Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

3 April 2014*

(Request for a preliminary ruling — Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Sites of Community importance — Review of status in the event of pollution or degradation of the environment — National legislation not providing for persons concerned to request such a review — Attribution to the competent national authorities of a discretionary power to undertake of their own motion a review procedure of that status)

In Case C-301/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Italy), made by decision of 29 May 2012, received at the Court on 20 June 2012, in the proceedings

Cascina Tre Pini Ss

v

Ministero dell'Ambiente e della Tutela del Territorio e del Mare,

Regione Lombardia,

Presidenza del Consiglio dei Ministri,

Consorzio Parco Lombardo della Valle del Ticino,

Comune di Somma Lombardo,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.L. da Cruz Vilaça, G. Arestis (Rapporteur), J.-C. Bonichot and A. Arabadjiev, Judges,

Advocate General: J. Kokott,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 16 May 2013,

after considering the observations submitted on behalf of:

— Cascina Tre Pini Ss, by E. Cicigoi, avvocatessa,

* Language of the case: Italian.

— the Italian Government, by G. Palmieri, acting as Agent, assisted by A. De Stefano, avvocato dello Stato,

— the Czech Government, by M. Smolek and D. Hadroušek, acting as Agents,

— the European Commission, by F. Moro and L. Banciella, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 June 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 9 and 11 of 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), as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33; 'the Habitats Directive').

2 The request has been made in proceedings between Cascina Tre Pini Ss ('Cascina'), a company incorporated under Italian law, and the Ministero dell'Ambiente e della Tutela del Territorio e del Mare (Ministry of the Environment and the Protection of the Land and the Sea; 'the Ministero'), the Regione Lombardia (Region of Lombardy), the Presidenza del Consiglio dei Ministri (Office of the Prime Minister), the Consorzio Parco Lombardo della Valle del Ticino (Lombardy Association of the Ticino Valley Park) and the Comune di Somma Lombardo (municipality of Somma Lombardo) concerning the procedure for review of the status of site of Community importance ('SCI') of a site including a plot of land of which Cascina is the owner.

Legal context

EU law

3 Article 2 of the Habitats Directive, defining the aims thereof, provides:

'1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the [EC] Treaty applies.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.'

4 Article 3 of that directive, providing for the creation of the Natura 2000 network, provides:

‘1. A coherent European ecological network of special areas of conservation [“SACs”] shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to [Council] Directive 79/409/EEC [of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)].

2. Each Member State shall contribute to the creation of Natura 2000 in proportion to the representation within its territory of the natural habitat types and the habitats of species referred to in paragraph 1. To that effect each Member State shall designate, in accordance with Article 4, sites as [SACs] taking account of the objectives set out in paragraph 1.

3. Where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in Article 10.’

5 Article 4 of Directive 92/43 sets out the procedure for drawing up the lists of the SCIs as follows:

‘1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. … Where appropriate, Member States shall propose adaptation of the list in the light of the results of the surveillance referred to in Article 11.

The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site. …

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the five biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory referred to in Article 2(1), the Commission shall establish, in agreement with each Member State, a draft list of [SCIs] drawn from the Member States’ lists identifying those which host one or more priority natural habitat types or priority species.

…

The list of sites selected as [SCIs], identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.

3. The list referred to in paragraph 2 shall be established within six years of the notification of this Directive.

4. Once [an SCI] has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as [an SAC] as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.

5. As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).'

6 Article 6 of that directive, which applies to the SACs, provides, in paragraphs 2 to 4 thereof:

'2. Member States shall take appropriate steps to avoid, in the SACs, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

…'

7 Article 9 of the directive provides:

'The Commission, acting in accordance with the procedure laid down in Article 21, shall periodically review the contribution of Natura 2000 towards achievement of the objectives set out in Article 2 and 3. In this context, [an SAC] may be considered for declassification where this is warranted by natural developments noted as a result of the surveillance provided for in Article 11.'

8 Article 11 of Directive 92/43 states:

'Member States shall undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2 with particular regard to priority natural habitat types and priority species.'

