



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

5 May 2022 *

(Reference for a preliminary ruling – Environment – Directive 2000/60/EC – Framework for European Union action in the field of water policy – Article 4(1)(a) – Environmental objectives relating to surface water – Obligation of the Member States not to authorise a programme or project that may cause a deterioration of the status of a body of surface water – Concept of ‘deterioration’ of the status of a body of surface water – Article 4(6) and (7) – Derogations from the prohibition of deterioration – Conditions – Programme or project having temporary, short-term impacts on the status of a body of surface water which are without lasting consequences)

In Case C-525/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d’État (Council of State, France), made by decision of 14 October 2020, received at the Court on 19 October 2020, in the proceedings

Association France Nature Environnement

v

Premier ministre,

Ministre de la Transition écologique et solidaire,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, J. Passer (Rapporteur), F. Biltgen, N. Wahl and M.L. Arastey Sahún, Judges,

Advocate General: A. Rantos,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 28 October 2021,

after considering the observations submitted on behalf of:

– Association France Nature Environnement, by B. Hogommat,

* Language of the case: French.

- the French Government, by T. Stéhelin, W. Zemamta and E. Toutain, acting as Agents,
 - the Czech Government, by M. Smolek and J. Vlácil and by L. Dvořáková, acting as Agents,
 - the Netherlands Government, by M.K. Bulterman and A.M. de Ree, acting as Agents,
 - the European Commission, by C. Valero and O. Beynet, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 13 January 2022,
- gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 4 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).
- 2 The request has been made in the context of a dispute between Association France Nature Environnement and the Premier ministre (Prime Minister, France) and Ministre de la Transition écologique et solidaire (Minister for Ecological and Joint Transition, France) concerning the legality of a decree on water management master plans and water management plans.

Legal context

European Union law

- 3 According to recitals 11, 25, 26 and 32 of Directive 2000/60:
 - ‘(11) As set out in Article 174 of the Treaty, the Community policy on the environment is to contribute to pursuit of the objectives of preserving, protecting and improving the quality of the environment, in prudent and rational utilisation of natural resources, and to be based on the precautionary principle and on the principles that preventive action should be taken, environmental damage should, as a priority, be rectified at source and that the polluter should pay.
- ...
- (25) Common definitions of the status of water in terms of quality and, where relevant for the purpose of the environmental protection, quantity should be established. Environmental objectives should be set to ensure that good status of surface water and groundwater is achieved throughout the Community and that deterioration in the status of waters is prevented at Community level.

- (26) Member States should aim to achieve the objective of at least good water status by defining and implementing the necessary measures within integrated programmes of measures, taking into account existing Community requirements. Where good water status already exists, it should be maintained. For groundwater, in addition to the requirements of good status, any significant and sustained upward trend in the concentration of any pollutant should be identified and reversed.

...

- (32) There may be grounds for exemptions from the requirement to prevent further deterioration or to achieve good status under specific conditions, if the failure is the result of unforeseen or exceptional circumstances, in particular floods and droughts, or, for reasons of overriding public interest, of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, provided that all practicable steps are taken to mitigate the adverse impact on the status of the body of water.'

- 4 Article 1 of that directive, entitled 'Purpose', provides:

'The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

- (a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;

...'

- 5 Under Article 2 of that directive, entitled 'Definitions':

'For the purposes of this Directive the following definitions shall apply:

- (1) "Surface water" means inland waters, except groundwater; transitional waters and coastal waters, except in respect of chemical status for which it shall also include territorial waters.

...

- (10) "Body of surface water" means a discrete and significant element of surface water such as a lake, a reservoir, a stream, river or canal, part of a stream, river or canal, a transitional water or a stretch of coastal water.

...

- (17) "Surface water status" is the general expression of the status of a body of surface water, determined by the poorer of its ecological status and its chemical status.

- (18) "Good surface water status" means the status achieved by a surface water body when both its ecological status and its chemical status are at least "good".

...'

6 Article 4 of the same directive, entitled ‘Environmental objectives’, provides, in paragraph 1 and paragraphs 6 to 8 thereof:

‘1. In making operational the programmes of measures specified in the river basin management plans:

(a) for surface waters

- (i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;
- (ii) Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;
- (iii) Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years from the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;

...

