



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

15 June 2023*

(Reference for a preliminary ruling – Environment – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Special areas of conservation – Article 6(3) – Screening of a plan or project with a view to determining whether or not it is necessary to carry out an appropriate assessment of the implications of that plan or project for a special area of conservation – Statement of reasons – Measures that may be taken into account – Project for the construction of a dwelling – Procedural autonomy – Principles of equivalence and effectiveness – Procedural rules according to which the subject matter of the dispute is determined by the pleas in law put forward at the point in time at which the action was brought)

In Case C-721/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 4 October 2021, received at the Court on 26 November 2021, in the proceedings

Eco Advocacy CLG

v

An Bord Pleanála,

other parties:

Keegan Land Holdings,

An Taisce – The National Trust for Ireland,

ClientEarth AISBL,

THE COURT (Second Chamber),

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

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 27 October 2022,

* Language of the case: English.

after considering the observations submitted on behalf of:

- Eco Advocacy CLG, by O. Clarke and A. O’Connell, Solicitors, O. Collins, SC, and C. Lenaghan, Barrister-at-Law,
- An Bord Pleanála, by D. Browne, Barrister-at-Law, B. Foley, SC, and by B. Magee and J. Moore, Solicitors,
- An Taisce – The National Trust for Ireland and ClientEarth AISBL, by J. Kenny, Barrister-at-Law, and F. Logue, Solicitor,
- the Irish Government, by M. Browne, A. Joyce and M. Tierney, acting as Agents, A. Carroll, Barrister-at-Law, and by P. Gallagher and B. Kennedy, SC,
- the Italian Government, by G. Palmieri, and by G. Palatiello, avvocato dello Stato,
- the European Commission, by C. Hermes and M. Noll-Ehlers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 January 2023,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation, inter alia, of Article 4(2) to (5) of, and Annex III to, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ 2014 L 124, p. 1) (‘Directive 2011/92’), and of 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 (OJ 1992 L 206, p. 7).
- 2 The request has been made in proceedings between Eco Advocacy CLG and An Bord Pleanála (Planning Board, Ireland) concerning the validity of a planning permission issued by the latter.

Legal context

European Union law

Directive 92/43

- 3 Under Article 6(3) of Directive 92/43:

‘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.’

Directive 2011/92

4 Article 4 of Directive 2011/92 provides, in paragraphs 2 to 5 thereof:

‘2. Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

(a) a case-by-case examination;

or

(b) thresholds or criteria set by the Member State.

Member States may decide to apply both procedures referred to in points (a) and (b).

3. Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.

4. Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to [European] Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

5. The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:

(a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or

(b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.’

5 Article 11 of that directive provides:

‘1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

...

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

...

4. ...

[Judicial review procedures] shall be fair, equitable, timely and not prohibitively expensive.

...’

6 Annex III to the said directive sets out the criteria for determining whether the projects listed in Annex II to the same directive must be subject to an environmental impact assessment.

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

7 The dispute in the main proceedings concerns a proposal for the construction of 320 dwellings, at Charterschool Land (Trim, County Meath, Ireland), in the vicinity of the special area of conservation of the River Boyne and the River Blackwater (IE0002299), designated under Directive 92/43, and the special protection area of the River Boyne and the River Blackwater (IE0004232), designated under Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7).

8 Following various informal contacts, an application for planning permission for that project was submitted on 8 July 2020.

9 The design in question provides, inter alia, that, during the operational phase of the site, surface water run-off will be collected below ground in attenuation storage tanks. They will operate in conjunction with suitable flow control devices which will be fitted to the outlet manhole of each attenuation tank. A class 1 bypass separator will be installed on the inlet pipe to all tanks in order

to treat the surface water and remove any potential contaminants prior to entering the tank and prior to discharge. The water is discharged into a stream, a tributary of the River Boyne, located approximately 100 metres south of the site of the construction project at issue.