Italian law

9 Article 1 of Decree No 357 of the President of the Republic transposing Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (decreto del Presidente della Repubblica n. 357 — Regolamento recante attuazione della direttiva 92/43/CEE relativa alla conservazione degli habitat naturali e seminaturali, nonché della flora e della fauna selvatiche) of 8 September 1997 (Ordinary supplement to GURI No 248 of 23 October 1997), in the version application to the dispute in the main proceedings ('the DPR'), defines the scope of the DPR as follows:

'1. This decree shall govern the procedures for adopting measures provided for in [the Habitats Directive] on the conservation of natural habitats and of wild fauna and flora in order to safeguard biodiversity by conserving the natural habitats listed in Annex A and the species of flora and fauna listed in Annexes B, C and E to this decree.

2. The procedures governed by this decree shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. The procedures governed by this decree shall take account of economic, social and cultural requirements and regional and local characteristics.

…'

10 Article 3 of the DPR reads as follows:

'1. The Regions and Independent provinces of Trento and Bolzano shall prepare a list of the sites hosting the habitat types listed in Annex A and the habitats of species listed in Annex B; they shall communicate that list to [the Ministero] so that it may forward to the Commission … the list of proposed [SCIs] with a view to the creation of the coherent European ecological network of SACs "Natura 2000".

2. By decree, [the Ministero] shall designate, in agreement with each region concerned, the sites referred to in paragraph 1, namely the [SACs], within six years at most of the drawing up of the list of the sites by the Commission.

…

4(a). In order to ensure the functional implementation of the [Habitats Directive] and the updating of the data, also as regards the alterations to the annexes provided for in Article 19 of the directive, the Regions and the Autonomous Provinces of Trento and Bolzano shall, on the basis of monitoring activities referred to in Article 7, undertake periodic reviews of the suitability of the sites for achieving the objectives of the directive, following which they may propose to [the Ministero] that the list of the sites, the site boundaries and the content of the relevant information document be updated. [The Ministero] shall transmit that proposal to the … Commission for the purposes of the review referred to in Article 9 of the directive.'

11 Article 7 of the DPR, concerning the monitoring procedure, provides:

'1. By decree, [the Ministero], after having consulted the Ministry of Agricultural and Forestry Policy and the Istituto nazionale per la fauna selvatica (National Institute for Wild Fauna) (INFS), to the extent of their powers, and the Comitato interministeriale per la programmazione economica (inter-ministerial committee for economic planning) and in agreement with the Conferenza permanente per i rapporti tra lo Stato, le regioni e le province autonome di Trento e di Bolzano (standing committee on relations between the State, the regions and the Autonomous Provinces of Trento and Bolzano), shall establish the guidelines for surveillance, sampling and derogations concerning the animal and plant species protected under the present decree.

2. The regions and the Autonomous Provinces of Trento and Bolzano, on the basis of the guidelines referred to in the preceding paragraph, shall adopt measures to ensure the safeguarding and surveillance of the conservation status of the natural habitats and species of Community interest, in particular those regarded as priorities, informing the Ministries referred to in paragraph 1 of those measures.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 Cascina owns an area which forms part of the 'Brughiera del Dosso' site in the Comune di Somma Lombardo, near to Milan-Malpensa airport in Lombardy. In 2002, that site was placed inside the perimeter of the Ticino Valley Natural Park created by a Law of the Regione Lombardia.

13 By decision of the Giunta regionale (Regional Executive Body) of the Regione Lombardia of 8 August 2003, that site was included in the list of the proposed SCIs, in accordance with Article 3 of the DPR. That site was subsequently entered in the list of SCIs by Commission Decision 2004/798/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Continental biogeographical region (OJ 2004 L 382, p. 1). The site of Brughiera del Dosso was also classified as an SCI by decree of the Ministero of 25 March 2005.

14 In the meantime, the airport of Milan-Malpensa underwent an extension in accordance with the Malpensa area development plan approved by a Law of the Regione Lombardia of 1999. According to Cascina, land on the territory of the Comune di Somma Lombardo is earmarked for development of a commercial and industrial nature. Cascina claims that the steady increase in air traffic at that airport will lead to environmental damage on the site of Brughiera del Dosso with the passage of time.

15 Taking the view that the ecological quality of the site of Brughiera del Dosso had been compromised, during 2005 Cascina asked the Consorzio Parco Lombardo Valle del Ticino, which manages the site, to adopt the measures necessary to prevent the environmental degradation of that site.

