Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

12 June 2019*

[Text rectified by order of 4 September 2019]

(Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Decree — Establishment of conservation objectives for the Natura 2000 network, in accordance with Directive 92/43/EEC — Definition of 'plans and programmes' — Obligation to undertake an environmental assessment)

In Case C-321/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, Belgium), made by decision of 2 May 2018, received at the Court on 9 May 2018, in the proceedings

Terre wallonne ASBL

v

Région wallonne

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader (Rapporteur), A. Rosas, L. Bay Larsen and M. Safjan, Judges,

Advocate General: J. Kokott,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 13 December 2018,

after considering the observations submitted on behalf of:

– Terre wallonne ASBL, by A. Lebrun, avocat,

– Région wallonne, by P.C. Moërynck, avocat,

– the Belgian Government, by M. Jacobs, C. Pochet and P. Cottin, acting as Agents, and by P. Moërynck, G. Shaiko and J. Bouckaert, avocats,

– the Czech Government, by M. Smolek, J. Vláčil and L. Dvořáková, acting as Agents,

* Language of the case: French.

– [As rectified by order of 4 September 2019] Ireland, by M. Browne, G. Hodge and A. Joyce, acting as Agents, and by C. Toland and G. Simons, Senior Counsel, and M. Gray, Barrister-at-Law,

– the European Commission, by C. Hermes, M. Noll-Ehlers and F. Thiran, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 January 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(2) and (4) of 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; 'the SEA Directive').

2 The request was made in the course of proceedings between Terre Wallonne ASBL and Région wallonne (Walloon Region, Belgium) concerning the validity of the Walloon Government's Decree of 1 December 2016 setting conservation objectives for the Natura 2000 network (*Moniteur belge* of 22 December 2016, p. 88148; 'the Decree of 1 December 2016').

Legal context

EU law

The SEA Directive

3 Under recital 4 of the SEA Directive:

'Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.'

4 Article 1 of the SEA Directive, headed 'Objectives', provides:

'The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.'

5 Article 2 of that directive is worded as follows:

‘For the purposes of this Directive, the following definitions apply:

(a) “plans and programmes” shall mean plans and programmes, including those co-financed by the European [Union], as well as any modifications to them:

– which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and

– which are required by legislative, regulatory or administrative provisions;

(b) “environmental assessment” shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

…’

6 Under Article 3 of the SEA Directive, headed ‘Scope’:

‘1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to [Council] Directive 85/337/EEC [of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) as amended by Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 (OJ 2012 L 26, p. 1)], or

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 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)].

…

4. Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive.

…’

The Habitats Directive

7 Article 6(3) of Directive 92/43 ('the Habitats Directive') states:

'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.'

Belgian law

8 The Law of 12 July 1973 on nature conservation (*Moniteur belge* of 11 September 1973, p. 10306), last amended by the Decree of 22 December 2010 (*Moniteur belge* of 13 January 2011, p. 1257) ('the Law of 12 July 1973') states, in Article 25a:

'(1) The Government shall establish, at Walloon Region level, conservation objectives for each natural habitat type and each species type for which sites must be designated.

The conservation objectives shall be determined on the basis of the conservation status, at Walloon Region level, of the natural habitat types and species for which sites must be designated, and shall serve to maintain at, or, where appropriate, restore to, a favourable conservation status the natural habitat types and species for which sites must be designated.

Those conservation objectives shall have indicative value.

(2) On the basis of the conservation objectives referred to in paragraph 1, the Government shall establish conservation objectives applicable at Natura 2000 site level.

These objectives shall have statutory value. They shall be interpreted in the light of the data referred to in points 2 and 3 of the second subparagraph of Article 26(1).'

9 The SEA Directive was transposed into the law of the Walloon Region by Article D. 52 et seq. of Book I of the Environment Code (*Moniteur belge* of 9 July 2004, p. 54654). Those provisions do not lay down a requirement that the conservation objectives adopted pursuant to Article 25a of the Law of 12 July 1973 are to be subject to an environmental assessment as 'plans and programmes'.