- 10 The planning permission application has been the subject of submissions inter alia from An Taisce (the National Trust for Ireland), a non-governmental organisation, and from Meath County Council, which raised a number of doubts as to the potential impact of that project on the areas referred to in paragraph 7 above, in particular on the water quality of the River Boyne, and on the protected species concerned.
- 11 By a decision of 27 October 2020, An Bord Pleanála authorised the said project and issued the requested planning permission, taking the view, on the basis of its inspector report of 6 October 2020, that neither an environmental impact assessment under Directive 2011/92 nor an appropriate assessment under Directive 92/43 was required.
- 12 Hearing a challenge against that decision by the applicant in the main proceedings, the referring court, by a judgment of 27 May 2021 ('the judgment of 27 May 2021'), rejected various objections raised against that challenge, before rejecting the challenge in so far as it was based on domestic law and on certain points of EU law.
- 13 With regard to the pleas on which that court has not yet ruled, it is apparent from the request for a preliminary ruling that, by those pleas, the applicant alleges, inter alia, first, that the decision of 27 October 2020 does not expressly state which documents contain An Bord Pleanála's reasoning for its decision not to require an environmental impact assessment, within the meaning of Directive 2011/92, or an appropriate assessment, within the meaning of Directive 92/43, second, that that board failed to address the doubts expressed by Meath County Council and by An Taisce in their submissions, and, third, that the said board failed to examine expressly, one by one, the headings in Annex III to Directive 2011/92. Moreover, the said court notes that An Bord Pleanála considered the sustainable drainage system at issue to be not a mitigation measure, but a standard feature of dwelling construction projects such as that at issue in the main proceedings.
- 14 However, it is apparent from the judgment of 27 May 2021 that the applicant in the main proceedings raised, for the first time at the hearing before the referring court, the first and third allegations referred to in the preceding paragraph.
- 15 In those circumstances, the High Court (Ireland) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does the general principle of the primacy of EU law and/or of cooperation in good faith have the effect that, either generally or in the specific context of environmental law, where a party brings proceedings challenging the validity of an administrative measure by reference, expressly or impliedly, to a particular instrument of EU law, but does not specify which provisions of the instrument have been infringed, or by reference to which precise interpretation, the domestic court before which proceedings are brought must, or may, examine the complaint, notwithstanding any rule of domestic procedure requiring the specific breaches concerned to be set out in the party's written pleadings?

- (2) If the answer to the first question is “Yes”, [does Article] 4(2), (3), (4) and/or (5) [of] and/or Annex III [to] ... Directive 2011/92 and/or the directive read in the light of the principle of legal certainty and good administration under [Article] 41 of the Charter of Fundamental Rights of the European Union have the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of environmental impact assessment, there should be an express, discrete and/or specific statement as to what documents exactly set out the reasons of the competent authority?
- (3) If the answer to the first question is “Yes”, [does Article] 4(2), (3), (4) and/or (5) [of] and/or Annex III [to] ... Directive 2011/92 and/or the directive read in the light of the principle of legal certainty and good administration under [Article] 41 of the Charter of Fundamental Rights of the European Union have the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of environmental impact assessment, there is an obligation to expressly set out consideration of all specific headings and sub-headings in Annex III [to Directive 2011/92], in so far as those headings and sub-headings are potentially relevant to the development?
- (4) [Must Article] 6(3) of Directive 92/43 ... be interpreted as meaning that, in the application of the principle that in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site, the competent authority of a Member State is entitled [not] to take account of features of the plan or project involving the removal of contaminants that may have the effect of reducing harmful effects on the European site solely on the grounds that those features are not intended as mitigation measures even if they have that effect, and that they would have been incorporated in the design as standard features irrespective of any effect on the European site concerned?
- (5) [Must Article] 6(3) of Directive 92/43 ... be interpreted as meaning that, where the competent authority of a Member State is satisfied notwithstanding the questions or concerns expressed by expert bodies in holding at the screening stage that no appropriate assessment is required, the authority must give an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the works envisaged on the European site concerned, and that expressly and individually removes each of the doubts raised in that regard during the public participation process?
- (6) If the answer to the first question is “Yes”, [must Article] 6(3) of [Directive] 92/43 and/or the directive read in the light of the principle of legal certainty and good administration under [Article] 41 of the Charter of Fundamental Rights of the European Union has the consequence that, where a competent authority decides not to subject a proposal for development consent to the process of appropriate assessment, there should be an express, discrete and/or specific statement as to what documents exactly set out the reason of the competent authority?