16 Receiving no reply, in 2006 Cascina sent the Ministero a formal application, on the basis of Article 9 of the Habitats Directive and Article 3(4a) of the DPR, asking it to re-draw the boundaries of, or declassify, that site, removing it from the list of SCIs, since, in the view of Cascina, the factual and legal preconditions laid down in the applicable legislation and, in particular, the criteria for the selection of sites likely to be identified as SCIs set out in Annex III to the directive, were no longer satisfied. Cascina's interest in having the boundaries re-drawn or the site declassified follows from the fact that the property right over its land included in the Brughiera del Dosso site has been affected by the restrictive legislation governing SCIs to which any development of the land is subject. That restriction prevents any change of use of the land, while such changes are provided for in the Malpensa area development plan.

17 By decision of 2 May 2006, the Ministero declared that it was not competent and referred Cascina to the Regione Lombardia since under Article 3 of the DPR, it is for the Regions to identify the sites and to inform the Ministero accordingly. Cascina therefore re-submitted its application to the Regione Lombardia, which rejected it by decision of 26 July 2006, on the ground that the application 'cannot be considered until such time as [the Ministero] asks the Regions to launch the procedure provided for under Article 3(4a) of [the DPR]'.

18 In the face of the administration's refusal to rule on its application, Cascina brought an action at first instance before the Tribunale amministrativo regionale della Lombardia (Regional Administrative Court, Lombardy) against those two decisions, on the basis of the failure by the Ministero and the Regione Lombardia to act. In that action, it also sought damages.

19 By judgment of 15 December 2009, that court dismissed the action in its entirety. In that judgment, the court pointed out that Article 3(4a) of the DPR conferred on the Regions a power of initiative and the authority to make proposals to identify the SCIs, so that there had been no unlawful failure to act by the Ministero. In addition, that court interpreted the decision of the Regione Lombardia not as a refusal to act, but as an expression of the intention to continue to include the site of Brughiera del Dosso in the list of SCIs despite the pollution, so that the application for a finding of failure to act by the Region could not succeed either.

20 Cascina brought an appeal against that judgment before the Consiglio di Stato (Council of State). It contests, in particular, the interpretation given in that judgment to Article 3(4a) of the DPR, submitting that that provision, read in the light of the Habitats Directive, would result in a finding that not only the Regions but also the State concerned have a power of initiative to review the list of SCIs, which vitiates the refusal by the Ministero to rule on its application made in 2006.

21 Requested to examine whether that argument was well founded in order to resolve the dispute, the Consiglio di Stato asks, inter alia, whether the provisions of that directive confer on the State concerned, on the same basis as the Regions, a power of initiative to review that list which the State may exercise, if necessary, in lieu of the Regions. That court also wishes to know whether that power may be exercised not only of the competent administrative authority's own motion, but also at the request of an individual, the owner of land forming part of a site on that list, and whether the Member States must act to review or even declassify the site if they observe a change from the original condition of the site. That court is thus doubtful as to the interpretation of the relevant provisions of the directive in that regard.

22 In those circumstances, the Consiglio di Stato decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is the proper application of Articles 9 and [11] of [the Habitats Directive] prevented by a provision of national law (Article 3(4a) of [the DPR]) under which power is conferred on the Regions and the Autonomous Provinces to propose, of their own motion, a review of the SCIs, but no obligation is placed on them to exercise that power in response to a reasoned request to that effect made by private owners of land falling within SCIs, even where those private individuals argue that the land has suffered environmental degradation?

2. Is the proper application of Articles 9 and [11] of [the Habitats Directive] prevented by a provision of national law (Article 3(4a) of [the DPR]) under which power is conferred on the Regions and the Autonomous Provinces to propose, of their own motion, a review of the SCIs, through a periodic assessment, but the frequency with which that review must be conducted (every two or three years, for example) is not specified and there is no obligation for notice to be given of the periodic review by the Regions and Autonomous Provinces by means of some form of general advertising campaign designed to enable stakeholders to submit comments or proposals?

3. Is the proper application of Articles 9 and [11] of the Habitats Directive prevented by a provision of national law (Article 3(4a) of [the DPR]) under which a power of initiative is conferred on the Regions and Autonomous Provinces in relation to the review of the SCIs, but no power of initiative is also conferred on the State, even to act in lieu of the Regions or Autonomous Provinces in the event that they fail to act?

4. Is the proper application of Articles 9 and [11] of [the Habitats Directive] prevented by a provision of national law (Article 3(4a) of [the DPR]) under which power is conferred on the Regions and Autonomous Provinces to propose, of their own motion, a review of the SCIs, where that power is entirely discretionary and not mandatory, even where pollution or environmental degradation has taken place and this has been formally confirmed?

