Case Law Report

Case Law of the Court of Justice of the European Union and the General Court

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Overview of the Judgments¹

1 On the Concepts of ‘judicious use’ and ‘small numbers’ under the Birds Directive

Judgment of the Court (First Chamber) of 23 April 2020 in Case C-217/19 — *European Commission v. Republic of Finland*

1.1 *Subject Matter*

This action for failure to comply with Directive 2009/147/EC on the conservation of birds concerns an action brought by the Commission against Finland. By its action, the Commission is seeking from the Court a declaration that the Republic of Finland has failed to fulfil its obligations under Article 7(4) and

¹ Only opinions, judgements and orders available on Curia.eu under the subject matter ‘environment’, ‘energy’ and ‘provisions concerning the institutions/access to documents’ have been included in this report. Due to the length constraints, only those proceedings that in the subjective opinion of the editor were considered interesting are included.

Article 9(1)(c) of the Birds Directive by recurrently granting authorisations for spring hunting of male common eiders in the province of Åland since 2011.

1.2 *Key Findings*

74 In that regard, first, it cannot be maintained that a Member State has the best scientific knowledge when, at the time the competent authority adopts its decision, the latter relies on a study published seven years prior with the result that, unless evidence to the contrary, it is permissible to consider that a subsequent study, which analyses data from more recent years, contains more up-to-date data and, therefore, is significantly more accurate and relevant.

84 It must also be added, with regard to the interpretation of the Birds Directive and of the Habitats Directive that while the Court's case-law has recognised, for the latter, the possibility of granting derogations in cases of unfavourable conservation status, first, the grant of such derogations occurs by way of exception only and, secondly, such a grant must be assessed in the light of the precautionary principle (see, to that effect, with regard to the Habitats Directive, judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraphs 68 and 69 and the case-law cited). It follows that, even if both directives are to be interpreted in a way that includes their respective specific features, that interpretation cannot be regarded as diverging since, subject to their specific features, that interpretation contains similar considerations relating to, inter alia, their respective protection system.

87 It follows that the arguments put forward by the parties to the proceedings as well as the scientific evidence adduced in support do not demonstrate, which was a matter for the Republic of Finland to prove, that at the time the contested authorisations were granted the national authorities had well-established scientific knowledge showing that the population of the species concerned was maintained at a 'satisfactory level', and, accordingly, that the exploitation may be considered to be 'judicious'.

88 It also follows that the condition relating to 'judicious use' within the meaning of Article 9(1)(c) of the Birds Directive is not met.

93 In addition, the simple fact that a Member State is the only one to authorise a certain practice provides no ground for inferring that it may take over the entire quota available. For that reason, it is appropriate to contemplate hypothetically which other Member States might wish to use that quota and to reserve a relative portion thereof for each of them.

94 In the present case, instead of basing its calculation on the entire Baltic/Wadden Sea flyway population, the Republic of Finland should have used the

population of the relevant species breeding in the islands of the province of Åland as a baseline.

95 It follows that, at the relevant date, the authorities of the province of Åland did not have the data to calculate correctly the number of birds of the population in question for hunting.

96 In those circumstances, it can be inferred that the Republic of Finland has failed to observe the condition relating to ‘small numbers’ set out in Article 9(1)(c) of the Birds Directive.

97 In the light of the foregoing, it is appropriate to find that, by recurrently granting authorisations for spring hunting of male common eiders in the province of Åland since 2011 and up to and including 2019, the Republic of Finland has failed to fulfil its obligations under Article 7(4) and Article 9(1)(c) of the Birds Directive.

2 On the After-care Duties in the Context of Landfilling Sites

Judgment of the Court (Second Chamber) of 14 May 2020 in Case C-15/19 – *AMA — Azienda Municipale Ambiente SpA*

