting projects listed in Annexes I and II to Directive 2011/92, does not lay down such criteria or detailed rules.

Having regard to the foregoing, the answer to the first and second questions is that Article 3(2)(a) of Directive 2001/42 must be interpreted as meaning that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits without laying down sufficiently detailed rules regarding the content, preparation and implementation of the projects referred to in Annexes I and II to Directive 2011/92 does not fall within the scope of that provision.
(Bund Naturschutz in Bayern, C-300/20, paragraphs 62-63, 70)

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, paragraphs 28 and 31 ; Inter-Environnement Bruxelles and Others C-671/16, paragraph 37 ; Terre wallonne ASBL v Région wallonne, Case C-321/18, paragraph 34 ; A and Others, C-24/19, paragraph 35 ; Bund Naturschutz in Bayern, C-300/20, paragraph 37).

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, 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, paragraph 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, 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, paragraphs 36-38)

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, 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, 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, paragraph 46 and paragraphs 48-49 ; Thybaut and Others, C-160/17, paragraph 50)

Regarding, in the first place, the question whether a regulation such as the Inntal Süd Regulation covers the projects listed in Annex I or Annex II to Directive 2011/92, it should be noted that the concept of 'project', as defined in Article 1(2)(a) of Directive 2011/92, cannot be regarded as covering certain activities which that regulation makes subject to authorisation, such as those consisting of '[setting] up vending vans' (point 2(d) of Paragraph 5(1)), '[pursuing], [capturing] or [killing] wild animals' (point 7 of Paragraph 5(1)), or '[allowing] aircraft … to take off or land' (point 13 of Paragraph 5(1)). It follows from case-law that that concept refers to work or interventions involving alterations to the physical aspect of the site (judgment of 9 September 2020, *Friends of the Irish Environment*, C-254/19, EU:C:2020:680, paragraph 32 and the case-law cited).
(Bund Naturschutz in Bayern, C-300/20, paragraph 56)

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, 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, 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, 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, paragraphs 45-49, 51-59)

Plans and programmes different than those referred to in Article 3(2)

The obligation laid down in Article 3(4) of Directive 2001/42 is therefore dependent on a condition which corresponds to the second condition laid down in Article 3(2)(a) of that directive, namely that the plan or programme in question must set the framework for future development consent of projects (see, to that effect, judgment of 12 June 2019, *CFE*, C-43/18, EU:C:2019:483, paragraph 60).

Thus, in view of the considerations relating to that condition set out in paragraphs 60 to 69 of the present judgment, the answer to the third question is that Article 3(4) of Directive 2001/42 must be interpreted as meaning that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits without laying down sufficiently detailed rules regarding the content, preparation and implementation of projects does not fall within the scope of that provision.
(Bund Naturschutz in Bayern, C-300/20, paragraphs 73-74)

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, 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, 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, paragraph 33;Valčiukienė and Others, C-295/10, 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 plans

On 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, paragraph 42, Dimos Kropias Attikis, C-473/14, 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, paragraphs 71-73; A and Others, C-24/19, 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, paragraphs 51-55 ; Friends of the Irish Environment, C-254/19, 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, paragraph 39 ; Association France Nature Environnement, C-379/15, 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, 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, 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, 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, paragraphs 60-62, Dimos Kropias Attikis, C-473/14, 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, 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, paragraph 64-66 ; *Thybaut and Others*, C-160/17, 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, 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, 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, paragraphs, 51-54*)

ANNEX - SEA Directive CJEU rulings

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

https://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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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

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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

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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

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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

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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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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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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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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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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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Judgment of the Court (Grand Chamber) of 22 February 2022
Bund Naturschutz in Bayern e.V. v Landkreis Rosenheim, Case C-300/20, ECLI:EU:C:2022:102

Request for a preliminary ruling from the Bundesverwaltungsgericht

Reference for a preliminary ruling – Environment – Directive 2001/42/EC – Assessment of the effects of certain plans and programmes on the environment – Article 2(a) – Concept of 'plans and programmes' – Article 3(2)(a) – Measures prepared for certain sectors and setting a framework for future development consent of projects listed in Annexes I and II to Directive 2011/92/EU – Article 3(4) – Measures setting a framework for future development consent of projects – Landscape conservation regulation adopted by a local authority
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