10 Under recitals 6 to 9, 16 and 18 of the Decree of 1 December 2016:

'Whereas establishing the conservation objectives at Walloon Region level and at site level is essential for the purposes of implementing the Natura 2000 site conservation scheme, inasmuch as these are normative references for decision-making in relation to the adoption of plans and issue of permits, as well as for any active management of the sites;

… the conservation objectives are established with a view to maintaining at, or, where appropriate, restoring to, a favourable conservation status the natural habitat types and the species for which sites must be designated;

… in accordance with Article 1a, [Article] 21a and the first subparagraph of Article 25a(1) of the Law [of 12 July 1973], it is necessary to establish conservation objectives at the level of the entire territory of Wallonia (and not only for the Natura 2000 network), so as to provide an overview of what needs

to be protected or, where appropriate, restored in the Walloon Region in order to maintain or restore at a favourable conservation status habitats and species for which the Natura 2000 network was set up; whereas these objectives have an indicative value;

… the conservation objectives at site level must be established on the basis of the conservation objectives established for the entire territory of Wallonia; whereas these objectives have a statutory value.

…

those objectives apply within a specific Natura 2000 site only where that site is designated for that species or habitat; whereas the compatibility of a project with those conservation objectives is to be examined on a case-by-case basis with reference to the management unit likely to be impacted and the results of the appropriate assessment, if one has taken place;

…

the conservation objectives for the site constitute, at site level, the reference framework which, unless provision is made to the contrary, must be observed by the competent authorities, in particular, when issuing permits, whether they come within the scope of the Law of 12 July 1973 on nature conservation or other legislation'.

11 In accordance with Article 2 of the Decree of 1 December 2016, the annex thereto defines 'the quantitative and qualitative conservation objections applicable at the level of the Walloon Region.'

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

12 On 8 November 2012, the Minister with responsibility for nature lodged with the Walloon Government a note concerning the adoption of a preliminary draft decree establishing the conservation objectives for the Natura 2000 network. From 10 December 2012 to 8 February 2013, a public inquiry was conducted in the 218 municipalities affected by the Natura 2000 network.

13 In October and November 2016, a second then a third draft decree were put before the Walloon Government.

14 On 1 December 2016, that government adopted the contested decree.

15 By application lodged on 9 February 2017, Terre wallonne sought the annulment of that decree before the Conseil d'Etat (Council of State, Belgium).

16 In support of its application, that association claimed, inter alia, that the provisions of the Decree of 1 December 2016 come within the scope of the notion of 'plans and programmes', for the purposes of either the Habitats Directive or the SEA Directive. According to the association, that notion applies not only to plans and programmes likely to be harmful to the environment but also to those potentially beneficial to the environment. It takes the view, moreover, that the public inquiry ought to have extended to the entire territory of the Walloon Region and not solely to the municipalities affected by the Natura 2000 sites.

17 In reply, the Government of the Walloon Region contends, first, that the Decree of 1 December 2016 is 'directly linked or necessary' to the management of the sites, with the effect that it does not come within the scope of the situations referred to in Article 6(3) of the Habitats Directive. Secondly, since that decree is exempt from an appropriate assessment, within the meaning of that directive, it ought also to be exempt from an assessment of its effects, for the purposes of the SEA Directive,

Article 3(2)(b) of which refers to Articles 6 and 7 of the Habitats Directive. The Walloon Government adds that that decree does not constitute a plan or programme, for the purposes of the SEA Directive, and does not, in any case, come within the scope of that directive as a result of Article 3 thereof.

18 The referring court is unclear as to whether the Decree of 1 December 2016 comes within the scope of the SEA Directive and, if so, whether or not the effect of the Habitats Directive is to preclude the obligation to conduct a prior assessment of its effects on the environment, for the purposes of the SEA Directive.

19 According to that court, while the Decree of 1 December 2016 falls outside the scope of Article 3(2)(b) of the SEA Directive, the fact remains that such a measure could nevertheless constitute a plan or programme, within the meaning of either Article 3(2)(a) or Article 3(4) of the SEA Directive.