5. … Must the procedure governed by Article 9 [of the Habitats Directive], implemented by the national legislature by means of Article 3(4a) of [the DPR], be interpreted as a procedure which must close with the adoption of an administrative act, or as a procedure the outcome of which is merely "optional"? Is it necessary to construe a "procedure which must close with the adoption of an administrative act" as a procedure which "where the conditions are satisfied, consists in the transmission of the regional proposal, by [the Ministero], to the … Commission", there being no need in that regard for any consideration as to whether it must be construed as a procedure which may be instigated only by the authority of its own motion or whether it may also be instigated at the request of a party?

6. … Does [European Union] law and, in particular, [the Habitats Directive] preclude legislation of a Member State under which it is necessary to initiate the declassification procedure, rather than to adopt further monitoring and protection measures, on the basis of a report from a private party concerning the degree of degradation of the site?

7. Does [European Union] law and, in particular, [the Habitats Directive] preclude legislation of a Member State under which the declassification procedure must be initiated in relation to a site covered by the Natura 2000 network in order to protect exclusively private interests of a commercial nature?

8. Does [European Union] law and, in particular, [the Habitats Directive] preclude legislation of a Member State under which, in the context of infrastructure projects in the general, social and economic interest — acknowledged also by the European Union — which may be detrimental to a natural habitat recognised in accordance with that directive, it is necessary to initiate a procedure for the declassification of the site rather than to adopt countervailing measures to ensure the overall coherence of the Natura 2000 network?

9. Does [European Union] law and, in particular, [the Habitats Directive] preclude legislation of a Member State under which, as regards natural habitats, importance is attributed to the commercial interests of individual owners, enabling them to obtain from the national court a decision requiring the boundaries of the site to be re-drawn?

10. Does [European Union] law and, in particular, [the Habitats Directive] preclude legislation of a Member State under which provision is made for a site to be declassified where it has suffered degradation which is anthropogenic and not natural in origin?'

Consideration of the questions referred

The first, fourth and fifth questions

23 By its first, fourth and fifth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 4(1), 9 and 11 of the Habitats Directive are to be interpreted as meaning that the competent authorities of the Member States are required to propose to the Commission the declassification of a site on the list of SCIs, where those authorities have received a request from the owner of land included in that site, alleging an environmental degradation of the site.

24 Before considering whether the Habitats Directive provides for the declassification of a site on the list of SCIs, it is appropriate to recall the procedure laid down in that directive for the entry of a site in that list. Thus, pursuant to Article 4(1) and (2) of the directive, such an entry follows a Commission decision on a proposal from the Member State concerned. In that regard, Article 4(1) of the Habitats Directive states that, where appropriate, Member States are to propose the adaptation of the list in the light of the results of the surveillance of the conservation status of the natural habitats and species which the Member States undertake in accordance with Article 11 of the directive. Article 4(4) of that directive in turn requires the Member States to designate all sites on the list of SCIs as SACs.

25 Although it is true that there is no provision of the directive which expressly provides for the declassification of a site on the list of SCIs, it is appropriate, however, to note that Article 9 of the Habitats Directive allows the Commission to consider declassifying an SAC where this is warranted by natural developments noted as a result of the surveillance undertaken by the Member States in accordance with Article 11 thereof. Such declassification implies of necessity the declassification of an SIC since, under Article 4(4) of the directive, all sites on the list of SCIs must be designated as SACs by the Member States.

26 It follows therefrom that the adaptation of the list of SCIs which the Member States propose to the Commission under Article 4(1) of the Habitats Directive may include the declassification of a site on the list of SCIs which, in the absence of specific provisions, must be carried out following the same procedure as that for entry in that list.

27 In that regard, it must be noted that, although it follows from the rules governing the procedure for identifying sites eligible for designation as SACs, set out in Article 4(1) of the Habitats Directive, that Member States have a margin of discretion when making their site proposals, the fact none the less remains that they must do so in compliance with the criteria laid down by the directive (see, inter alia, Case C-67/99 *Commission* v *Ireland* EU:C:2001:432, paragraph 33). It follows that, where the results of the surveillance undertaken by the Member States pursuant to Article 11 of the directive give rise to the conclusion that those criteria can irretrievably no longer be met, the Member States must of necessity, under Article 4(1) of the directive, make a proposal for the adaptation of the list of SCIs seeking to make that list meet those criteria once again.