Consideration of the questions referred

The first question

- 16 By its first question, the referring court asks, in essence, whether EU law must be interpreted as meaning that, where a party brings an action for annulment of an administrative decision and relies in support of that action, expressly or implicitly, on a specific act of EU law, but does not specify which provisions of that act have been infringed or of which precise interpretation it avails, the national court seised of the said action must or may hear and determine that action notwithstanding the existence of a national procedural rule according to which the application must set out the specific infringements concerned.
- 17 In its request for a preliminary ruling, the referring court does not reproduce the procedural rule in question. However, it follows from that request, from the file before the Court and from the written observations submitted in the present proceedings that what are contemplated in that regard are the Rules of the Superior Courts, according to which, first, an application for judicial review must state precisely each ground, giving particulars where appropriate and identify in respect of each ground the facts or matters relied upon as supporting that ground and, second, an applicant may not rely upon any grounds or any relief sought at the hearing other than those set out in that statement.
- 18 In the case at hand, it follows from the judgment of 27 May 2021 that it is in breach of those procedural rules that the applicant in the main proceedings relies, before the referring court, on the pleas giving rise to the second, third and sixth questions, for which reason that court considers itself compelled to reject those pleas as inadmissible, unless EU law requires it or allows it to examine them.
- 19 Consequently, in order to provide the referring court with a useful answer, it must be considered that, by its first question, that court asks, in essence, whether EU law must be interpreted as precluding a national procedural rule such as that described in paragraph 17 above.
- 20 In that regard, as the Advocate General observed, in essence, in points 29 and 30 of her Opinion, although EU law requires, pursuant to Article 11 of Directive 2011/92 and Article 9 of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1), inter alia that environmental associations be guaranteed access to an effective and fair review procedure, it does not prescribe how and at what point in time the grounds aimed at challenging the lawfulness of relevant decisions, acts or omissions must be raised.
- 21 According to the Court's settled case-law, in the absence of EU rules in the field, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, second, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (judgment of 7 June 2007, *van der Weerd and Others*, C-222/05 to C-225/05, EU:C:2007:318, paragraph 28 and the case-law cited).

