



C/2023/124

16.10.2023

**Request for a preliminary ruling from the Niedersächsisches Oberverwaltungsgericht (Germany)
lodged on 24 July 2023 — Umweltforum Osnabrücker Land e. V. v Landkreis Osnabrück**

(Case C-461/23, Umweltforum Osnabrücker Land)

(C/2023/124)

Language of the case: German

Referring court

Niedersächsisches Oberverwaltungsgericht

Parties to the main proceedings

Applicant: Umweltforum Osnabrücker Land e. V.

Defendant: Landkreis Osnabrück

Questions referred

1. Is Article 3(2)(b) of Directive 2001/42/EC⁽¹⁾ (SEA Directive) in conjunction with Article 6(3) of Directive 92/43/EEC⁽²⁾ (Habitats Directive) to be interpreted as meaning that all the provisions in a legislative act by which a Member State designates a site as a special area of conservation under the Habitats Directive are to be regarded, whatever their regulatory content, as directly connected with or necessary to the management of the site, with the result that the legislative act, as a plan, is not subject to an environmental assessment under Article 3(2)(b) of the SEA Directive in conjunction with Article 6(3) of the Habitats Directive, or is it possible that, depending on the content of the individual provisions, a differentiated approach may be appropriate, so that individual provisions of such an act, as a plan or part of a plan, would have to be regarded as directly connected with or necessary to the management of the site and other provisions of that act, as a plan or part of a plan, would not?
2. If Question 1 is answered as having the second meaning: Is Article 3(2)(b) of the SEA Directive in conjunction with Article 6(3) of the Habitats Directive to be interpreted as meaning that an individual provision contained in a legislative act of a Member State designating a site as a special area of conservation within the meaning of the Habitats Directive, setting conservation objectives and laying down requirements and prohibitions is to be regarded as a plan or part of a plan not directly connected with or necessary to the management of the site if that provision, by establishing specific criteria and procedures, excludes activities in the site from the scope of the requirements and prohibitions laid down, and those activities do not directly serve to fulfil the conservation objectives, but are to be regarded as management or maintenance measures serving other purposes and qualifying as a project within the meaning of Article 6(3) of the Habitats Directive?
3. If Question 2 is answered in the affirmative: Is Article 3(2)(b) of the SEA Directive in conjunction with Article 6(3) of the Habitats Directive to be interpreted as meaning that, based on a provision contained in a legislative act designating a site as a special area of conservation within the meaning of the Habitats Directive, such as that described in Question 2, which establishes in a sufficiently specific manner the criteria and procedures for carrying out the activities covered by it and qualifying as a project within the meaning of Article 6(3) of the Habitats Directive, the occurrence of a significant effect on the site cannot be regarded as excluded if national law does not provide for any authorisation requirement for those activities and by reason of that provision in the legislative act the competent authority also dispenses with prior notification and carrying out a project-related impact assessment pursuant to Article 6(3) of the Habitats Directive for those activities in individual cases, or else carries out a project-related impact assessment in individual cases and, in the process, assesses the project's impact against the yardstick of whether the criteria and procedures contained in the provision, such as that described in Question 2, are fulfilled?

⁽¹⁾ 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 (OJ 2001 L 197, p. 30).

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

4. If Question 2 is answered in the affirmative: Is Article 3(2)(b) of the SEA Directive in conjunction with Article 6(3) of the Habitats Directive to be interpreted as meaning that, based on a provision contained in a legislative act designating a site as a special area of conservation within the meaning of the Habitats Directive, such as that described in Question 2, there is no reason to fear the occurrence of a significant effect on the site if the activities covered by such a provision have, as a general rule, already been carried out for a long time and, in any event, based on the criteria and procedures for carrying them out established by the provision, no intensification or expansion of those activities in the site is made possible?
5. If, on the basis of the answers to the preceding questions, an obligation to carry out an environmental assessment pursuant to Article 3(2)(b) of the SEA Directive in conjunction with Article 6(3) of the Habitats Directive is to be assumed to exist by reason of the content of individual provisions of a legislative act designating a site as a special area of conservation within the meaning of the Habitats Directive: Is Article 3(3) of the SEA Directive to be interpreted as meaning that, if designating the site is to be regarded as determining the use of small sites at local level, on the basis of the pre-existing classification of the site as a site of Community importance within the meaning of the third subparagraph of Article 4(2) of the Habitats Directive, an authority of a Member State must, as a general rule, presume that the designation of an area of conservation is likely to have significant effects on the environment?
6. If, on the basis of the answers to the preceding questions, an obligation to carry out an environmental assessment is to be assumed to exist by reason of the content of individual provisions of a legislative act designating a site as a special area of conservation within the meaning of the Habitats Directive: Is Article 3(2)(b) of the SEA Directive in conjunction with Article 6(3) of the Habitats Directive to be interpreted as meaning that only those individual provisions are to be made the subject of the environmental assessment or should such an environmental assessment relate to the entire content of the legislative act?
7. If, on the basis of the answers to the preceding questions, an obligation to carry out an environmental assessment is to be assumed to exist by reason of the content of individual provisions of a legislative act designating a site as a special area of conservation within the meaning of the Habitats Directive: Is Article 4(1) of the SEA Directive, which provides that the environmental assessment referred to in Article 3 of the directive is to be carried out during the preparation of a plan or programme and before its adoption, to be interpreted as meaning that failure to carry out an environmental assessment of a plan or components of a plan cannot be subsequently remedied by means of a supplementary procedure after the plan or components of the plan have been adopted, thereby rectifying ex post the procedural error of failure to carry out an environmental assessment?