2.1 *Subject Matter*

This reference for a preliminary ruling concerns the interpretation of Articles 10 and 14 of Council Directive 1999/31/EC on the landfill of waste. The reference was made in proceedings between *AMA — Azienda Municipale Ambiente SpA* (‘AMA’), the company responsible for the collection and landfill of solid urban waste service for the municipality of Rome (Italy), and *Consorzio Laziale Rifiuti — Co.La.Ri.*, the operator of the Malagrotta landfill site (Lazio Region, Italy), regarding the increase in costs connected with the obligation on *Co.La.Ri.* to provide after-care for that landfill site for at least 30 years following its closure, rather than 10 years as originally planned. *AMA* was ordered by an arbitration decision to pay EUR 76 391 533.29 to *Co.La.Ri.* on the basis of the costs associated with the obligation on the latter to provide after-care for the landfill for a period of at least 30 years. *AMA* contested that decision before the *Corte d'appello di Roma* (Court of Appeal, Rome, Italy), first and before the *Corte suprema di cassazione* (Supreme Court of Cassation, Italy), later. Having doubts about the meaning of Directive 1999/31, the Supreme Court of Cassation asked, in essence, whether Articles 10 and 14 of Directive 1999/31 must be interpreted as precluding the interpretation of a provision of national law to the effect that a landfill site in operation at the date of transposition of that directive

must be subject to the obligations arising under that directive, in particular the obligation to extend the after-care period following the closure of the landfill, without it being necessary to make a distinction according to the date of storage of the waste or to provide for measures to limit the financial impact of that extension in respect of the holder of the waste.

2.2 *Key Findings*

40 It is clear that Article 14 of Directive 1999/31 cannot be interpreted as excluding existing landfill sites from the application of other provisions of that directive.

45 It follows from this, in the first place, that, in accordance with Articles 10, 13 and 14 of Directive 1999/31, the operator of a landfill operating at the date of transposition of that directive is subject to the obligation to ensure the after-care of that landfill for at least 30 years following its closure.

55 It follows that, although the Member State concerned must, under Article 10 of Directive 1999/31, have adopted measures in order to ensure that the price charged for waste disposal in a landfill covers, *inter alia*, all the costs of closure of a landfill site and of its after-care, which is a matter for the referring court to ascertain, that article cannot be interpreted as requiring that Member State to adopt measures to limit the financial implications of any extension of the after-care period of the landfill concerned for the holder of the waste.

58 As stated in paragraphs 34 and 35 above, the setting of the after-care period for a landfill at a minimum of 30 years after its closure, as provided for in Article 10 of Directive 1999/31, does not apply to landfills closed before the date of transposition of that directive. It therefore does not apply to legal situations that have arisen and become definitive before that date and, accordingly, does not apply with retroactive effect. By contrast, as regards both the operator of the landfill in question and the holder of the waste stored there, that is an example of the application of a new rule to the future effects of a situation that arose under the old rule.

63 In the light of the foregoing considerations, the answer to the questions referred is that Articles 10 and 14 of Directive 1999/31 must be interpreted as not precluding the interpretation of a provision of national law to the effect that a landfill site in operation at the date of transposition of that directive must be subject to the obligations arising under that directive, in particular the obligation to extend the after-care period following the closure of the landfill, without it being necessary to make a distinction according to the date of storage of the waste or to provide for measures to limit the financial impact of that extension in respect of the holder of the waste.

3 On the Allocation of Allowances Free of Charge under the ETS Directive

Judgment of the Court (Sixth Chamber) of 14 May 2020 in Case C-189/19 – *Spenner GmbH & Co. KG*

3.1 *Subject Matter*

This request for a preliminary ruling concerns the interpretation of Article 9(1) and 9(9) of Commission Decision 2011/278/EU laying down transitional rules for the Union as a whole for the purposes of harmonization of the procedures for free allocation of allowances pursuant to Article 10a of Directive 2003/87/EC. That request was made in the context of a dispute between *Spenner GmbH & Co. KG* and the Federal Republic of Germany concerning an application for the allocation of greenhouse gas emission allowances (hereinafter ‘the emissions’) free of charge to a cement clinker plant. In these circumstances, the *Bundesverwaltungsgericht* (Federal Administrative Court) decided to stay the proceedings and to refer the four questions to the Court for a preliminary ruling, two of which are reported in this overview. By the first question, the referring court is essentially asking whether Article 9(9) of Decision 2011/278 is to be interpreted as meaning that it does not apply to substantial capacity extensions of an existing installation which occurred before the reference period which was chosen in accordance with Article 9(1) of that decision. Moreover, the referring court asks, essentially, whether Article 9(1) of Decision 2011/278 is to be interpreted as requiring the competent national authority to determine itself the relevant reference period to evaluate the historical levels of activity of a plant.

