



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

21 July 2016*

(Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats — Special areas of conservation — Natura 2000 site ‘Scheldt and Durme estuary from the Dutch border to Ghent’ — Development of a port area — Assessment of the implications of a plan or project for a protected site — Occurrence of adverse effects — Prior but not yet completed development of an area of an equivalent type to the part destroyed — Completion subsequent to the assessment — Article 6(3) and (4))

In Joined Cases C-387/15 and C-388/15,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Raad van State (Council of State, Belgium), made by decisions of 13 July 2015, received at the Court on 17 July 2015, in the proceedings

Hilde Orleans,

Rudi Van Buel,

Marina Apers (C-387/15),

and

Denis Malcorps,

Myriam Rijssens,

Guido Van De Walle (C-388/15)

v

Vlaams Gewest,

intervening party:

Gemeentelijk Havenbedrijf Antwerpen,

THE COURT (Seventh Chamber),

composed of C. Toader (Rapporteur), President of the Chamber, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: E. Sharpston,

* Language of the case: Dutch.

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Ms Orleans, Mr Van Buel, Ms Apers, Mr Malcorps, Ms Rijssens and Mr Van De Walle, by I. Rogiers, advocaat,
- the Gemeentelijk Havenbedrijf Antwerpen, by S. Vernailen and J. Geens, advocaten,
- the Belgian Government, by L. Van den Broeck and S. Vanrie, acting as Agents, and by V. Tollenaere, advocaat,
- the European Commission, by E. Manhaeve and C. Hermes, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Article 6(3) and (4) 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, ‘the Habitats Directive’).
- 2 The requests have been made in two sets of proceedings between Ms Hilde Orleans, Mr Rudi Van Buel and Ms Marina Apers in the first case, and Mr Denis Malcorps, Ms Myriam Rijssens and Mr Guido Van De Walle in the second case, and the Vlaams Gewest (Flemish Region, Belgium), concerning challenges to the validity of decisions establishing the Regional Development Implementation Plan for the ‘Demarcation of the maritime port area of Antwerp — Port development on the left bank’ (‘the RDIP’).

Legal context

EU law

- 3 The first and third recitals in the preamble to the Habitats Directive state:

‘... the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community, as stated in Article [191 TFEU];

...

... the main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, this Directive makes a contribution to the general objective of sustainable development; ... the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities.’

4 Article 1 of the Habitats Directive provides:

‘For the purpose of this Directive:

...

- (e) *conservation status of a natural habitat* means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2.

The conservation status of a natural habitat will be taken as “favourable” when:

— its natural range and areas it covers within that range are stable or increasing,

and

— the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future,

...

- (k) *site of Community importance* means a site which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000 referred to in Article 3, and/or contributes significantly to the maintenance of biological diversity within the biogeographic region or regions concerned.

...

- (l) *special area of conservation* means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated;

...’

5 Under Article 2 of that directive:

‘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 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.’

6 Article 3(1) of the Habitats Directive is worded as follows:

‘A coherent European ecological network of special areas of conservation 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.

...’

7 Article 6 of the Habitats Directive states:

‘1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, 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.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.’

Belgian law

- 8 Paragraph 30 of Article 2 of the decreet betreffende het natuurbehoud en het natuurlijk milieu (Decree on nature conservation and the natural environment) of 21 October 1997 (*Belgisch Staatsblad*, 10 January 1998, p. 599), defines ‘significant effect on the integrity of a special area of conservation’ in the following terms:

‘an effect which has measurable and demonstrable implications for the integrity of a special area of conservation, to the extent that there are measurable and demonstrable implications for the conservation status of the species or the habitat(s) for which the special area of conservation concerned has been designated or for the conservation status of the species listed in Annex III to this Decree in so far as that effect may occur in the special area of conservation concerned.’

- 9 Paragraph 38 of Article 2 of that decree describes the ‘integrity of a special area of conservation’ as follows:

‘the totality of biotic and abiotic factors, together with their landscape and ecological features and processes, which are necessary for the conservation of:

- (a) the natural habitats and the habitats of the species for which the special area of conservation concerned has been designated and
- (b) the species listed in Annex III.’

