2. The operator of a website, such as Fashion ID GmbH & Co. KG, that embeds on that website a social plugin causing the browser of a visitor to that website to request content from the provider of that plugin and, to that end, to transmit to that provider personal data of the visitor can be considered to be a controller, within the meaning of Article 2(d) of Directive 95/46. That liability is, however, limited to the operation or set of operations involving the processing of personal data in respect of which it actually determines the purposes and means, that is to say, the collection and disclosure by transmission of the data at issue.

3. In a situation such as that at issue in the main proceedings, in which the operator of a website embeds on that website a social plugin causing the browser of a visitor to that website to request content from the provider of that plugin and, to that end, to transmit to that provider personal data of the visitor, it is necessary that that operator and that provider each pursue a legitimate interest, within the meaning of Article 7(f) of Directive 95/46, through those processing operations in order for those operations to be justified in respect of each of them.

4. Articles 2(h) and 7(a) of Directive 95/46 must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, in which the operator of a website embeds on that website a social plugin causing the browser of a visitor to that website to request content from the provider of that plugin and, to that end, to transmit to that provider personal data of the visitor, the consent referred to in those provisions must be obtained by that operator only with regard to the operation or set of operations involving the processing of personal data in respect of which that operator determines the purposes and means. In addition, Article 10 of that directive must be interpreted as meaning that, in such a situation, the duty to inform laid down in that provision is incumbent also on that operator, but the information that the latter must provide to the data subject need relate only to the operation or set of operations involving the processing of personal data in respect of which that operator actually determines the purposes and means.

([1]) OJ C 112, 10.4.2017.

Judgment of the Court (Grand Chamber) of 29 July 2019 (request for a preliminary ruling from the Cour constitutionnelle — Belgium) — Inter-Environnement Wallonnie ASBL, Bond Beter Leefmilieu Vlaanderen ASBL v Council of Ministers

(Case C-411/17) ([1])

(Reference for a preliminary ruling — Environment — Espoo Convention — Aarhus Convention — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 6(3) — Definition of 'project' — Assessment of the effects on the site concerned — Article 6(4) — Meaning of 'imperative reasons of overriding public interest' — Conservation of wild birds — Directive 2009/147/EC — Assessment of the effects of certain public and private projects on the environment — Directive 2011/92/EU — Article 1(2)(a) — Definition of 'project' — Article 2(1) — Article 4(1) — Environmental impact assessment — Article 2(4) — Exemption from assessment — Phasing out of nuclear energy — National legislation providing, first, for restarting industrial production of electricity for a period of almost 10 years at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the date initially set by the national legislature for deactivating and ceasing production at that power station, and second, for deferral, also by 10 years, of the date initially set by the legislature for deactivating and ceasing industrial production of electricity at an active power station — No environmental impact assessment)

(2019/C 319/03)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Inter-Environnement Wallonnie ASBL, Bond Beter Leefmilieu Vlaanderen ASBL

Defendant: Council of Ministers

Intervener: Electrabel SA

Operative part of the judgment

1. The first indent of Article 1(2)(a), Article 2(1) and Article 4(1) of Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment must be interpreted as meaning that the restarting of industrial production of electricity for a period of almost 10 years at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the deadline initially set by the national legislature for deactivating and ceasing production at that power station, and deferral, also by 10 years, of the date initially set by the legislature for deactivating and ceasing industrial production of electricity at an active power station, measures which entail work to upgrade the power stations in question such as to alter the physical aspect of the sites, constitute a 'project', within the meaning of that directive, and subject to the findings that are for the referring court to make, an environmental impact assessment must, in principle, be carried out with respect to that project prior to the adoption of those measures. The fact that the implementation of those measures involves subsequent acts, such as the issue, for one of the power stations in question, of a new specific consent for the production of electricity for industrial purposes, is not decisive in that respect. Work that is inextricably linked to those measures must also be made subject to such an assessment before the adoption of those measures if its nature and potential impact on the environment are sufficiently identifiable at that stage, a finding which it is for the referring court to make.

2. Article 2(4) of Directive 2011/92 must be interpreted as meaning that a Member State may exempt a project such as that at issue in the main proceedings from the requirement to conduct an environmental impact assessment in order to ensure the security of its electricity supply only where that Member State can demonstrate that the risk to the security of that supply is reasonably probable and that the project in question is sufficiently urgent to justify not carrying out the assessment, subject to compliance with the obligations in points (a) to (c) of the second subparagraph of Article 2(4) of that directive. However, that possibility granting an exemption is without prejudice to the obligations incumbent on the Member State concerned under Article 7 of that directive.

3. Article 1(4) of Directive 2011/92 must be interpreted as meaning that national legislation such as that at issue in the main proceedings is not a specific act of national legislation, within the meaning of that provision, that is excluded, by virtue of that provision, from the scope of that directive.

4. 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 must be interpreted as meaning that measures such as those at issue in the main proceedings, together with the work of upgrading and of ensuring compliance with current safety standards, constitute a project in respect of which an appropriate assessment of its effects on the protected sites concerned should be conducted. Such an assessment should be conducted in respect of those measures before they are adopted by the legislature. The fact that the implementation of those measures involves subsequent acts, such as the issue, for one of the power stations in question, of a new specific consent for the production of electricity for industrial purposes, is not decisive in that respect. Work that is inextricably linked to those measures must also be subject to such an assessment before the adoption of those measures if its nature and potential impact on the protected sites are sufficiently identifiable at that stage, a finding which it is for the referring court to make.

5. The first subparagraph of Article 6(4) of Directive 92/43 must be interpreted as meaning that the objective of ensuring security of the electricity supply in a Member State at all times constitutes an imperative reason of overriding public interest, within the meaning of that provision. The second subparagraph of Article 6(4) of that directive must be interpreted as meaning that if a protected site likely to be affected by a project hosts a priority natural habitat type or priority species, a finding which it is for the referring court to make, only a need to nullify a genuine and serious threat of rupture of that Member State's electricity supply constitutes, in circumstances such as those in the main proceedings, a public security ground, within the meaning of that provision.

6. EU law must be interpreted as meaning that if domestic law allows it, a national court may, by way of exception, maintain the effects of measures, such as those at issue in the main proceedings, adopted in breach of the obligations laid down by Directive 2011/92 and Directive 92/43, where such maintenance is justified by overriding considerations relating to the need to nullify a genuine and serious threat of rupture of the electricity supply in the Member State concerned, which cannot be remedied by any other means or alternatives, particularly in the context of the internal market. The effects may only be maintained for as long as is strictly necessary to remedy the breach.

([1]) OJ C 300, 11.9.2017.

Judgment of the Court (Grand Chamber) of 29 July 2019 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Funke Medien NRW GmbH v Bundesrepublik Deutschland

(Case C-469/17) ([1])

(Reference for a preliminary ruling — Copyright and related rights — Directive 2001/29/EC — Information Society — Harmonisation of certain aspects of copyright and related rights — Article 2(a) — Reproduction right — Article 3(1) — Communication to the public — Article 5(2) and (3) — Exceptions and limitations — Scope — Charter of Fundamental Rights of the European Union)

(2019/C 319/04)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Defendant and appellant: Funke Medien NRW GmbH

Applicant and respondent: Bundesrepublik Deutschland

Operative part of the judgment

1. Article 2(a) and Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as constituting measures of full harmonisation of the scope of the exceptions or limitations which they contain. Article 5(3)(c), second case, and (d) of Directive 2001/29 must be interpreted as not constituting measures of full harmonisation of the scope of the relevant exceptions or limitations.