3.2 *Judgment (not available in English)*

1) L'article 9, paragraphe 9, de la décision 2011/278/UE de la Commission, du 27 avril 2011, définissant des règles transitoires pour l'ensemble de l'Union concernant l'allocation harmonisée de quotas d'émission à titre gratuit conformément à l'article 10 bis de la directive 2003/87/CE du Parlement européen et du Conseil, doit être interprété en ce sens qu'il ne s'applique pas aux extensions significatives de capacité d'une installation en place intervenues avant la période de référence qui a été déterminée conformément à l'article 9, paragraphe 1, de cette décision.

2) L'article 9, paragraphe 1, de la décision 2011/278 doit être interprété en ce sens qu'il n'impose pas à l'autorité nationale compétente de déterminer elle-même la période de référence pertinente pour évaluer les niveaux d'activité historiques d'une installation.

4 On the Regime Applicable to the Shipment of Mixture of Paper, Cardboard and Paper Products under Regulation 1013/2006

Judgment of the Court (Fifth Chamber) of 28 May 2020 in Case C-654/18 – *Interseroh Dienstleistungs GmbH*

4.1 *Subject Matter*

The request for a preliminary ruling concerns the interpretation of Article 3 (2) of Regulation (EC) No. 1013/2006 of the European Parliament and of the Council on shipments of waste. This request was made in the context of a dispute between Interseroh Dienstleistungs GmbH ('Interseroh') and SAA Sonderabfallagentur Baden-Württemberg GmbH (special waste agency of the Land Baden-Württemberg) regarding the latter's refusal to exempt the shipment of a mixture of waste paper, cardboard and paper products as well as other materials from the notification procedure provided for by Regulation no. 1013/2006. The Verwaltungsgericht Stuttgart (Administrative Court of Stuttgart) hearing the case between these two parties asked to the Court of Justice, in essence, whether Article 3(2)(a) and (b) of Regulation No 1049/2001 1013/2006 must be interpreted as meaning that a mixture of waste paper, cardboard and paper products is included in this provision in which each type of waste falls under one of the first three indents of entry B3020 of Annex IX of the Basel Convention, reproduced in Annex V, Part 1, List B, of that Regulation, and which contains up to 10% of contaminating materials.

4.2 *Judgment (not available in English)*

L'article 3, paragraphe 2, sous a), du règlement (CE) n° 1013/2006 du Parlement européen et du Conseil, du 14 juin 2006, concernant les transferts de déchets, tel que modifié par le règlement (UE) 2015/2002 de la Commission, du 10 novembre 2015, doit être interprété en ce sens qu'il ne s'applique pas à un mélange de déchets de papier, de carton et de produits en papier dont chaque type de déchet relève de l'un des trois premiers tirets de la rubrique B3020 de l'annexe IX de la convention sur le contrôle des mouvements transfrontières de déchets dangereux et de leur élimination, signée à Bâle le 22 mars 1989, approuvée au nom de la Communauté européenne par la décision 93/98/CEE du Conseil, du 1er février 1993, reproduite à l'annexe V, partie 1, liste B, de ce règlement, et qui contient des matières perturbatrices jusqu'à hauteur de 10 %.

L'article 3, paragraphe 2, sous b), du règlement n° 1013/2006, tel que modifié par le règlement 2015/2002, doit être interprété en ce sens qu'il s'applique à un tel mélange de déchets pour autant, d'une part, que ce mélange ne contient

pas de matières qui relèvent du quatrième tiret de la rubrique B3020 de l'annexe IX de ladite convention, reproduite à l'annexe V, partie 1, liste B, de ce règlement, et, d'autre part, qu'il est satisfait aux conditions figurant au point 1 de l'annexe III A dudit règlement, ce qu'il incombe à la juridiction de renvoi de vérifier.

5 On the Assessment of the Environmental Impact of Certain Projects Affecting the Quality of a Body of Groundwater, the Right of Public Participation in Decision-making and Access to Justice

Judgment of the Court (First Chamber) of 28 May 2020 in Case C-535/18 – *Land Nordrhein-Westfalen*

