

**Judgment of the Court (Tenth Chamber) of 3 September 2020 — *achtung! GmbH v European Union Intellectual Property Office (EUIPO)***

(Case C-214/19 P) <sup>(1)</sup>

(Appeal — EU trade mark — Regulation (EC) No 207/2009 — Article 7(1)(b) — Distinctive character — None)

(2020/C 378/11)

Language of the case: German

**Parties**

*Appellant*: *achtung! GmbH* (represented by: G.J. Seelig and D. Bischof, Rechtsanwälte)

*Other party to the proceedings*: European Union Intellectual Property Office (represented by: D. Hanf, acting as Agent)

**Operative part of the judgment**

The Court:

1. Dismisses the appeal;
2. Orders *achtung! GmbH* to pay, in addition to its own costs, the costs incurred by the European Union Intellectual Property Office (EUIPO).

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<sup>(1)</sup> OJ C 238, 15.7.2019.

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**Judgment of the Court (First Chamber) of 9 September 2020 (request for a preliminary ruling from the High Court (Ireland) — Ireland) — *Friends of the Irish Environment Ltd v An Bord Pleanála***

(Case C-254/19) <sup>(1)</sup>

(Reference for a preliminary ruling — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(3) — Scope — Concepts of ‘project’ and ‘agreement’ — Appropriate assessment of the implications of a plan or project for a protected site — Decision extending the duration of a development consent for the construction of a liquefied natural gas regasification terminal — Original decision based on national legislation which did not properly transpose Directive 92/43)

(2020/C 378/12)

Language of the case: English

**Referring court**

High Court (Ireland)

**Parties to the main proceedings**

*Applicant*: Friends of the Irish Environment Ltd

*Defendant*: An Bord Pleanála

*Intervening party*: Shannon Lng Ltd

**Operative part of the judgment**

1. A decision extending the 10-year period originally set for carrying out a project for the construction of a liquefied natural gas regasification terminal must be regarded as an agreement of a project under 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, where the original consent, having lapsed, ceased to have legal effect on expiry of the period originally set for those works and the latter have not been undertaken;

2. It is for the competent authority to assess whether a decision extending the period originally set for carrying out a project for the construction of a liquefied natural gas regasification terminal, the original consent for which has lapsed, must be preceded by the appropriate assessment of its implications under the first sentence of Article 6(3) of Directive 92/43 and, if so, whether that assessment must relate to the entire project or part thereof, taking into account, inter alia, previous assessments that may have been carried out and changes in the relevant environmental and scientific data as well as changes to the project and the existence of other plans or projects;

The assessment of a project's implications must be carried out where it cannot be ruled out, having regard to the best scientific knowledge in the field, that the plan or project might affect the conservation objectives of the site. A previous assessment of that project, carried out before the original consent for the project was granted, cannot rule out that risk unless it contains full, precise and definitive conclusions capable of removing all reasonable scientific doubt as to the effects of the works, and provided that there are no changes in the relevant environmental and scientific data, no changes to the project and no other plans or projects

(<sup>1</sup>) OJ C 206, 17.6.2019.

**Judgment of the Court (Grand Chamber) of 8 September 2020 (request for a preliminary ruling from the High Court (Ireland) — Ireland) — Recorded Artists Actors Performers Ltd v Phonographic Performance (Ireland) Ltd, Minister for Jobs, Enterprise and Innovation, Ireland, Attorney General**

(Case C-265/19) (<sup>1</sup>)

*(Reference for a preliminary ruling — Intellectual property — Rights related to copyright — Directive 2006/115/EC — Article 8(2) — Use of phonograms in the European Union — Right of the performers to equitable remuneration shared with the phonogram producers — Applicability to nationals of third States — Performances and Phonograms Treaty — Articles 4 and 15 — Reservations notified by third States — Limitations of the right to equitable remuneration that may, on the basis of reciprocity, follow, in the European Union, for nationals of third States from those reservations — Article 17(2) and Article 52 (1) of the Charter of Fundamental Rights of the European Union — Fundamental right to the protection of intellectual property — Requirement that any limitation must be provided for by law, respect the essence of the fundamental right and be proportionate — Division between the European Union and the Member States of competences to set those limitations — Division of competences in relations with third States — Article 3(2) TFEU — Exclusive competence of the European Union)*

(2020/C 378/13)

Language of the case: English

**Referring court**

High Court (Ireland)

**Parties to the main proceedings**

*Plaintiff:* Recorded Artists Actors Performers Ltd

*Defendants:* Phonographic Performance (Ireland) Ltd, Minister for Jobs, Enterprise and Innovation, Ireland, Attorney General

**Operative part of the judgment**

1. Article 8(2) of Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property must, in the light of Article 4(1) and Article 15(1) of the World Intellectual Property Organisation Performances and Phonograms Treaty, be interpreted as precluding a Member State from excluding, when it transposes into its legislation the words 'relevant performers' which are contained in Article 8(2) of the directive and designate the performers entitled to a part of the single equitable remuneration referred to therein, performers who are nationals of States outside the European Economic Area (EEA), with the sole exception of those who are domiciled or resident in the EEA and those whose contribution to the phonogram was made in the EEA.