6. Temporary deterioration in the status of bodies of water shall not be in breach of the requirements of this Directive if this is the result of circumstances of natural cause or *force majeure* which are exceptional or could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, or the result of circumstances due to accidents which could not reasonably have been foreseen, when all of the following conditions have been met:

- (a) all practicable steps are taken to prevent further deterioration in status and in order not to compromise the achievement of the objectives of this Directive in other bodies of water not affected by those circumstances;
- (b) the conditions under which circumstances that are exceptional or that could not reasonably have been foreseen may be declared, including the adoption of the appropriate indicators, are stated in the river basin management plan;
- (c) the measures to be taken under such exceptional circumstances are included in the programme of measures and will not compromise the recovery of the quality of the body of water once the circumstances are over;
- (d) the effects of the circumstances that are exceptional or that could not reasonably have been foreseen are reviewed annually and, subject to the reasons set out in paragraph 4(a), all practicable measures are taken with the aim of restoring the body of water to its status prior to the effects of those circumstances as soon as reasonably practicable, and

- (e) a summary of the effects of the circumstances and of such measures taken or to be taken in accordance with paragraphs (a) and (d) are included in the next update of the river basin management plan.

7. Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or
- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

8. When applying paragraphs 3, 4, 5, 6 and 7, a Member State shall ensure that the application does not permanently exclude or compromise the achievement of the objectives of this Directive in other bodies of water within the same river basin district and is consistent with the implementation of other Community environmental legislation.'

7 Article 5 of the Directive 2000/60, entitled 'Characteristics of the river basin district, review of the environmental impact of human activity and economic analysis of water use', provides:

'1. Each Member State shall ensure that for each river basin district or for the portion of an international river basin district falling within its territory:

- an analysis of its characteristics,
- a review of the impact of human activity on the status of surface waters and on groundwater, and
- an economic analysis of water use

is undertaken according to the technical specifications set out in Annexes II and III and that it is completed at the latest four years after the date of entry into force of this Directive.

2. The analyses and reviews mentioned under paragraph 1 shall be reviewed, and if necessary updated at the latest 13 years after the date of entry into force of this Directive and every six years thereafter.’

8 Article 8 of that directive, entitled ‘Monitoring of surface water status, groundwater status and protected areas’, states:

‘1. Member States shall ensure the establishment of programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district:

– for surface waters such programmes shall cover:

- (i) the volume and level or rate of flow to the extent relevant for ecological and chemical status and ecological potential, and
- (ii) the ecological and chemical status and ecological potential;

...

2. These programmes shall be operational at the latest six years after the date of entry into force of this Directive unless otherwise specified in the legislation concerned. Such monitoring shall be in accordance with the requirements of Annex V.

...’

9 Under Article 11 of that directive, entitled ‘Programme of measures’:

‘1. Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Such programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a Member State. Where appropriate, a Member State may adopt measures applicable to all river basin districts and/or the portions of international river basin districts falling within its territory.

...

8. The programmes of measures shall be reviewed, and if necessary updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter. Any new or revised measures established under an updated programme shall be made operational within three years of their establishment.’

10 Article 13 of that directive, entitled ‘River basin management plans’, provides:

‘1. Member States shall ensure that a river basin management plan is produced for each river basin district lying entirely within their territory.

...

4. The river basin management plan shall include the information detailed in Annex VII.

...

6. River basin management plans shall be published at the latest nine years after the date of entry into force of this Directive.

7. River basin management plans shall be reviewed and updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter.'

11 Annex V to Directive 2000/60 states, in sections 1.3 and 1.3.4 thereof:

'1.3. Monitoring of ecological status and chemical status for surface waters

The surface water monitoring network shall be established in accordance with the requirements of Article 8. The monitoring network shall be designed so as to provide a coherent and comprehensive overview of ecological and chemical status within each river basin and shall permit classification of water bodies into five classes consistent with the normative definitions in section 1.2. Member States shall provide a map or maps showing the surface water monitoring network in the river basin management plan.