5.1 Subject Matter

This request for a preliminary ruling concerns the interpretation of Article 6 and Article 11(1)(b) of Directive 2011/92/EU of the European Parliament and of the Council on the assessment of environmental impact of certain public and private projects, and of Article 4 of Directive 2000/60/EC establishing a framework for Community action in the field of water. This request was made in the context of a dispute between several private individuals and the Land Nordrhein-Westfalen (Land North Rhine-Westphalia, Germany), concerning a decision by the authorities of the Bezirksregierung Detmold (Detmold District Government, Germany), of 27 September 2016, with which the construction plan for a motorway section of approximately 3.7 kilometers was approved. In these circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to suspend the judgment and to refer four questions to the Court for a preliminary ruling. By its first question, the referring court asked whether Article 11(1)(b) of Directive 2011/92 must be interpreted as allowing Member States to provide that an application for annulment of the authorization of a project for procedural defect is admissible only if the irregularity in question has deprived the applicant of his right to participate in the environmental decision-making process guaranteed by Article 6 of that directive. By its second question, the referring court asked whether Article 4(1)(a) of Directive 2000/60 must be interpreted as precluding the control of compliance with the obligations laid down therein from being able to intervene only after the project has been authorized. By its third question, the referring court asked whether Article 4(1)(b)(i) of Directive 2000/60 must be interpreted as meaning that it must be regarded as a deterioration in the chemical status of a groundwater body due to a project exceeding a parameter of at least one of

the environmental quality standards. It also asks whether it must be considered that a foreseeable increase in the concentration of a pollutant constitutes such a deterioration when the threshold fixed for the latter is already exceeded. Finally, by its fourth question, the referring court asked, essentially, whether Article 4(1) of Directive 2000/60, read in the light of Article 19 TFEU and Article 288 TFEU, is to be interpreted in meaning that members of the public concerned by a project must be able to assert, before the competent national courts, the violation of the obligations to prevent the deterioration of water bodies and to improve their status.

5.2 *Judgment (not available in English)*

1) L'article 11, paragraphe 1, sous b), de la directive 2011/92/UE du Parlement européen et du Conseil, du 13 décembre 2011, concernant l'évaluation des incidences de certains projets publics et privés sur l'environnement, doit être interprété en ce sens qu'il permet aux États membres de prévoir que, lorsqu'un vice de procédure qui entache la décision d'autorisation d'un projet n'est pas de nature à en modifier le sens, la demande d'annulation de cette décision n'est recevable que si l'irrégularité en cause a privé le requérant de son droit de participer au processus décisionnel en matière d'environnement, garanti par l'article 6 de cette directive.

2) L'article 4 de la directive 2000/60/CE du Parlement européen et du Conseil, du 23 octobre 2000, établissant un cadre pour une politique communautaire dans le domaine de l'eau, doit être interprété en ce sens qu'il s'oppose à ce que le contrôle par l'autorité compétente du respect des obligations qu'il prévoit, au nombre desquelles celle de prévenir la détérioration de l'état des masses d'eau, tant de surface que souterraines, concernées par un projet, puisse n'intervenir qu'après qu'il a été autorisé.

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

3) L'article 4, paragraphe 1, sous b), i), de la directive 2000/60 doit être interprété en ce sens que doit être considéré comme une détérioration de l'état chimique d'une masse d'eau souterraine en raison d'un projet, d'une part, le dépassement d'au moins l'une des normes de qualité ou des valeurs seuils, au sens de l'article 3, paragraphe 1, de la directive 2006/118/CE du Parlement européen et du Conseil, du 12 décembre 2006, sur la protection des eaux souterraines contre la pollution et la détérioration, et, d'autre part, une augmentation prévisible de la concentration d'un polluant lorsque le seuil fixé pour

celui-ci est d'ores et déjà dépassé. Les valeurs mesurées à chaque point de surveillance doivent être prises en compte individuellement.

4) L'article 1er, premier alinéa, sous b), et second alinéa, premier tiret, ainsi que l'article 4, paragraphe 1, sous b), de la directive 2000/60, lus à la lumière de l'article 19 TUE et de l'article 288 TFUE, doivent être interprétés en ce sens que les membres du public concerné par un projet doivent pouvoir faire valoir, devant les juridictions nationales compétentes, la violation des obligations de prévenir la détérioration des masses d'eau et d'améliorer leur état, si cette violation les concerne directement.

