Judgment of the Court (Second Chamber) of 7 November 2018 (requests for a preliminary ruling from the Raad van State — Netherlands) — Coöperatie Mobilisation for the Environment UA, Vereniging Leefmilieu v College van gedeputeerde staten van Limburg, College van gedeputeerde staten van Gelderland (C-293/17), Stichting Werkgroep Behoud de Peel v College van gedeputeerde staten van Noord-Brabant (C-294/17)

(Joined Cases C-293/17 and C-294/17) ([1])

(Reference for a preliminary ruling — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Special areas of conservation — Article 6 — Appropriate assessment of the implications of a plan or project for a site — National programmatic approach to tackling nitrogen deposition — Concepts of 'project' and 'appropriate assessment' — Overall assessment prior to individual authorisations for farms which cause nitrogen deposition)

(2019/C 16/15)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: Coöperatie Mobilisation for the Environment UA, Vereniging Leefmilieu

Defendants: College van gedeputeerde staten van Limburg, College van gedeputeerde staten van Gelderland

Interveners: G. H. Wildenbeest, Maatschap Smeets, Maatschap Lintzen-Crooijmans, W. A. H. Corstjens (C-293/17)

and

Applicant: Stichting Werkgroep Behoud de Peel

Defendant: College van gedeputeerde staten van Noord-Brabant

Interveners: Maatschap Gebr. Lammers, Landbouwbedrijf Swinkels, Pluimveehouderij Van Diepen VOF, Vermeerderingsbedrijf Engelen, Varkenshouderij Limburglaan BV, Madou Agro Varkens CV (C-294/17)

Operative part of the judgment

1. *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 the grazing of cattle and the application of fertilisers on the surface of land or below its surface in the vicinity of Natura 2000 sites may be classified as a 'project' within the meaning of that provision, even if those activities, in so far as they are not a physical intervention in the natural surroundings, do not constitute a 'project' within the meaning of Article 1(2)(a) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.*

2. *Article 6(3) of Directive 92/43 must be interpreted as meaning that a recurring activity, such as the application of fertilisers on the surface of land or below its surface, authorised under national law before the entry into force of that directive, may be regarded as one and the same project for the purposes of that provision, exempted from a new authorisation procedure, in so far as it constitutes a single operation characterised by a common purpose, continuity and, inter alia, the location and the conditions in which it is carried out being the same. If a single project was authorised before the system of protection laid down by that provision became applicable to the site in question, the carrying out of that project may nevertheless fall within the scope of Article 6(2) of that directive.*

3. *Article 6(3) of Directive 92/43 must be interpreted as not precluding national programmatic legislation which allows the competent authorities to authorise projects on the basis of an 'appropriate assessment' within the meaning of that provision, carried out in advance and in which a specific overall amount of nitrogen deposition has been deemed compatible with that legislation's objectives of protection. That is so, however, only in so far as a thorough and in-depth examination of the scientific soundness of that assessment makes it possible to ensure that there is no reasonable scientific doubt as to the absence of adverse effects of each plan or project on the integrity of the site concerned, which it is for the national court to ascertain.*

4. *Article 6(3) of Directive 92/43 must be interpreted as not precluding national programmatic legislation, such as that at issue in the main proceedings, exempting certain projects which do not exceed a certain threshold value or a certain limit value in terms of nitrogen deposition from the requirement for individual approval, if the national court is satisfied that the 'appropriate assessment' within the meaning of that provision, carried out in advance, meets the criterion that there is no reasonable scientific doubt as to the lack of adverse effects of those plans or projects on the integrity of the sites concerned.*

5. *Article 6(3) of Directive 92/43 must be interpreted as precluding national programmatic legislation, such as that at issue in the main proceedings, which allows a certain category of projects, in the present case the application of fertilisers on the surface of land or below its surface and the grazing of cattle, to be implemented without being subject to a permit requirement and, accordingly, to an individualised appropriate assessment of its implications for the sites concerned, unless the objective circumstances make it possible to rule out with certainty any possibility that those projects, individually or in combination with other projects, may significantly affect those sites, which it is for the referring court to ascertain.*

6. *Article 6(3) of Directive 92/43 must be interpreted as meaning that an 'appropriate assessment' within the meaning of that provision may not take into account the existence of 'conservation measures' within the meaning of paragraph 1 of that article, 'preventive measures' within the meaning of paragraph 2 of that article, measures specifically adopted for a programme such as that at issue in the main proceedings or 'autonomous' measures, in so far as those measures are not part of that programme, if the expected benefits of those measures are not certain at the time of that assessment.*

7. *Article 6(3) of Directive 92/43 must be interpreted as meaning that measures introduced by national legislation, such as that at issue in the main proceedings, including procedures for the surveillance and monitoring of farms whose activities cause nitrogen deposition and the possibility of imposing penalties, up to and including the closure of those farms, are sufficient for the purposes of complying with that provision.*

([1]) OJ C 293, 4.9.2017.

Judgment of the Court (Fourth Chamber) of 14 November 2018 (request for a preliminary ruling from the Varhoven kasatsionen sad — Bulgaria) — Wiemer & Trachte GmbH, in liquidation v Zhan Oved Tadzher

(Case C-296/17) ([1])

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Insolvency proceedings — Regulation (EC) No 1346/2000 — Article 3(1) — International jurisdiction — Action to set a transaction aside — Exclusive jurisdiction of the courts of the Member State within the territory of which insolvency proceedings have been opened)

(2019/C 16/16)

Language of the case: Bulgarian

Referring court

Varhoven kasatsionen sad (Bulgaria)