- 10 Article 36b of the decree provides:

‘1. In special areas of conservation, regardless of the intended use of the site concerned, the administrative authority shall, within the limits of its powers, take the necessary conservation measures, which must continue to correspond to the ecological requirements of the habitat types listed in Annex I to this Decree and of the species listed in Annexes II, III and IV to this Decree as well as the migratory birds species not mentioned in Annex IV to this Decree but regularly found in the territory of the Flemish Region. The Flemish Government may lay down the detailed rules concerning the necessary conservation measures and the ecological requirements, and the procedure for setting the conservation objectives.

...

3. An activity requiring a permit or a plan or programme, which, either individually or in combination with one or more existing or proposed activities, plans or programmes, might significantly affect the integrity of a special area of conservation, shall be subject to an appropriate assessment as regards the significant effects on the special area of conservation.

...

The initiator shall be responsible for preparing the appropriate assessment.

...

4. The authority responsible for deciding on a permit application, plan or programme may grant the permit or approve the plan or programme only if the plan or programme or the activity to be performed does not significantly affect the integrity of the special area of conservation concerned. The competent authority shall continue to ensure, through the imposition of conditions, that the integrity of a special area of conservation is not significantly affected.

5. Notwithstanding the provisions of paragraph 4, an activity requiring a permit or a plan or programme which, either individually or in combination with one or more existing or proposed activities, plans or programmes, might significantly affect the integrity of a special area of conservation, may be authorised or approved only:

- (a) after it has been shown that no less damaging alternative solution exists for the integrity of the special area of conservation and
- (b) for imperative reasons of overriding public interest, including those of a social or economic nature. Where the special area of conservation concerned or a part thereof hosts a priority natural habitat type or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

Furthermore, the derogation referred to in the previous paragraph may be authorised only after the following conditions have been satisfied:

- 1° the necessary compensatory measures have been taken and the necessary active conservation measures have been taken or are under way for the purpose of ensuring the overall coherence of the special area(s) of conservation;
- 2° the compensatory measures are of such a nature that, in principle, a habitat of the same value or the natural environment thereof, of at least an equivalent area, is actively developed.

The Flemish Government may lay down the detailed rules for preparing the appropriate assessment of the implications of the activity for the habitats, the habitats of a species and the species in respect of which a special area of conservation is designated, for examining less damaging alternatives and on compensatory measures.

The Flemish Government shall assess whether there are any imperative reasons of overriding public interest, including those of a social or economic nature.

All decisions adopted under the derogation procedure in the present paragraph shall state the grounds on which they are based.'

The disputes in the main proceedings and the question referred for a preliminary ruling

- 11 The disputes in the main proceedings concern the RDIP, which provides for the development of a large part of the port of Antwerp (Belgium) on the left bank of the Scheldt.
- 12 That project affects the Natura 2000 site known as 'Scheldt and Durme estuary from the Dutch border to Ghent' ('the Natura 2000 site in question'), designated as being a special area of conservation, in particular, for the habitat type 'estuary'.
- 13 By decision of 27 April 2012, the Flemish Government provisionally adopted the draft RDIP, which was definitively established by decision of 30 April 2013. The decision of 30 April 2013 formed the subject matter of an action for suspension and for annulment before the Raad van State (Council of State, Belgium). By judgment of 3 December 2013, that court ordered the partial suspension of the implementation of that decision, in particular, in so far as it concerned the commune of Beveren (Belgium).