28 Thus, when a site on the list of SCIs is definitively no longer capable of contributing to the achievement of the objectives of the Habitats Directive and, accordingly, it is no longer warranted for the site to remain subject to the provisions of that directive, the Member State concerned is required to propose to the Commission that the site be declassified. If that State were to refrain from proposing its declassification, it could continue to use resources in vain to manage that site which would prove to be of no use to the conservation of natural habitats and species. In addition, keeping sites in the Natura 2000 network which no longer definitively contribute to the achievement of those objectives does not meet the quality requirements of that network.

29 The obligation on the Member States to propose to the Commission the declassification of a site on the list of SCIs which has become irretrievably unsuitable to achieve the objectives of the Habitats Directive, is all the greater when that site includes land belonging to an owner whose exercise of his right to property is restricted as a result of that listing, when it is no longer warranted for the site to remain subject to the provisions of the directive. As the Advocate General noted in point 39 of her Opinion, as long as the quality of the site in question meets the requirements for its classification, such restrictions of the right to property are, as a rule, justified by the objective of protecting the environment laid down in that directive (see, to that effect, Case C-416/10 *Križan and Others* EU:C:2013:8, paragraphs 113 to 115). However, where those qualities definitively disappear, continuing to restrict the use of that site might be an infringement of the right to property.

30 It must, however, be pointed out that a mere allegation of environmental degradation of an SCI, made by the owner of land included in that site, cannot suffice of itself to bring about such an adaptation of the list of SCIs. It is essential that that degradation should make the site irretrievably unsuitable to ensure the conservation of natural habitats and of the wild fauna and flora or the setting up of the Natura 2000 network, so that that site can definitively no longer contribute to the achievement of the objectives of the directive set out in Articles 2 and 3 thereof. As is clear from Article 4(1) and (2) of the directive, it is the pursuit of those objectives of conservation and setting up of that network which have led to the inclusion of such a site on that list.

31 Thus, not all degradation of a site on the list of SCIs justifies its declassification.

32 In that regard, it must be borne in mind that Article 6(2) of the Habitats Directive, to which Article 4(5) thereof refers, requires the Member States to protect the SCIs by adopting measures to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated. The failure of a Member State to fulfil that obligation of protecting a particular site does not necessarily justify the declassification of that site (see, by analogy, Case C-418/04 *Commission* v *Ireland* EU:C:2007:780, paragraphs 83 to 86). On the contrary, it is for that State to take the measures necessary to safeguard that site.

33 In addition, it must also be noted that a site on the list of SCIs can lawfully be significantly affected by a plan or project which is incompatible with the objectives of protection of the Habitats Directive only where the rules referred to in Article 6(3) and (4) of that directive are followed, to which Article 4(5) thereof refers, which require an appropriate assessment of the implications for the environment and, if necessary, the adoption of all compensatory measures necessary for its protection.

34 Furthermore, as regards the plans and projects which are not covered by Article 6(3) and (4) of the Habitats Directive when they are adopted, the Court has held that the possibility cannot be excluded that a Member State, by analogy with the procedure in derogation provided for in Article 6(4) of that directive, may, in a procedure under domestic law for assessing the environmental impacts of a plan or project capable of significantly affecting the interests of conserving a site, invoke a reason of public interest and, if the conditions laid down by that provision are essentially satisfied, authorise an activity which, subsequently, is no longer prohibited by Article 6(2). However, in order to be able to verify whether the conditions laid down by Article 6(4) of the Habitats Directive have been met, the impacts of the plan or project must first have been analysed in accordance with Article 6(3) of that directive (Case C-404/09 *Commission* v *Spain* EU:C:2011:768, paragraphs 156 and 157).

35 It thus follows therefrom that the competent national authorities are required to propose the declassification of a site only where, despite compliance with those provisions, that site has become irretrievably unsuitable to meet the objectives of the Habitats Directive, so that its classification as an SCI no longer appears justified.

36 Having regard to the foregoing considerations, the answer to the first, fourth and fifth questions is that Articles 4(1), 9 and 11 of the Habitats Directive are to be interpreted as meaning that the competent authorities of the Member States are required to propose to the Commission the declassification of a site on the list of SCIs, where those authorities have received a request from the owner of land included in that site, alleging an environmental degradation of the site, provided that that request is based on the fact that, despite compliance with the provisions of Article 6(2) to (4) of that directive, that site can definitively no longer contribute to the conservation of natural habitats and of the wild fauna and flora or the setting up of the Natura 2000 network.