...

1.3.4. Frequency of monitoring

For the surveillance monitoring period, the frequencies for monitoring parameters indicative of physico-chemical quality elements given below should be applied unless greater intervals would be justified on the basis of technical knowledge and expert judgement. For biological or hydromorphological quality elements monitoring shall be carried out at least once during the surveillance monitoring period.

For operational monitoring, the frequency of monitoring required for any parameter shall be determined by Member States so as to provide sufficient data for a reliable assessment of the status of the relevant quality element. As a guideline, monitoring should take place at intervals not exceeding those shown in the table below unless greater intervals would be justified on the basis of technical knowledge and expert judgement.

Frequencies shall be chosen so as to achieve an acceptable level of confidence and precision. Estimates of the confidence and precision attained by the monitoring system used shall be stated in the river basin management plan.

Monitoring frequencies shall be selected which take account of the variability in parameters resulting from both natural and anthropogenic conditions. The times at which monitoring is undertaken shall be selected so as to minimise the impact of seasonal variation on the results, and thus ensure that the results reflect changes in the water body as a result of changes due to anthropogenic pressure. Additional monitoring during different seasons of the same year shall be carried out, where necessary, to achieve this objective.

Quality element	Rivers	Lakes	Transitional	Coastal
Biological				
Phytoplankton	6 months	6 months	6 months	6 months
Other aquatic flora	3 years	3 years	3 years	3 years
Macro invertebrates	3 years	3 years	3 years	3 years
Fish	3 years	3 years	3 years	
Hydromorphological				
Continuity	6 years			
Hydrology	continuous	1 month		
Morphology	6 years	6 years	6 years	6 years
Physico-chemical				
Thermal conditions	3 months	3 months	3 months	3 months
Oxygenation	3 months	3 months	3 months	3 months
Salinity	3 months	3 months	3 months	
Nutrient status	3 months	3 months	3 months	3 months
Acidification status	3 months	3 months		
Other pollutants	3 months	3 months	3 months	3 months
Priority substances	1 month	1 months	1 months	1 month

...

- 12 According to Annex VII of Directive 2000/60, entitled ‘River basin management plans’:

‘A. River basin management plans shall cover the following elements:

...

5. a list of the environmental objectives established under Article 4 for surface waters, groundwaters and protected areas, including in particular identification of instances where use has been made of Article 4(4), (5), (6) and (7), and the associated information required under that Article;

...

French law

- 13 Article L. 212-1 of the Code de l'environnement (Environmental Code) provides:

‘ ...

III. – Each basin or group of basins has one or more water management master plans setting the objectives referred to in paragraph IV of this Article ...

IV. – The quality and quantity objectives set by the water management master plans correspond:

1. For surface water except for artificial bodies of water or those greatly modified by human activity, to a good ecological and chemical state;

2. For artificial bodies of surface water or those greatly modified by human activity, to a good ecological potential and a good chemical state;

...

4. To the prevention of the deterioration of the quality of water;

...

VII. – Modifications to the physical characteristics of the waters or the exercise of new human activities may justify, under the conditions defined by the decree stipulated in XIII, reasoned derogations from the objectives mentioned in indents 1 to 4 of paragraph IV ...

...

XI. – The programmes and administrative decisions in the field of water policy must be compatible or made compatible with the provisions of the water management master plans.

...

XIII. – A Conseil d'État [(Council of State)] decree shall set out the methods of application of the present article.’

- 14 Article R. 212-13 of the Environmental Code, as amended by Decree No 2018-847 of 4 October 2018 on water management master plans and water management plans (JORF of 6 October 2018, text No 11), states:

‘For the application of Article L. 212-1(IV)(4), the prevention of deterioration of water quality entails ensuring that:

– for the ecological status and ecological potential of surface waters, the status of the quality elements classifying that ecological status and potential is not in a lower class than it was in previously;

– for the chemical status of surface water, the concentrations of pollutants do not exceed the environmental quality standards where they did not previously exceed them;

...