- 14 Following that partial suspension, the Flemish Government adopted, on 24 October 2014, a corrective decision, which amended the content of the decision of 30 April 2013 by withdrawing and replacing the suspended provisions of that decision. The decision of 24 October 2014 was published in the *Belgisch Staatsblad* on 28 November 2014.
- 15 According to the orders for reference, the RDIP forming the subject matter of the decisions of 27 April 2012 and 24 October 2014 is liable to affect significantly the Natura 2000 site in question, in so far as the works envisaged will entail the destruction of land falling within the scope of certain habitat types present on that site.
- 16 In particular, the Doel section of the commune of Beveren, in which the applicants in the main proceedings live, and the surrounding polders, are to give way to the 'Saefthinge zone', which includes the Saefthinge dock and a tidal dock.
- 17 Actions for suspension and for annulment were brought before the Raad van State (Council of State), which rejected the former in the orders for reference, and which is at present called on to examine the validity of the decisions of 30 April 2013 and 24 October 2014.
- 18 The referring court notes that, in its opinion on the draft decision of 24 October 2014, the legislation department of the Raad van State (Council of State) expressed doubts about the compatibility of the RDIP with the national measures transposing Article 6 of the Habitats Directive, as interpreted by the Court, in particular, in its judgment of 15 May 2014 in *Briels and Others* (C-521/12, EU:C:2014:330).
- 19 However, the Flemish Government took the view that those doubts were unfounded. In the circumstances that gave rise to the judgment of 15 May 2014 in *Briels and Others* (C-521/12, EU:C:2014:330), the new area of natural habitat had to be developed only after the existing area was affected. It is for that reason that it was not certain, at the time the decision concerning the project was decided upon, that that project would not adversely affect the integrity of the special area of conservation.
- 20 In the present cases, according to the Flemish Government, the present RDIP establishes, first, that the development of affected areas will become possible only after the sustainable establishment of habitats and habitats of species in ecological core areas. Second, a decision of that government will have to declare, following an opinion from the Agency for Nature and Forests, that habitats in the nature reserves have in fact been sustainably created, and the application for a planning permit relating to implementing the intended use of the area concerned will also have to include that decision.
- 21 Consequently, according to the Flemish Government, at the time it becomes possible adversely to affect an existing area, the ecological core areas will already contribute to the integrity of the Natura 2000 site in question. The use of ecological core areas in the RDIP is therefore not a compensatory measure, but rather a conservation measure, within the meaning of Article 6(1) of the Habitats Directive.
- 22 The applicants in the main proceedings state, in support of their action for annulment, that a plan or project may be approved only in so far as the appropriate assessment shows that that plan or project does not adversely affect the integrity of the site at issue. In that regard, they state that the examination was carried out not by reference to the existing ecological situation, but by reference to that which would result from the initial measures. They submit that according to the judgment of 15 May 2014 in *Briels and Others* (C-521/12, EU:C:2014:330) in particular, the creation of an 'ecologically resistant' core area must be regarded, at least in part, as a compensatory measure that may not be taken into consideration in the appropriate assessment.

- 23 In the alternative, in the event that the creation of an ‘ecologically resistant’ core area is not a compensatory measure but an autonomous ecological development, the applicants submit, again on the basis of the grounds of the judgment of 15 May 2014 in *Briels and Others* (C-521/12, EU:C:2014:330), that that area ought likewise not be taken into consideration.
- 24 Furthermore, according to the applicants, the technique used — consisting in creating, following the approval of the RDIP, new nature reserves that have to correspond to the characteristics of the Natura 2000 site in question — contravenes the Court’s case-law relating to Article 6(3) of the Habitats Directive, which integrates the precautionary principle. The competent national authorities ought therefore to refuse to approve the proposed plan or project where they are not yet certain that it will not adversely affect the integrity of the site at issue.
- 25 In response to the arguments of the applicants in the main proceedings, the Flemish Region contends that they are wrong in proceeding on the assumption that the RDIP adversely affects the integrity of that site. It is only significant effects that are referred to in Article 6(3) of the Habitats Directive.
- 26 The Flemish Region contends, moreover, that the status of the areas concerned is unfavourable, so that its conservation is not an option and restoration is necessary. In the present case, an ecologically resistant core area would be created prior to carrying out the port development. Therefore, the situation at issue in the main proceedings is not comparable to that which gave rise to the judgment of 15 May 2014 in *Briels and Others* (C-521/12, EU:C:2014:330), since, in the case that gave rise to that judgment, the adverse effect on the existing area of a protected habitat was occurring without an area of the same type having been created beforehand.
- 27 The Gemeentelijk Havenbedrijf Antwerpen (Antwerp Port Authority, Belgium), intervener in the main proceedings, also emphasises the fact that the RDIP does not apply any mitigating or compensatory techniques, but lays down conservation measures. It states that the RDIP provides for the creation of nature reserves that must imperatively be put in place before any possible adverse effect on the existing habitat. As indicated, it submits that it is certain that the new areas of habitats will be fully developed prior to any adverse effect that might occur outside those areas. The staggering [of works] incorporated in the RDIP requirements and the times [set aside for] monitoring and adaptation will make it possible to ascertain at any time the true impact of that plan and to ensure that the interim period will not lead to any ecological regression.
- 28 Taking the view that the outcome of the two cases before it depends on the interpretation of the provisions of the Habitats Directive, the Raad van State (Council of State) decided to stay the proceedings and to refer the following question, which is formulated in identical terms in both cases, to the Court of Justice for a preliminary ruling:

‘The [RDIP] contains planning rules under which, in mandatory terms, the development of areas (more specifically, for seaport- and water-related businesses, for a logistics park, for waterway infrastructure and for traffic and transport infrastructure) that have ecological features (areas hosting a natural habitat type or the habitat of a species for which the special area of conservation concerned was designated) that contribute to the conservation objectives of the special areas of conservation concerned, is possible only after the creation of sustainable habitats in ecological core areas (designated within the Natura 2000 area) and following a decision by the Flemish Government preceded by an opinion from the Flemish administrative body responsible for nature conservation — which decision must form part of the application for a planning permit relating to the development of the aforementioned facilities — that the sustainable creation of the ecological core areas has been successful.

Can those planning rules with their envisaged positive developments of ecological core areas be taken into account in the determination, under Article 6(3) of the Habitats Directive, of potentially significant effects and/or in the making of the appropriate assessment, or can those planning rules be regarded only as ‘compensatory measures’, within the meaning of Article 6(4) of the Habitats Directive, in so far as the conditions laid down in that provision have been satisfied?’

- 29 By decision of the President of the Court of 18 September 2015, Cases C-387/15 and C-388/15 were joined for the purposes of the written and oral procedure and the judgment.

The question referred for a preliminary ruling

- 30 By its question, the referring court asks, in essence, whether the provisions of Article 6 of the Habitats Directive must be interpreted as meaning that measures, contained in a plan or project not directly connected with or necessary to the management of a site of Community importance, providing, prior to the occurrence of adverse effects on a natural habitat type present thereon, for the future creation of an area of that type, but the completion of which will take place subsequently to the assessment of the significance of any adverse effects on the integrity of that site, may be taken into consideration in that assessment, under Article 6(3) of that directive, or whether those measures must be categorised as ‘compensatory measures’, within the meaning of Article 6(4) of that directive.
- 31 As a preliminary point, it must be recalled that Article 6 of the Habitats Directive imposes upon the Member States a series of specific obligations and procedures designed, as is clear from Article 2(2) of that directive, to maintain, or as the case may be restore, at a favourable conservation status natural habitats and, in particular, special areas of conservation (see, to that effect, judgment of 11 April 2013 in *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 36 and the case-law cited).
- 32 The provisions of Article 6 of the Habitats Directive must be construed as a coherent whole in the light of the conservation objectives pursued by that directive. Thus, Article 6(2) and (3) are designed to ensure the same level of protection of natural habitats and habitats of species, whilst Article 6(4) constitutes merely a provision derogating from the second sentence of Article 6(3) (see, to that effect, judgment of 14 January 2016 in *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 52 and the case-law cited).
- 33 Accordingly, Article 6 of the Habitats Directive divides the measures into three categories, namely conservation measures, preventive measures and compensatory measures, provided for in Article 6(1), (2) and (4), respectively.
- 34 In the cases in the main proceedings, the Antwerp Port Authority and the Belgian Government submit that the planning rules contained in the RDIP constitute conservation measures within the meaning of Article 6(1) of the Habitats Directive. The Belgian Government takes the view that such measures might possibly fall within Article 6(2) of that directive.
- 35 In this regard, it should be noted that under Article 1(e) of the Habitats Directive, the conservation status of a natural habitat is considered to be ‘favourable’ when, inter alia, its natural range and the areas it covers within that range are stable or increasing and the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future.
- 36 In that context, the Court has already held that the Habitats Directive has the aim that the Member States take appropriate protective measures to preserve the ecological characteristics of sites which host natural habitat types (judgment of 11 April 2013 in *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 38 and the case-law cited).

