

### Operative part of the judgment

Articles 167, 168 and 184 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the principle of the neutrality of value added tax must be interpreted as not precluding a body governed by public law from being entitled to a right to adjustment of deductions of value added tax paid on immovable property acquired as capital goods in a situation, such as that at issue in the main proceedings, where, at the time of the acquisition of those goods, first, they could, by their very nature, be used both for taxable activities and for non-taxable activities but were initially used for non-taxable activities, and second, that public body had not expressly stated its intention to use those goods for a taxable activity but had also not excluded the possibility that they might be used for such a purpose, so long as it follows from an assessment of all the factual circumstances, which it is for the referring court to carry out, that the condition laid down by Article 168 of Directive 2006/112, according to which the taxable person must have acted as a taxable person at the time when it made that acquisition, is satisfied.

<sup>(1)</sup> OJ C 202, 26.6.2017.

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### Judgment of the Court (Second Chamber) of 25 July 2018 (request for a preliminary ruling from the Supreme Court — Ireland) — Edel Grace, Peter Sweetman v An Bord Pleanála

(Case C-164/17) <sup>(1)</sup>

*(Reference for a preliminary ruling — Environment — Directive 92/43/EC — Conservation of natural habitats and of wild fauna and flora — Article 6(3) and (4) — Assessment of the implications of a plan or project for a protected site — Plan or project not directly connected with or necessary to the management of the site — Wind farm project — Directive 2009/147/EC — Conservation of wild birds — Article 4 — Special Protection Area (SPA) — Annex I — Hen harrier (Circus cyaneus) — Suitable habitat fluctuating over time — Temporary or permanent reduction of the amount of appropriate land — Measures included in the project to ensure that, during the lifetime of the project, the amount of land that is in fact suitable for hosting the natural habitat of the species will not be reduced and indeed may be enhanced)*

(2018/C 328/19)

Language of the case: English

### Referring court

Supreme Court

### Parties to the main proceedings

Applicant: Edel Grace, Peter Sweetman

Defendant: An Bord Pleanála

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Article 6 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, where it is intended to carry out a project on a site designated for the protection and conservation of certain species, of which the area suitable for providing for the needs of a protected species fluctuates over time, and the temporary or permanent effect of that project will be that some parts of the site will no longer be able to provide a suitable habitat for the species in question, the fact that the project includes measures to ensure that, after an appropriate assessment of the implications of the project has been carried out and throughout the lifetime of the project, the part of the site that is in fact likely to provide a suitable habitat will not be reduced and indeed may be enhanced may not be taken into account for the purpose of the assessment that must be carried out in accordance with Article 6(3) of the directive to ensure that the project in question will not adversely affect the integrity of the site concerned; that fact falls to be considered, if need be, under Article 6(4) of the directive.

<sup>(1)</sup> OJ C 178, 6.6.2017.