6 On Restrictions to Wind Generators

Judgment of the Court (Fourth Chamber) of 28 May 2020 in Case C-727/17 – *Syndyk Masy Upadłości ECO-WIND Construction S.A. w upadłości, formerly ECO-WIND Construction S.A.*

6.1 Subject Matter

This request for a preliminary ruling concerns the interpretation of Article 1(1)(f) of Directive 2015/1535/EU of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, of Article 15(2)(a) of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market, and of the first subparagraph of Article 3(1) and the first subparagraph of Article 13(1) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources. The request has been made in proceedings between *Syndyk Masy Upadłości ECO-WIND Construction S.A. w upadłości*, formerly *ECO-WIND Construction S.A.* ('ECO-WIND'), and *Samorządowe Kolegium Odwoławcze w Kielcach* (Independent Appeal Board of Kielce, Poland) concerning a decision by the latter refusing to give its consent to the creation of a wind farm within the territory of the municipality of Opatów (Poland). The dispute between the parties turned around the compatibility of national rules setting the condition of a minimum distance between wind turbines and buildings with a residential function with the above mentioned directives. In that context, the *Wojewódzki Sąd Administracyjny w Kielcach* (Regional Administrative Court, Kielce, Poland) decided to stay the proceedings and to refer three questions to the Court of Justice for a preliminary ruling, each concerning the compatibility of the mentioned national regulation with one of the directives.

6.2 *Judgment*

1. Article 1(1)(f) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services must be interpreted as meaning that the requirement that the installation of a wind turbine is subject to compliance with the condition of a minimum distance between it and buildings with a residential function does not constitute a technical regulation which must be notified under Article 5 of that directive, provided that that requirement does not lead to a purely marginal use of wind generators, which it is for the referring court to determine.

2. Article 15(2)(a) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as meaning that legislation which makes the installation of a wind turbine subject to compliance with the condition of a minimum distance between that wind turbine and buildings with a residential function cannot be categorised as rules which make access to, or exercise of, a service activity subject to a territorial limit in the form, in particular, of limits fixed according to a minimum distance between service providers, which the Member States must notify to the European Commission in accordance with Article 15(7) of that directive.

3. The first subparagraph of Article 3(1) and the first subparagraph of Article 13(1) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, as amended by Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 must be interpreted as not precluding legislation which makes the installation of a wind turbine subject to compliance with the condition of a minimum distance between that wind turbine and buildings with a residential function, provided that that legislation is necessary and proportionate in the light of the mandatory national overall target of the Member State concerned, which it is for the referring court to determine.

7 **On the Capturing of Wolfs**

Judgment of the Court (Second Chamber) of 11 June 2020 in Case C – 88/19 – *Alianța pentru combaterea abuzurilor*

7.1 *Subject Matter*

This request for a preliminary ruling concerns the interpretation of Article 12(1) and Article 16(1) of Council Directive 92/43/EEC on the conservation of natural and semi-natural habitats and wild flora and fauna (hereinafter: the 'Habitats Directive'). That request was made in the context of a dispute between, on the one hand, Alianța pentru combaterea abuzurilor, an association and, on the other hand, TM, a member of the Direcția pentru Monitorizarea și Protecția Animalelor (hereinafter 'the DMPA'), an animal welfare association, UN, a veterinarian, and the DMPA, regarding the capture and transport, under inappropriate conditions, of a wild animal belonging to the *canis lupus* (wolf) species in Romania. It is in this context that the Judecătoria Zărnești (Zărnești Court of First Instance) decided to stay the proceedings and to refer a question to the Court for a preliminary ruling. By its question, the referring court asked, essentially, whether Article 12(1)(a) and Article 16 of the Habitats Directive must be interpreted as meaning that the capture and transport of a specimen of a protected animal species, such as the wolf, on the outskirts of an area populated by man or in such an area, may fall under the prohibition provided for by the first of those articles, in the absence of derogations granted by the competent national authority on the basis of the second of these.

7.2 *Judgment (not available in English)*

L'article 12, paragraphe 1, sous a), de la directive 92/43/CEE du Conseil, du 21 mai 1992, concernant la conservation des habitats naturels ainsi que de la faune et de la flore sauvages, telle que modifiée par la directive 2013/17/UE, du 13 mai 2013, doit être interprété en ce sens que la capture et le transport d'un spécimen d'une espèce animale protégée au titre de l'annexe IV de cette directive, telle que le loup, à la périphérie d'une zone de peuplement humain ou dans une telle zone, sont susceptibles de relever de l'interdiction prévue à cette disposition.

L'article 16, paragraphe 1, de ladite directive doit être interprété en ce sens que toute forme de capture intentionnelle de spécimens de cette espèce animale dans les circonstances susmentionnées est interdite en l'absence de dérogation accordée par l'autorité nationale compétente sur le fondement de cette disposition.