- 37 In this instance, the referring court has found that the RDIP will result in the disappearance of a body of 20 hectares of tidal mudflats and tidal marshes of the Natura 2000 site in question.
- 38 It should therefore be observed that, first, the findings of fact made by that court show that the measures at issue in the main proceedings envisage, inter alia, the disappearance of a part of that site. It follows that such measures cannot constitute measures ensuring the conservation of that site.
- 39 Second, as regards preventive measures, the Court has already held that the provisions of Article 6(2) of the Habitats Directive make it possible to satisfy the fundamental objective of preservation and protection of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, and establish a general obligation of protection consisting in avoiding deterioration and disturbance which could have significant effects in the light of the directive's objectives (judgment of 14 January 2010 in *Stadt Papenburg*, C-226/08, EU:C:2010:10, paragraph 49 and the case-law cited).
- 40 Accordingly, a preventive measure complies with Article 6(2) of the Habitats Directive only if it is guaranteed that it will not cause any disturbance likely significantly to affect the objectives of that directive, particularly its conservation objectives (judgment of 14 January 2016 in *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 41 and the case-law cited).
- 41 It follows that Article 6(1) and (2) of the Habitats Directive is not applicable in circumstances such as those in the main proceedings.
- 42 Accordingly, the points of law needed in order to provide an answer to the question referred should be confined to Article 6(3) and (4) of that directive.
- 43 Article 6(3) of the Habitats Directive establishes an assessment procedure intended to ensure, by means of a prior examination, that a plan or project not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site (judgment of 11 April 2013 in *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 28 and the case-law cited).
- 44 That provision thus prescribes two stages. The first, envisaged in the provision's first sentence, requires the Member States to carry out an appropriate assessment of the implications for a protected site of a plan or project when there is a likelihood that the plan or project will have a significant effect on that site (judgment of 11 April 2013 in *Sweetman and Others*, C-258/11, EU:C:2013:220, paragraph 29 and the case-law cited).
- 45 In particular, where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site's conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project (judgment of 15 May 2014 in *Briels and Others*, C-521/12, EU:C:2014:330, paragraph 20 and the case-law cited).
- 46 The second stage, which is envisaged in the second sentence of Article 6(3) of the Habitats Directive and occurs following the aforesaid appropriate assessment, allows such a plan or project to be authorised on condition that it will not adversely affect the integrity of the site concerned, subject to the provisions of Article 6(4) of that directive.
- 47 The Court has thus held that in order for the integrity of a site as a natural habitat not to be adversely affected for the purposes of the second sentence of Article 6(3) of the Habitats Directive the site needs to be preserved at a favourable conservation status; this entails the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural

habitat type whose preservation was the objective justifying the designation of that site in the list of sites of Community importance, in accordance with the directive (judgment of 15 May 2014 in *Briels and Others*, C-521/12, EU:C:2014:330, paragraph 21 and the case-law cited).

- 48 As regards, more specifically, the answer to be given to the question referred, it must, in the first place, be recalled that, in paragraph 29 of the judgment of 15 May 2014 in *Briels and Others* (C-521/12, EU:C:2014:330), the Court held that protective measures provided for in a project which are aimed at compensating for the negative effects of the project on a Natura 2000 site cannot be taken into account in the assessment of the implications of the project provided for in Article 6(3).
- 49 Admittedly, in the cases in the main proceedings, the circumstances are not identical to those in the case that gave rise to the judgment of 15 May 2014 in *Briels and Others* (C-521/12, EU:C:2014:330), since the measures envisaged in the former cases must be completed before the adverse effects, whereas in the latter case, the measures were to be completed subsequently to such effects.
- 50 However, the Court's case-law emphasises the fact that the assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned (judgment of 14 January 2016 in *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 50 and the case-law cited).
- 51 In this connection, the appropriate assessment of the implications of the plan or project for the site concerned that must be carried out pursuant to Article 6(3) implies that all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified in the light of the best scientific knowledge in the field (judgment of 14 January 2016 in *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 49 and the case-law cited).
- 52 Moreover, it must be noted that, as a rule, any positive effects of a future creation of a new habitat, which is aimed at compensating for the loss of area and quality of that same habitat type on a protected site, are highly difficult to forecast with any degree of certainty and, in any event, will be visible only several years into the future (see, to that effect, judgment of 15 May 2014 in *Briels and Others*, C-521/12, EU:C:2014:330, paragraph 32).
- 53 In the second place, Article 6(3) of the Habitats Directive also integrates the precautionary principle and makes it possible to prevent in an effective manner adverse effects on the integrity of protected sites as a result of the plans or projects being considered. A less stringent authorisation criterion than that set out in that provision could not ensure as effectively the fulfilment of the objective of site protection intended under that provision (see, to that effect, judgment of 14 January 2016 in *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 48 and the case-law cited).
- 54 The application of that principle in the context of the implementation of Article 6(3) of the Habitats Directive requires the competent national authority to assess the implications of the project for the site concerned in view of the site's conservation objectives and taking into account the protective measures forming part of that project aimed at avoiding or reducing any direct adverse effects on the site, in order to ensure that it does not adversely affect the integrity of the site (judgment of 15 May 2014 in *Briels and Others*, C-521/12, EU:C:2014:330, paragraph 28).
- 55 In the present cases, first, the adverse effects on the Natura 2000 site in question are certain, since the referring court was able to quantify them. Second, the benefits resulting from the creation of the nature reserves have already been taken into account in the assessment and in demonstrating the absence of significant adverse effects on the site even though the result of the creation of those reserves is uncertain, since it is not complete.

