

JUDGMENT OF THE COURT

(Grand Chamber)

of 7 September 2004

in Case C-127/02 (reference for a preliminary ruling from the Raad van State): Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij ⁽¹⁾

(Directive 92/43/EEC — Conservation of natural habitats and of wild flora and fauna — Concept of ‘plan’ or ‘project’ — Assessment of the implications of certain plans or projects for the protected site)

(2004/C 262/03)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-127/02: reference for a preliminary ruling under Article 234 EC from the Raad van State (Netherlands), made by decision of 27 March 2002, received on 8 April 2002, between Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels and Staatssecretaris van Landbouw, Natuurbeheer en Visserij — the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann (Rapporteur), J.-P. Puissechet and J.N. Cunha Rodrigues, Presidents of Chambers, R. Schintgen, S. von Bahr and R. Silva de Lapuerta, Judges; J. Kokott, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 7 September 2002, in which it has ruled:

1. Mechanical cockle fishing which has been carried on for many years but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may be carried on, falls within the concept of ‘plan’ or ‘project’ within the meaning of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora.
2. Article 6(3) of Directive 92/43 establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely

affect the integrity of that site, while Article 6(2) of that directive establishes an obligation of general protection consisting in avoiding deterioration and disturbances which could have significant effects in the light of the Directive’s objectives, and cannot be applicable concomitantly with Article 6(3).

3. (a) The first sentence of Article 6(3) of Directive 92/43 must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.
- (b) Pursuant to the first sentence of Article 6(3) of Directive 92/43, where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site’s conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light *inter alia* of the characteristics and specific environmental conditions of the site concerned by such a plan or project.
4. Under Article 6(3) of Directive 92/43, an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site’s conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the site’s conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.
5. Where a national court is called on to ascertain the lawfulness of an authorisation for a plan or project within the meaning of Article 6(3) of Directive 92/43, it can determine whether the limits on the discretion of the competent national authorities set by that provision have been complied with, even though it has not been transposed into the legal order of the Member State concerned despite the expiry of the time-limit laid down for that purpose.

⁽¹⁾ OJ C 16 of 29.6.2002.