8 On the Meaning of Plans and Programmes and their Executability

Judgment of the Court (Grand Chamber) of 25 June 2020 in Case C-24/19 – *A and Others*

8.1 *Subject Matter*

This request for a preliminary ruling concerns the interpretation of Article 2(a) and Article 3(2)(a) of 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. The request has been made in proceedings between A and others and the Gewestelijke stedenbouwkundige ambtenaar van het departement Ruimte Vlaanderen, afdeling Oost-Vlaanderen (regional town planning official of the Flanders Department of Land Planning, East Flanders Division, Belgium), concerning the latter's decision to grant development consent to a generator and supplier of electricity for the purpose of the installation and operation of five wind turbines on a site that is near to A and others. Peculiar in this case is the fact that the Raad voor Vergunningsbetwistingen (Council for consent disputes) hearing the dispute asked the Court of Justice to reconsider its interpretation of the Directive so as to favour an interpretation that, in view of the national court, is closer to the intention of the EU legislature. Accordingly, the Court of Justice should adopt an interpretation that would restrict the scope of Article 2(a) of Directive 2001/42 to those acts whose adoption is mandatory pursuant to legislative or regulatory provisions, therefore excluding cases in which the adoption of those acts is non-compulsory. In those circumstances, the Council for consent disputes decided to stay the proceedings and to refer questions to the Court of Justice for a preliminary ruling. First, the referring court asked, in essence, whether Article 2(a) of Directive 2001/42 must be interpreted as meaning that the concept of 'plans and programmes' covers an order and circular, adopted by the government of a federated entity of a Member State, both of which contain various provisions concerning the installation and operation of wind turbines. Second, it asked, in essence, whether Article 3(2)(a) of Directive 2001/42 must be interpreted as meaning that an order and a circular, both of which contain various provisions regarding the installation and operation of wind turbines, including measures on shadow flicker, safety and noise level standards, constitute plans and programmes that must be subject to an environmental assessment in accordance with that provision. Finally, it asked, in essence, whether and under what conditions, if it is found that an environmental assessment within the meaning of Directive 2001/42 should have been carried out prior to the adoption of the order and circular on the basis of which the consent, which is contested before it, was granted for the installation and operation of wind turbines, with the result that those instruments and that consent do not comply with EU law, that court may maintain the effects of those instruments and that consent.

8.2 *Judgment*

1. Article 2(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment must be interpreted as meaning that the concept of ‘plans and programmes’ covers an order and circular, adopted by the government of a federated entity of a Member State, both of which contain various provisions concerning the installation and operation of wind turbines.

2. Article 3(2)(a) of Directive 2001/42 must be interpreted as meaning that an order and a circular, both of which contain various provisions concerning the installation and operation of wind turbines, including measures on shadow flicker, safety, and noise level standards, constitute plans and programmes that must be subject to an environmental assessment in accordance with that provision.

3. Where it appears that an environmental assessment within the meaning of Directive 2001/42 should have been carried out prior to the adoption of the order and circular on the basis of which a consent, which is contested before a national court, was granted for the installation and operation of wind turbines with the result that those instruments and that consent do not comply with EU law, that court may maintain the effects of those instruments and that consent only if the national law permits it to do so in the proceedings before it and if the annulment of that consent would be likely to have significant implications for the electricity supply of the whole of the Member State concerned, and only for the period of time strictly necessary to remedy that illegality. It is for the referring court, if necessary, to carry out that assessment in the case in the main proceedings.

9 On the Protection of Hamsters

Judgment of the Court (Seventh Chamber) of 2 July 2020 in Case C-477/19 – *IE v. Magistrat der Stadt Wien*

9.1 *Subject Matter*

This request for a preliminary ruling concerns the interpretation of Article 12(1)(d) of the Habitats Directive. The request has been made in proceedings between IE, an employee of a property developer, and Magistrat der Stadt Wien (City Council of Vienna, Austria) concerning the adoption by the latter of an administrative decision imposing on IE a fine and, in the event that that

fine is not paid, a custodial sentence for having caused, in the course of a property redevelopment project, the deterioration or destruction of resting places or breeding sites of the *Cricetus cricetus* (European hamster) species, which is on the list of protected animal species set out in Annex IV(a) to the Habitats Directive. In those circumstances, the Verwaltungsgericht Wien (Administrative Court of Vienna) decided to stay the proceedings and to refer questions to the Court of Justice for a preliminary ruling. Only one of these questions was considered in need of an answer by the Court of Justice, specifically the first question. By its first question, the referring court asked, in essence, whether Article 12(1)(d) of the Habitats Directive is to be interpreted as meaning that the term ‘resting place’ referred to in that provision also includes resting places which are no longer occupied by one of the protected animal species listed in Annex IV(a) to that directive, such as the *Cricetus cricetus* (European hamster).