The second question

37 Having regard to the answer to the first, fourth and fifth questions, there is no need to answer the second question, since an answer to that question is no longer strictly necessary to the resolution of the dispute in the main proceedings.

The third question

38 By its third question, the referring court asks, in essence, whether Articles 4(1), 9 and 11 of the Habitats Directive are to be interpreted as precluding national legislation under which a power is conferred on the regional and local authorities to propose the adaptation of the list of the SCIs, but no corresponding power is conferred on the State, even to act in lieu of the regional or local authorities in the event that they fail to act.

39 In that regard, it is appropriate to note that that directive places obligations on the Member States without reference to any division of powers within domestic law for the performance of those obligations. Thus, the directive does not lay down the methods for the allocation in domestic law of the power to propose the adaptation of the list of SCIs.

40 In the absence of such a requirement, the rule in the third paragraph of Article 288 TFEU must be followed, under which the directive is still binding on each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods. The designation of the competent authorities responsible for meeting the obligations laid down in the Habitats Directive is covered by that choice.

41 In that regard, EU law requires only that the transposition into domestic law of the Habitats Directive, including that designation, actually ensure the full application of its provisions in a sufficiently clear and precise manner (see, to that effect, inter alia, Case C-507/04 *Commission* v *Austria* EU:C:2007:427, paragraph 89).

42 Although it is true that each Member State is free to delegate powers to its domestic authorities as it sees fit and to implement directives by means of measures adopted by regional or local authorities, that freedom does not, however, release it from the obligation to ensure that the provisions of the directive are properly implemented in national law.

43 Consequently, EU law does not require the power conferred on the regional or local authorities to perform the obligations under that directive be supplemented by a subsidiary power of the State. In addition, the obligations on a Member State by virtue of that directive and, in particular, that of proposing the adaptation of the list of SCIs, do not mean, in terms of the domestic division of powers, that the Member State must, if necessary, act in the place of the regional or local authorities if they fail to act. None the less, EU law does require the arrangements within the national legal system to be in their entirety sufficiently effective to enable the requirements of the Habitats Directive to be correctly applied (see, to that effect, Case C-8/88 *Germany* v *Commission* EU:C:1990:241, paragraph 13).

44 Having regard to the foregoing considerations, the answer to the third question is that Articles 4(1), 9 and 11 of the Habitats Directive are to be interpreted as not precluding national legislation under which a power is conferred on the regional and local authorities alone to propose the adaptation of the list of the SCIs, but not on the State, even to act in lieu of the regional or local authorities in the event that they fail to act, provided that that allocation of power does not prevent the proper application of the provisions of that directive.

The sixth to tenth questions

45 It must be born in mind that, in the context of the procedure provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (see, inter alia, Case C-617/10 *Åkerberg Fransson* EU:C:2013:105, paragraph 39 and the case-law cited).

46 The presumption of relevance attaching to questions referred by the national courts for a preliminary ruling may be rebutted only in exceptional cases, where it is quite obvious that the interpretation of Community law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted.

47 In the present case, as the referring court itself accepts in its request for a preliminary ruling, it is not in dispute that the sixth to tenth questions, raised before it by the Regione Lombardia, are hypothetical. According to the information supplied by that court, those questions concern national legislation which does not currently exist in Italian law.

48 Consequently, the sixth to tenth questions must be declared inadmissible.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Articles 4(1), 9 and 11 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, must be interpreted as meaning that the competent authorities of the Member States are required to propose to the European Commission the declassification of a site on the list of sites of Community importance, where those authorities have received a request from the owner of land included in that site, alleging an environmental degradation of the site, provided that that request is based on the fact that, despite compliance with the provisions of Article 6(2) to (4) of that directive, that site can definitively no longer contribute to the conservation of natural habitats and of the wild fauna and flora or the setting up of the Natura 2000 network.**

2. **Articles 4(1), 9 and 11 of Directive 92/43, as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, must be interpreted as not precluding national legislation under which a power is conferred on the regional and local authorities alone to propose the adaptation of the list of the sites of Community importance, but not on the State, even to act in lieu of the regional or local authorities in the event that they fail to act, provided that that allocation of power does not prevent the proper application of the provisions of that directive.**

[Signatures]