20 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is a decree by which a body of a Member State establishes the conservation objectives for the Natura 2000 network, in accordance with the [Habitats] Directive, a plan or programme within the meaning of the [SEA] Directive, and, more specifically, within the meaning of Article 3(2)(a) [of that directive] or of Article 3(4) of that directive?

(2) If so, must such a decree be subjected to an environmental assessment in accordance with [the SEA] Directive, even though such an assessment is not required under [the Habitats] Directive, on the basis of which the decree was adopted?'

Consideration of the questions referred

21 By its questions, which it is appropriate to examine together, the referring court is asking, in essence, whether Article 3(2) and (4) of the SEA Directive must be interpreted as meaning that a decree, such as that at issue in the main proceedings, by which a body of a Member State establishes conservation objectives at regional level for its Natura 2000 network, is one of the 'plans and programmes' for which an environmental impact assessment is mandatory.

22 As a preliminary point, it should first of all be recalled that, as is clear from recital 4 of the SEA Directive, environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes.

23 Secondly, according to Article 1 of that directive, its objective is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with the directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

24 Lastly, given the objective of the SEA Directive, which is to provide for such a high level of protection of the environment, the provisions which delimit the scope of the directive, in particular those setting out the definitions of the measures envisaged by the directive, must be interpreted broadly (judgment of 27 October 2016, *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 40 and the case-law cited).

25 It is in the light of those considerations that the questions referred must be answered.

26 The Court must, first of all, reject the arguments that the provisions of Article 3(2)(b) of the SEA Directive and the first sentence of Article 6(3) of the Habitats Directive exclude in any case an obligation to conduct an assessment of effects on the environment in a case such as that at issue in the main proceedings.

27 In that connection, first, the Belgian Government and Ireland argue that, in so far as the Decree of 1 December 2016 establishes conservation objectives, it could have only beneficial effects and, accordingly, would not require an environmental impact assessment.

28 It must, however, be borne in mind that, as regards Directive 85/337, the Court has already ruled that the fact that projects should have beneficial effects is not relevant in determining whether it is necessary to make those projects subject to an assessment of their environmental impact (judgment of 25 July 2008, *Ecologistas en Acción-CODA*, C-142/07, EU:C:2008:445, paragraph 41).

29 Secondly, according to the Belgian Government and Ireland, on account of Article 3(2)(b) of the SEA Directive and the exception which applies to site management measures under Article 6(3) of the Habitats Directive, the strategic environmental assessment is restricted, so far as Natura 2000 sites are concerned, to the assessment of plans and projects which are also subject to an assessment of the implications for the site under the Habitats Directive. Following that analysis, measures for the management of those sites would never require an environmental assessment.

30 In the present case, it is clear from the order for reference that the Decree of 1 December 2016 is directly connected to the management of all sites in the Walloon region. It therefore does not concern a particular site, for the purposes of Article 6(3) of the Habitats Directive and, accordingly, nor does it require an environmental assessment pursuant to Article 3(2)(b) of the SEA Directive.

31 That being said, the fact that a measure, such as that at issue in the main proceedings, need not be preceded by an environmental assessment on the basis of the combined provisions of Article 6(3) of the Habitats Directive and Article 3(2)(b) of the SEA Directive does not mean that it is exempt from any obligation in that regard, since it is not excluded that such a measure could enact rules which lead to it being placed on the same footing as a plan or programme for the purposes of the latter directive, in respect of which an environmental impact assessment may be mandatory.

32 In that connection, as the Advocate General states in points 64 and 65 of her Opinion, the fact that, in the context of the Habitats Directive, the EU legislature did not consider it necessary to adopt provisions on environmental assessment and public participation in connection with site management does not mean that it wished to exclude the management of Natura 2000 sites when it subsequently adopted general rules on environmental assessment. Assessments conducted under other environmental protection instruments co-exist and usefully supplement the rules of the Habitats Directive in relation to the assessment of potential environmental effects and public participation.

33 As regards, in the first place, the decree at issue in the main proceedings being placed on the same footing as a plan or programme for the purposes of the SEA Directive, it should be recalled that it follows from Article 2(a) of the SEA Directive that plans or programmes are those which satisfy two cumulative conditions, namely (i) having been subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government; and (ii) being required by legislative, regulatory or administrative provisions.