9.2 *Judgment*

Article 12(1)(d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that the term ‘resting places’ referred to in that provision also includes resting places which are no longer occupied by one of the protected animal species listed in Annex IV(a) to that directive, such as the *Cricetus cricetus* (European hamster), where there is a sufficiently high probability that that species will return to such places, which is a matter for the referring court to determine.

10 On the Concepts of ‘normal management of sites’ and ‘occupation activity’ under the Environmental Liability Directive

Judgment of the Court (First Chamber) of 9 July 2020 in Case C-297/19 – *Naturschutzbund Deutschland — Landesverband Schleswig-Holstein eV*

10.1 *Subject Matter*

This request for a preliminary ruling concerns the interpretation of Article 2(7) of and the second indent of the third paragraph of Annex I to Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive). The request has been made in proceedings between *Naturschutzbund Deutschland—Landesverband Schleswig-Holstein eV* (‘*Naturschutzbund Deutschland*’) and *Kreis Nordfriesland*

(the District of Nordfriesland, Germany) concerning measures to limit and remedy environmental damage that have been asked for by Naturschutzbund Deutschland. In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer two (main) questions to the Court for a preliminary ruling. By its first question, the referring court asked how the phrase 'normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators', in the second indent of the third paragraph of Annex I to Directive 2004/35, should be interpreted. By its second question, the referring court asked whether Article 2(7) of Directive 2004/35 must be interpreted as meaning that the concept of 'occupational activity' which is defined therein also covers activities carried out in the public interest pursuant to a statutory assignment of tasks.

10.2 *Judgment*

1. The concept of 'normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators', in the second indent of the third paragraph of Annex I to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, must be understood as covering, first, any administrative or organisational measure liable to have an effect on the protected species and natural habitats which are on a site, that measure being in the form resulting from the management documents adopted by the Member States on the basis of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and interpreted, if need be, by reference to any domestic legal rule which transposes the latter two directives or, failing this, is compatible with the spirit and purpose of those directives, and second, any administrative or organisational measure that is regarded as usual, is generally recognised, is established and was carried out by the owners or operators for a sufficiently long period of time until the occurrence of damage caused by virtue of that measure to the protected species and natural habitats, all of those measures having, in addition, to be compatible with the objectives underlying Directive 92/43 and Directive 2009/147 and, *inter alia*, with commonly accepted agricultural practices.

2. Article 2(7) of Directive 2004/35 must be interpreted as meaning that the concept of 'occupational activity' which is defined therein also covers activities carried out in the public interest pursuant to a statutory assignment of tasks.

11 On the Protection of the Part of the Natura 2000 Network nearby Rome

Judgment of the Court (Sixth Chamber) of 16 July 2020 in Case C-411/19 – *WWF Italia Onlus and Others*

11.1 *Subject Matter*

The request for a preliminary ruling concerns the interpretation of Article 6 of the Habitats Directive. This request was presented in the context of a dispute between WWF Italia Onlus, and other environmental NGOs, on the one hand, and the Presidency of the Council of Ministers (Italy) and to the Azienda Nazionale Autonoma Strade SpA (ANAS), on the other, regarding the legitimacy of the resolution of 1 December 2017, with which the Council of Ministers adopted the environmental compatibility provision of the preliminary draft road link north of Rome (Italy), according to the “green route”, between Monte Romano Est (Italy) and Tarquinia Sud (Italy), and the resolution of 28 February 2018, with which the Interministerial Committee for Economic Planning (hereinafter ‘the CIPE’) approved this preliminary draft. In these considerations, the Regional Administrative Court for Lazio has decided to suspend the procedure and to refer several questions to the Court for a preliminary ruling. First, the referring court asked, essentially, whether Article 6 of the Habitats Directive, in conjunction with Directive 2009/147, where the latter is applicable the dispute in the main proceedings, must be interpreted as precluding national legislation which allows the continuation, for imperative reasons of overriding public interest, of the authorization procedure for a plan or project whose impact on an area conservation special cannot be mitigated and on which the competent public authority has already expressed a negative opinion, where there is an alternative solution already approved from an environmental point of view. Second, the referring court essentially asked whether, where a plan or project has been the subject, pursuant to Article 6(3) of the Habitats Directive, a negative assessment as to its impact on a special area of conservation and the Member State concerned has nevertheless decided, pursuant to paragraph 4 of that article, to carry it out for imperative reasons of overriding public interest, Article 6 of that directive must be interpreted as precluding national legislation which allows the carrying out of further examinations and more in-depth studies on the effects of that plan or project on the final plan or project stage this area and the definition of adequate compensation and mitigation measures. Third, the referring court asked, in essence, whether the Habitats Directive must be interpreted as precluding national legislation providing for the proponent to carry out a study the impact of the plan or project in question on