To assess the compatibility of the programmes and administrative decisions mentioned in Article L. 212-1(XI) which have the objective of preventing deterioration of water quality mentioned in Article L. 212-1(IV)(4), account shall be taken of impact avoidance and minimisation measures, and no account shall be taken of temporary, short-term impacts which are without long-term consequences.’

15 Under Article R. 212-16 of the Environmental Code:

‘ ...

I(a) – The derogations provided for Article L. 212-1(VII) may be granted only for projects involving modifications to the physical characteristics of the waters or the exercise of new human activities when all the following conditions are met:

1 All practicable steps are taken to mitigate the adverse impact of the project on the status of the bodies of water concerned;

2 The modifications or alterations to the bodies of water serve an overriding public interest or the expected benefits of the project to human health, to the maintenance of human safety or to sustainable development outweigh the benefits to the environment and society linked to the achievement of the objectives set out in Article L. 212-1(IV);

3° The beneficial objectives served by the project cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means, which are a significantly better environmental option.

The Basin Coordinating Prefect shall approve the list of projects which meet or are likely to meet those conditions, as provided for in Article L. 212-1(VII).

The reasons for the modifications or alterations of water bodies under these conditions shall be expressly set out and explained in the water management master plan and water management plans when it is updated.

...’

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

16 By an application and a further statement of case, registered on 1 April 2019 and 22 September 2020 respectively, Association France Nature Environnement brought an action before the Conseil d’État (Council of State) seeking the annulment of Decree No 2018-847 in so far as it provides for the addition to Article R. 212-13 of the Environmental Code of a final paragraph according to which, in order to assess the compatibility of programmes and administrative decisions adopted in the field of water with the objective of preventing the deterioration of water quality, ‘no account shall be taken of the temporary, short-term impacts which are without lasting consequences’, and annulment of the implicit decision resulting from the refusal of the Prime Minister to grant its request for the withdrawal of that provision.

- 17 In support of its action, that association argued that that provision infringes Directive 2000/60, in particular Article 4(1) thereof, which prohibits any deterioration, whether temporary or long-term, of the status of bodies of water.
- 18 The referring court notes that, in its judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433), the Court ruled, in particular, that Article 4(1)(a)(i) to (iii) of Directive 2000/60 must be interpreted as meaning that the Member States are required – subject to the derogations provided for in paragraphs 6 and 7 of that article – to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by that directive.
- 19 Before that court, the Minister for Ecological and Joint Transition contends that the provision at issue in the main proceedings is not covered by the derogation provided for in Article 4(6) of Directive 2000/60, which must result from circumstances due to natural causes or force majeure, but by that referred to in paragraph 7 thereof, which excludes, from the scope of infringements of that directive, deteriorations in the status of a body of water resulting from new sustainable human development activities where the four conditions mentioned in that paragraph are cumulatively met. In that regard, the minister produced Guidance Document No 36 on ‘Derogations from the Environmental Objectives according to Article 4(7)’ prepared, as part of the process known as the ‘Common Implementation Strategy for the Water Framework Directive and the Floods Directive’, by the relevant administrations of the Member States and the European Commission, in the course of December 2017, according to which when such activities have only a temporary, short-term impact on the status of a body of water and are without lasting consequences, they may be authorised without that authorisation being made subject to compliance with the conditions referred to in Article 4(7) of that directive.
- 20 According to the referring court, the answer to the plea raised by the applicant association therefore depends on whether, having regard to the objective of preventing the deterioration of surface water quality, the administrative authority may disregard any impacts of the programmes and projects subject to its authorisation which are temporary, short-term and without lasting consequences and, if so, under what conditions and to what extent.
- 21 In those circumstances, the Conseil d’État (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
 - ‘(1) Must Article 4 of Directive [2000/60] be interpreted as permitting Member States, when authorising a programme or project, not to take into account their temporary, short-term impacts on surface water status which are without lasting consequences?
 - (2) If so, what conditions should those programmes and projects meet for the purposes of Article 4 of that directive and in particular paragraphs 6 and 7 thereof?’