34 The Court has interpreted that provision as meaning that plans and programmes whose adoption is regulated by national legislative or regulatory provisions, which determine the competent authorities for adopting them and the procedure for preparing them, must be regarded as 'required' within the meaning, and for the application, of the SEA Directive and, accordingly, be subject to an assessment

of their environmental effects in the circumstances which it lays down (judgments of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraph 31 and of 7 June 2018, *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 43).

35 In the present case, the Decree of 1 December 2016 was drafted and adopted by a regional authority, namely the Government of the Walloon Region, and that decree is required by Article 25a of the Law of 12 July 1973.

36 As regards, in the second place, the question of whether a plan or programme such as that at issue in the main proceedings must be preceded by an environmental assessment, it must be borne in mind that the plans and programmes which satisfy the requirements of Article 2(a) of the SEA Directive may be subject to an environmental assessment, provided that they are one of those categories referred to in Article 3 of the SEA Directive. Article 3(1) of the SEA Directive in fact provides that an environmental assessment is to be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

37 Under Article 3(2)(a) of the SEA Directive, an environmental assessment is to be carried out for all plans and programmes which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 2011/92.

38 In that connection, the Belgian and Czech Governments, Ireland and the Commission have expressed doubts as to whether the establishment of conservation objectives for the Natura 2000 sites in a region of a Member State can fall within the scope of one of those sectors.

39 As the Advocate General notes in point 44 of her Opinion, in so far as, under Article 3(4) of the SEA Directive, Member States must determine whether plans and programmes, other than those referred to in Article 3(2), which set the framework for future development consent of other projects, are likely to have significant environmental effects, it must be determined whether a measure, such as that at issue in the main proceedings, sets such a framework.

40 As the Advocate General observes in point 69 of her Opinion, the obligation to carry out an environmental assessment, laid down in Article 3(4) of the SEA Directive, like the assessment requirement under Article 3(2)(a) of that directive, is dependent on whether the plan or programme in question sets the framework for future development consent of projects.

41 In that connection, the Court has ruled that the notion of 'plans and programmes' relates to any measure which establishes, by defining rules and procedures, a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment (judgments of 27 October 2016, *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 49 and the case-law cited, and of 8 May 2019, *"Verdi Ambiente e Società (VAS) — Aps Onlus" and Others*, C-305/18, EU:C:2019:384, paragraph 50 and the case-law cited).

42 In the present case, the Decree of 1 December 2016 does not set out conservation objectives for specific sites, but summarises them for the Walloon region as a whole. Furthermore, it is apparent from the third subparagraph of Article 25a(1) of the Law of 12 July 1973 that the conservation objectives at Walloon Region level have indicative value only, whereas the second subparagraph of Article 25a(2) provides that the conservation objectives applicable at the level of Natura 2000 sites have statutory value.

43 In the light of those factors, it must be held that a measure, such as that at issue in the main proceedings, fails to satisfy the condition recalled in paragraph 41 of the present judgment, in that it does not set a framework for future development consent of projects, with the effect that it does not come within the scope either of Article 3(2)(a) or Article 3(4) of the SEA Directive.

44 In the light of the foregoing, the answer to the questions referred is that Article 3(2) and (4) of the SEA Directive must be interpreted as meaning that a decree, such as that at issue in the main proceedings, by which a body of a Member State establishes, at regional level for its Natura 2000 network, conservation objectives which have an indicative value, whereas the conservation objectives at site level have a statutory value, is not one of the 'plans and programmes', within the meaning of that directive, for which an environmental impact assessment is mandatory.

Costs

45 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 (First Chamber) hereby rules:

Article 3(2) and (4) of 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, must be interpreted as meaning that a decree, such as that at issue in the main proceedings, by which a body of a Member State establishes, at regional level for its Natura 2000 network, conservation objectives which have an indicative value, whereas the conservation objectives at site level have a statutory value, is not one of the 'plans and programmes', within the meaning of that directive, for which an environmental impact assessment is mandatory.

[Signatures]