the special conservation area concerned and incorporates, in the plan or in the final project, landscape and environmental prescriptions, observations and recommendations, after it has been the subject of a negative assessment by the 'competent authority. Finally, the referring court asked, in essence, whether the Habitats Directive must be interpreted as precluding national legislation which allows for the designation of an authority other than that responsible for assessing impact of a plan or project on a special conservation area to verify the study of the impact on that area which must be attached to the final plan or project.

11.2 *Judgment (not available in English)*

1) L'article 6 de la directive 92/43/CEE du Conseil, du 21 mai 1992, concernant la conservation des habitats naturels ainsi que de la faune et de la flore sauvages, doit être interprété en ce sens qu'il ne s'oppose pas à une réglementation nationale permettant la poursuite, pour des raisons impératives d'intérêt public majeur, de la procédure d'autorisation d'un plan ou d'un projet dont les incidences sur une zone spéciale de conservation ne peuvent pas être atténuées et sur lequel l'autorité publique compétente a déjà rendu un avis négatif, à moins qu'il existe une solution alternative comportant des inconvénients moindres pour l'intégrité de la zone concernée, ce qu'il appartient à la juridiction de renvoi de vérifier.

2) Lorsqu'un plan ou un projet a fait, en application de l'article 6, paragraphe 3, de la directive 92/43, l'objet d'une évaluation défavorable de ses incidences sur une zone spéciale de conservation et que l'État membre concerné a néanmoins décidé, en vertu du paragraphe 4 de cet article, de le réaliser pour des raisons impératives d'intérêt public majeur, l'article 6 de cette directive doit être interprété en ce sens qu'il s'oppose à une réglementation nationale permettant que, après son évaluation défavorable conformément au paragraphe 3 de cet article et avant son adoption définitive en application du paragraphe 4 dudit article, ce plan ou ce projet soit complété par des mesures d'atténuation de ses incidences sur cette zone et que l'évaluation desdites incidences soit poursuivie. En revanche, l'article 6 de la directive 92/43 ne s'oppose pas, dans la même hypothèse, à une réglementation nationale permettant de définir les mesures de compensation dans le cadre de la même décision, pourvu que les autres conditions de mise en œuvre de l'article 6, paragraphe 4, de cette directive soient également remplies.

3) La directive 92/43 doit être interprétée en ce sens qu'elle ne s'oppose pas à une réglementation nationale prévoyant que l'auteur de la demande réalise une étude des incidences du plan ou du projet en cause sur la zone spéciale de conservation concernée, sur la base de laquelle l'autorité compétente procède

à l'évaluation de ces incidences. Cette directive s'oppose, en revanche, à une réglementation nationale permettant de charger l'auteur de la demande d'intégrer, dans le plan ou le projet définitif, des prescriptions, des observations et des recommandations de caractère paysager et environnemental, après que celui-ci a fait l'objet d'une évaluation négative par l'autorité compétente, sans que le plan ou le projet ainsi modifié doive faire l'objet d'une nouvelle évaluation par cette autorité.

4) La directive 92/43 doit être interprétée en ce sens que, si elle laisse aux États membres le soin de désigner l'autorité compétente pour évaluer les incidences d'un plan ou d'un projet sur une zone spéciale de conservation dans le respect des critères énoncés par la jurisprudence de la Cour, elle s'oppose en revanche à ce qu'une quelconque autorité poursuive ou complète cette évaluation, une fois celle-ci réalisée.