The questions referred for a preliminary ruling

- 22 By its two questions, which should be examined together, the referring court asks, in essence, whether Article 4 of Directive 2000/60 must be interpreted as permitting Member States, when they assess the compatibility of a particular programme or project with the objective of

preventing the deterioration of water quality, not to take into account temporary, short-term impacts on that water quality which are without lasting consequences and, if so, under what conditions.

- 23 Under Article 4(1)(a)(i) of Directive 2000/60, in making operational the programmes of measures specified in the river basin management plans, Member States are to implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 thereof.
- 24 In that regard, the Court has held that Article 4(1)(a) of Directive 2000/60 does not simply set out, in programmatic terms, mere management-planning objectives, but has binding effects, once the ecological status of the body of water concerned has been determined, at each stage of the procedure prescribed by that directive. That provision does not therefore contain solely basic obligations, but also concerns individual projects (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraphs 43 and 47).
- 25 Accordingly, unless a derogation is granted, any deterioration of the status of a body of water must be prevented, irrespective of the longer-term planning provided for by management plans and programmes of measures. The obligation to prevent deterioration of the status of bodies of surface water remains binding at each stage of implementation of Directive 2000/60 and is applicable to every surface water body type and status for which a management plan has or should have been adopted. The Member State concerned is consequently required to refuse authorisation for a project where it is such as to result in deterioration of the status of the body of water concerned or to jeopardise the attainment of good surface water status, unless the view is taken that the project is covered by a derogation under Article 4(7) of the directive (judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 50).
- 26 That implies that, during the procedure for approval of a project, and therefore before the decision is taken, the competent authorities are required, under Article 4 of Directive 2000/60, to check whether that project may have adverse effects on water which would be contrary to the requirements to prevent deterioration and to improve the status of bodies of surface water and groundwater (judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18, EU:C:2020:391, paragraph 76).
- 27 As regards the concept of ‘deterioration of the status’ of a body of surface water, which is not defined in Directive 2000/60, the Court has held that there is deterioration of the status of a body of surface water, within the meaning of Article 4(1)(a)(i) thereof, as soon as the status of at least one of the quality elements within the meaning of Annex V to the directive falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned within the meaning of that annex is already in the lowest class, any deterioration of that element constitutes a ‘deterioration of the status’ of a body of surface water (judgment of 4 May 2016, *Commission v Austria*, C-346/14, EU:C:2016:322, paragraph 59 and the case-law cited).
- 28 In the present case, the national provision at issue in the main proceedings provides that, for the purpose of the check relating to the prevention of deterioration of the status of bodies of surface water, referred to in paragraph 26 of the present judgment, ‘account shall not be taken of temporary, short-term impacts which are without lasting consequences’.

