

Defendants: Dabas aizsardzības pārvalde, Vides pārraudzības valsts birojs

Intervening party: Valsts meža dienests

Questions referred

1. Does the concept of 'project' within the meaning of Article 1(2)(a) of 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 ⁽¹⁾ also include activities undertaken in a forest area to ensure maintenance of the area's forest fire protection infrastructure installations in accordance with the fire protection requirements established in the applicable legislation?
2. If the answer to the first question is in the affirmative, must the activities undertaken in a forest area to ensure maintenance of the area's forest fire protection infrastructure installations in accordance with the fire protection requirements established in the applicable legislation be deemed, for the purposes of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, ⁽²⁾ to constitute a project which is directly connected with or necessary to that management, meaning that an assessment procedure for special areas of conservation of European importance (*Natura 2000*) is not required for the activities in question?
3. If the answer to the second question is in the negative, does Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora also require an assessment to be carried out for plans and projects (activities) which are not directly connected with or necessary to the management of the special area of conservation but which are likely to have a significant effect on conservation areas of European importance (*Natura 2000*), but which are nevertheless undertaken in accordance with national legislation in order to satisfy forest fire protection and firefighting requirements?
4. If the answer to the third question is in the affirmative, is it possible to continue and complete the activity in question before carrying out an assessment procedure for special areas of conservation of European importance (*Natura 2000*) *ex post facto*?
5. If the answer to the third question is in the affirmative, in order to avoid a possibly significant impact, are the competent authorities under a duty to require the damage to be made good and to adopt measures if the significance of the impact was not assessed during the assessment procedure for special areas of conservation of European importance (*Natura 2000*)?

⁽¹⁾ OJ 2012 L 26, p. 1.

⁽²⁾ OJ 1992 L 206, p. 7, Special edition in Latvian: Chapter 15 Volume 002 P. 102

**Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla y León (Spain)
lodged on 1 July 2022 — Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL) v
Administración de la Comunidad Autónoma de Castilla y León**

(Case C-436/22)

(2022/C 359/54)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla y León

Parties to the main proceedings

Applicant: Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL)

Defendant: Administración de la Comunidad Autónoma de Castilla y León

Questions referred

In view of the fact that any measure adopted by a Member State pursuant to the Directive must, in accordance with Article 2(2) thereof, pursue the aim of maintaining or restoring, at favourable conservation status, animal species of Community interest, such as the wolf (*lupus canis*)

1. Do the provisions of Articles 2(2), 4, 11, 12, 14, 16 and 17 of Council Directive 92/43/EEC⁽¹⁾ of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora preclude a regional Law (Ley 4/1996 de Caza de Castilla y León (Law 4/1996 on Hunting in Castilla and Leon) of 12 July 1996 and, subsequently, Ley 4/2021 de Caza y de Gestión Sostenible de los Recursos Cinegéticos de Castilla y León (Law 4/2021 on Hunting and the Sustainable Management of the Hunting Resources of Castilla and Leon) of 1 July 2021), pursuant to which the wolf is declared to be a species of game which may be hunted, and the consequent authorisation of the local exploitation of wolves in hunting areas during the 2019/2020, 2020/2021 and 2021/2022 seasons, when the conservation status of the wolf is unfavourable-poor according to the report covering the six-year period 2013-2018 which Spain sent to the European Commission in 2019, as a result of which the State (the Member State, Article 4 HD) included all Spanish wolf populations in the List of Wild Species under Special Protection and the Spanish Inventory of Endangered Species, thereby also affording strict protection to populations situated north of the Douro?
2. Is it compatible with that aim for different protection to be afforded to the wolf depending on whether it is found north or south of the Douro River, bearing in mind (i) that, scientifically, that distinction is currently considered to be inappropriate; (ii) that the assessment of the conservation status of the wolf in the three regions where it is found in Spain (Alpine, Atlantic and Mediterranean) in the period 2013-2018 was unfavourable; (iii) that the wolf is a strictly protected species in almost every Member State and, in particular, because of a shared region, in Portugal; and (iv) the case-law of the Court of Justice of the European Union on the natural range and the territorial scope to be taken into account in order to assess the wolf's conservation status, it being more consistent with that directive, including with Article 2(3) thereof, that the wolf should be included, without differentiating between north and south of the Douro, in Annexes II and IV, such that the capture and killing of wolves would be possible only if there is no satisfactory alternative pursuant to and subject to the requirements laid down in Article 16?

If that distinction is considered to be justified,

3. Does the term 'exploitation' in Article 14 of the Directive include the cynegetic exploitation, that is the hunting, of wolves, in view of the special importance that this species has (it is a priority species in the other territorial areas), bearing in mind that, up to now, the hunting of wolves has been permitted and its status in the period 2013-2018 was determined to be unfavourable?
4. Does Article 14 of the Directive preclude the declaration, by Law, that wolves north of the Douro are a species of game and may be hunted (Article 7 and Annex I of Law 4 of 12 July 1996 on Hunting in Castilla and Leon and Article 6 and Annex I of Law 4 of 1 July 2001 on Hunting and the Sustainable Management of the Hunting Resources of Castilla and Leon) and the approval of a plan for the local exploitation of wolves in hunting grounds situated north of the Douro River for the 2019/2020, 2020/2021 and 2021/2022 seasons, without any data being available on which to base an assessment of whether the surveillance provided for in Article 11 of the Directive was carried out, without any census since 2012-2013 and without sufficient, objective, scientific and up-to-date information on the status of the wolf being held in the file which was the basis for the local exploitation plan, when, during the period 2013-2018, in the three regions where wolves are found in Spain (Alpine, Atlantic and Mediterranean), the assessment of the wolf's conservation status was unfavourable?
5. Pursuant to Articles 4, 11 and 17 of the HD, are the reports which must be taken into consideration in order to determine the conservation status of the wolf (current real population levels, current geographical distribution, reproductive rate, and so on) those which are drawn up by the Member State every six years or, if necessary, within a shorter period, by means of a scientific committee like that created by Real Decreto (Royal Decree) 139/2011, taking account of the fact that wolf populations come within the remit of different Autonomous Communities and of the need to conduct an assessment of the measures concerning a local population 'on a larger scale', in accordance with the judgment of 10 October 2019, [*Luonnonsuojeluyhdistys Tapiola*,] C-674/17, [EU:C:2019:851]?⁽²⁾

⁽¹⁾ OJ 1992 L 206, p. 7.

⁽²⁾ EU:C:2019:851.