- 56 Consequently, the circumstances of the cases in the main proceedings and those that gave rise to the judgment of 15 May 2014 in *Briels and Others* (C-521/12, EU:C:2014:330) are similar in so far as they involve, at the time of assessing the implications of the plan or project for the site concerned, the identical premise that future benefits will mitigate the significant adverse effects on that site, even though the development measures in question have not been completed.
- 57 In the third place, it should be pointed out, as noted in paragraph 33 above, that the wording of Article 6 of the Habitats Directive contains no reference to any concept of ‘mitigating measure’.
- 58 In this connection, as the Court has already observed, the effectiveness of the protective measures provided for in Article 6 of Directive 92/43 is intended to avoid a situation where competent national authorities allow so-called ‘mitigating’ measures — which are in reality compensatory measures — in order to circumvent the specific procedures provided for in Article 6(3) and authorise projects which adversely affect the integrity of the site concerned (judgment of 15 May 2014 in *Briels and Others*, C-521/12, EU:C:2014:330, paragraph 33).
- 59 It follows that the negative implications of a plan or project not directly connected with or necessary to the management of a special area of conservation and affecting its integrity do not fall within the scope of Article 6(3) of the Habitats Directive.
- 60 As regards Article 6(4) of the Habitats Directive, it must be recalled that, as an exception to the criterion for authorisation laid down in the second sentence of Article 6(3) of the Habitats Directive, Article 6(4) must be interpreted strictly (judgment of 14 January 2016 in *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 73 and the case-law cited) and can be applied only after the implications of a plan or project have been analysed in accordance with Article 6(3) (see, to that effect, judgment of 15 May 2014 in *Briels and Others*, C-521/12, EU:C:2014:330, paragraph 35 and the case-law cited).
- 61 In order to determine the nature of any compensatory measures, the damage to the site concerned must be precisely identified. Knowledge of those implications in the light of the conservation objectives relating to the site in question is a necessary prerequisite for the application of Article 6(4) of the Habitats Directive, since, in the absence of those elements, no condition for the application of that derogating provision can be assessed. The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration (see, to that effect, judgment of 14 January 2016 in *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 57 and the case-law cited).
- 62 Under Article 6(4) of the Habitats Directive, if, in spite of a negative assessment carried out in accordance with the first sentence of Article 6(3) of that directive, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, and there are no alternative solutions, the Member State is to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.
- 63 Therefore, in such a situation, the competent national authorities may grant an authorisation under Article 6(4) of the Habitats Directive only in so far as the conditions set out therein are satisfied (see, to that effect, judgment of 15 May 2014 in *Briels and Others*, C-521/12, EU:C:2014:330, paragraph 37 and the case-law cited).
- 64 In the light of the foregoing considerations, the answer to the question referred is that Article 6(3) of the Habitats Directive must be interpreted as meaning that measures, contained in a plan or project not directly connected with or necessary to the management of a site of Community importance, providing, prior to the occurrence of adverse effects on a natural habitat type present thereon, for the future creation of an area of that type, but the completion of which will take place subsequently to the

assessment of the significance of any adverse effects on the integrity of that site, may not be taken into consideration in that assessment. Such measures can be categorised as ‘compensatory measures’, within the meaning of Article 6(4), only if the conditions laid down therein are satisfied.

Costs

- ⁶⁵ Since these proceedings are, for the parties to the main proceedings, a step in the actions 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 (Seventh Chamber) hereby rules:

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 measures, contained in a plan or project not directly connected with or necessary to the management of a site of Community importance, providing, prior to the occurrence of adverse effects on a natural habitat type present thereon, for the future creation of an area of that type, but the completion of which will take place subsequently to the assessment of the significance of any adverse effects on the integrity of that site, may not be taken into consideration in that assessment. Such measures can be categorised as ‘compensatory measures’, within the meaning of Article 6(4), only if the conditions laid down therein are satisfied.

[Signatures]