- 29 Thus, it follows from the wording of that provision and from the request for a preliminary ruling, that that provision is intended, *inter alia*, to permit the authorisation of a programme or project which will have only such a temporary impact on the status of a body of surface water, without it being necessary, in that case, to verify that the cumulative conditions laid down in Article 4(7) of Directive 2000/60 and reproduced, in essence, in Article R. 212-16 of the Environmental Code are satisfied.
- 30 In that regard, the intervening Governments and the Commission submit, in essence, that, even where they cause deterioration within the meaning of paragraph 27 of the present judgment, temporary, short-term impacts which are without lasting consequences on the status of a body of surface water do not necessarily constitute deterioration prohibited by Article 4(1)(a)(i) of Directive 2000/60, as is apparent, in particular, from the passages of the guidance document referred to in paragraph 19 of the present judgment. In that connection, they refer, in particular, to the frequency of the reviews of the environmental impact of human activity on the status of surface waters, established in Article 5 of that directive, and to the frequency with which programmes of measures are to be updated, established in Article 11 thereof, as well as to the frequency of monitoring which is indicated, for the purpose of the programmes for the monitoring of surface water status referred to in Article 8 of that directive, in the table in section 1.3.4. of Annex V thereto. In the absence of a prohibited deterioration, there is nothing to give rise to a derogation for the purpose of Article 4(7) of that directive.
- 31 However, such an interpretation, as conveyed in particular by the abovementioned guidance document which, as stated by the Advocate General in point 75 of his Opinion, is not legally binding, does not derive from the provisions of Directive 2000/60 and is, moreover, contradicted by the general scheme of that directive and the objectives it pursues. While the obligation to prevent deterioration of the status of bodies of surface water does not imply that Member States are required, when they assess the compatibility of a particular programme or project with the objective of preventing the deterioration of water quality, to take into account temporary, short-term impacts which are without lasting consequences where it is established that such impacts have, by their nature, little effect on the status of bodies of water and that they are therefore incapable of leading to a deterioration of those bodies, that is not the case where it is established that such impacts may cause deterioration within the meaning of paragraph 27 of the present judgment, even if that deterioration is temporary in nature.
- 32 First of all, it follows from the combined reading of Article 4(1) and (6) of Directive 2000/60 that the obligation to prevent deterioration of the status of bodies of surface water includes the obligation to prevent a temporary deterioration of the status of those bodies of water. The fact that Article 4(6) of that directive provides for a derogation for such deterioration confirms that Article 4(1)(a)(i) thereof requires the Member States also to prevent that deterioration.
- 33 Furthermore, under Article 1(a) of Directive 2000/60, the purpose of that directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater, which prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems. Similarly, recital 32 of that directive refers to the ‘requirement’ to prevent further deterioration of the status of waters.
- 34 Furthermore, the Court has held that Article 4(1) of Directive 2000/60 imposes two distinct, albeit intrinsically linked, objectives. First, in accordance with Article 4(1)(a)(i) of that directive, Member States are to implement the necessary measures to prevent deterioration of the status of

all bodies of surface water (obligation to prevent deterioration). Secondly, pursuant to Article 4(1)(a)(ii) and (iii), Member States are to protect, enhance and restore all bodies of surface water with the aim of achieving ‘good status’ by the end of 2015 at the latest (obligation to enhance) (judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18, EU:C:2020:391, paragraph 68 and the case-law cited).

- 35 Accordingly, the obligation to prevent deterioration of the status of bodies of water was granted autonomous ranking by the EU legislature and is not merely an instrument placed at the service of the obligation to enhance the status of bodies of water (judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 49).
- 36 As regards the obligation to prevent deterioration, the Court has pointed out, moreover, that, unless a derogation is granted, any deterioration of the status of a body of surface water must be prevented (judgment of 4 May 2016, *Commission v Austria*, C-346/14, EU:C:2016:322, paragraph 64 and the case-law cited).
- 37 More particularly, the Court has repeatedly held that, as regards the criteria for concluding that there is a deterioration of the status of a body of water, it is clear from the scheme of Article 4 of Directive 2000/60, in particular Article 4(6) and (7), that a deterioration of the status of a body of water, even if transitory, is authorised only subject to strict conditions and that, consequently, the threshold beyond which breach of the obligation to prevent deterioration of the status of a body of water is found must be as low as possible (see, to that effect, judgments of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 67, and of 24 June 2021, *Commission v Spain (Deterioration of the Doñana natural area)*, C-559/19, EU:C:2021:512, paragraph 48).
- 38 Lastly, it should be recalled in this context that Directive 2000/60 was adopted on the basis of Article 175(1) EC (now Article 192(1) TFEU). In that regard, recital 11 of that directive states that, as set out in Article 174 EC (now Article 191 TFEU), EU policy on the environment is to contribute to pursuit of the objectives of preserving, protecting and improving the quality of the environment, in prudent and rational utilisation of natural resources, and to be based on the precautionary principle and on the principles that preventive action should be taken and that environmental damage should, as a priority, be rectified at source.
- 39 Both the objectives and the principles, on the one hand, and the ultimate objective of Directive 2000/60, on the other, which is to achieve at least ‘good status’ of all EU surface waters and maintain that status, as stated in recital 26 of that directive (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 37), in turn confirm the interpretation that, subject to the application of Article 4(6) and (7) of that directive and without prejudice to paragraph 8 thereof, any deterioration of the status of a body of water, even if temporary, transitory or short-term, must be avoided in the light of the adverse environmental effects or harm to human health which may result therefrom.
- 40 It is true that, in practice, in view of the frequency of monitoring laid down in section 1.3.4 of Annex V to Directive 2000/60, there is a possibility that, in the context of the monitoring of surface water status required by Article 8 thereof, a temporary deterioration of a quality element within the meaning of paragraph 27 of the present judgment will not be detected.

- 41 However, as observed by the Advocate General in point 51 of his Opinion, the frequency of the checks carried out for the purposes of analysis, monitoring and possible detection, which may, depending on the case, range from one month to six years, cannot be regarded as a relevant criterion for assessing a potential deterioration of the status of a body of surface water in the context of the ex ante check referred to in paragraph 26 of the present judgment. To accept an interpretation, according to which a deterioration of the status of a body of surface water of a foreseeable duration of months or years is not contrary to the obligation to prevent deterioration, referred to in Article 4(1) of that directive, and that, therefore a project capable of causing such deterioration may be authorised without the conditions laid down in Article 4(7) thereof being met, that is to say, without any monitoring, would be manifestly incompatible with the findings, in particular, in paragraphs 38 and 39 of the present judgment.
- 42 Conversely, contrary to the French Government's submissions, an interpretation according to which the obligation to prevent a deterioration of the status of a body of surface water also covers a temporary, short-term deterioration which is without lasting consequences does not render incoherent the provisions of Article 4 of Directive 2000/60. Like any other project capable of causing a deterioration of the status of a body of surface water, a project capable of causing a temporary, short-term deterioration which is without lasting consequences can, in principle, be granted an authorisation on the basis of Article 4(7) thereof.
- 43 In that connection, and with regard, inter alia, to projects aimed at protecting or even enhancing the status of bodies of surface water, such as the so-called 'renaturalisation' projects mentioned by the French Government, it appears, in particular, that, a priori, such projects will serve an overriding public interest or that the benefits to the environment and society linked to the achievement of the objectives set out in Article 4(1) of Directive 2000/60 will, in the case of such projects, be outweighed by the benefits to human health, the maintenance of human safety, or the sustainable development resulting from those projects, as required by Article 4(7)(c) thereof.
- 44 As regards the condition, laid down in Article 4(7)(b) of Directive 2000/60, according to which 'the reasons for those modifications or alterations [must be] specifically set out and explained in the river basin management plan required under Article 13 [of that directive] and the objectives are reviewed every six years', it is clear from the case-law of the Court (judgment of 4 May 2016, *Commission v Austria*, C-346/14, EU:C:2016:322, paragraphs 66 and 68 and the case-law cited) and section 5 of part A of Annex VII thereto, that that condition may be regarded as satisfied where the reasons behind the project concerned are set out, at the date of authorisation of that project, only in the decision authorising it.
- 45 In the light of all the foregoing considerations, the answer to the two questions posed is that Article 4 of Directive 2000/60 must be interpreted as requiring Member States, when they assess the compatibility of a particular programme or project with the objective of preventing the deterioration of water quality, to take into account temporary, short-term impacts which are without lasting consequences, unless it is clear that such impacts have, by their nature, little effect on the status of the bodies of water concerned and cannot lead to a 'deterioration' of that status, within the meaning of that provision. Where, as part of the authorisation procedure for a programme or project, the competent national authorities determine that that programme or project could lead to such a deterioration, that programme or project may be authorised only if the conditions set out in Article 4(7) of that directive are met, even if the deterioration is temporary in nature.

Costs

- 46 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 (Second Chamber) hereby rules:

Article 4 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

must be interpreted as requiring Member States, when they assess the compatibility of a particular programme or project with the objective of preventing the deterioration of water quality, to take into account temporary, short-term impacts which are without lasting consequences, unless it is clear that such impacts have, by their nature, little effect on the status of the bodies of water concerned and cannot lead to a ‘deterioration’ of that status, within the meaning of that provision. Where, as part of the authorisation procedure for a programme or project, the competent national authorities determine that that programme or project could lead to such a deterioration, that programme or project may be authorised only if the conditions set out in Article 4(7) of that directive are met, even if the deterioration is temporary in nature.

[Signatures]