- 22 As regards, in the first place, the principle of effectiveness, it is apparent from the case-law that that principle does not, as a rule, require national courts to raise of their own motion an issue concerning the breach of provisions of EU law, where examination of that issue would oblige them to go beyond the ambit of the dispute defined by the parties themselves and rely on facts and circumstances other than those on which the party with an interest in application of those provisions has based its claim (judgment of 26 April 2017, *Farkas*, C-564/15, EU:C:2017:302, paragraph 32 and the case-law cited).
- 23 Moreover, the Court has held that national procedural rules according to which the subject matter of the dispute is determined by the pleas in law put forward at the point in time at which the action was brought are consistent with the principle of effectiveness in so far as they ensure proper conduct of proceedings by, in particular, protecting them from the delays inherent in examination of new pleas (judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 64 and the case-law cited).
- 24 In the present case, the procedural rules at issue, as described in paragraph 17 above, do not appear to be such as to make it impossible or excessively difficult in practice to exercise the rights conferred by Directives 2011/92 and 92/43, at issue in the main proceedings, but, on the contrary, are such as to facilitate the proper conduct of proceedings by requiring that the pleas relied on in the action be raised with a sufficient degree of precision.
- 25 Last, while the Court has held that, in certain areas, and in the area of consumer protection in particular, national courts may be required, of their own motion, to examine compliance with the requirements which flow from EU law in the field (see, to that effect, judgment of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 66 and the case-law cited), such a requirement, which is the consequence of the specific characteristics of those areas and of the EU law provisions concerned, such as the necessity of compensating for the imbalance which exists between the consumer and the seller or supplier, may not, however, be inferred, in the case at hand, from the EU law requirements envisaged by the pleas referred to in paragraph 18 above.
- 26 In the second place, in so far as, according to the information available to the Court, the procedural rules at issue in the main proceedings apply irrespective of whether the alleged infringements concern Irish law or EU law, they do not appear to be contrary to the principle of equivalence, either.
- 27 It is true that respect for the principle of equivalence requires that, where the provisions of national law relating to procedural rules confer on a court the obligation to raise of its own motion a plea based on the infringement of national law, such an obligation must prevail in the same way for the same type of plea based on the infringement of EU law. The same applies if national law confers on the court the power to raise such a plea of its own motion (judgment of 26 April 2017, *Farkas*, C-564/15, EU:C:2017:302, paragraph 35 and the case-law cited).
- 28 However, in the present case, there is nothing in the information available to the Court to indicate that, under Irish law, the referring court has such an obligation or such an option. It follows, on the contrary, from the judgment of 27 May 2021 that, under EU law, any pleas in law of the kind referred to in paragraph 18 above, whether they be based on an infringement of EU law or of national law, not having been formulated with the degree of precision required in the action, must be declared inadmissible by the national courts.

- 29 In the light of the foregoing considerations, the answer to the first question is that EU law must be interpreted as not precluding a national procedural rule according to which, first, an application for judicial review, both under national law and under provisions of EU law such as Article 4(2) to (5) of, and Annex III to, Directive 2011/92 or Article 6(3) of Directive 92/43, must state precisely each ground, giving particulars where appropriate and identify in respect of each ground the facts or matters relied upon as supporting that ground and, second, an applicant may not rely upon any grounds or any relief sought at the hearing other than those set out in that statement.

The second, third and sixth questions

- 30 In view of the answer to the first question, there is no need to answer the second, third and sixth questions.

The fifth question

- 31 By its fifth question, which it is appropriate to examine before the fourth question, the referring court asks, in essence, whether Article 6(3) of Directive 92/43 must be interpreted as meaning that, where a competent authority of a Member State decides that an appropriate assessment is not necessary, it is obliged to state, in an explicit and detailed manner, the reasons on which it bases its decision, so as to dispel all reasonable scientific doubt concerning the effects of the proposed plan or project for the site concerned and to remove expressly and individually each of the doubts raised in that regard during the public participation process.
- 32 Neither Article 6(3) of Directive 92/43 nor any other provision of that directive lays down requirements as to the statement of reasons for decisions taken pursuant to Article 6(3).
- 33 That said, it should be recalled, in the first place, that the right to good administration, in so far as it reflects a general principle of EU law, has requirements that must be met by the Member States when they implement EU law. Among those requirements, the obligation to state reasons for decisions adopted by the national authorities is particularly important, since it puts their addressees in a position to defend their rights under the best possible conditions and decide in full knowledge of the circumstances whether it is worthwhile to bring an action against those decisions. It is also necessary in order to enable the courts to review the legality of those decisions (judgment of 9 November 2017, *LS Customs Services*, C-46/16, EU:C:2017:839, paragraphs 39 and 40 and the case-law cited).
- 34 In the second place, Article 6(3) of Directive 92/43 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 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 117 and the case-law cited).
- 35 Article 6(3) distinguishes two stages in the prescribed assessment procedure.
- 36 The first, the subject of that provision's first sentence, requires 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 the site. The second, the

subject of the second sentence, which arises following the appropriate assessment, allows such a plan or project to be authorised only if it will not adversely affect the integrity of the site concerned, subject to the provisions of Article 6(4) of Directive 92/43 (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 119 and the case-law cited).

- 37 In that regard, first, it follows from the Court's case-law that the requirement of an appropriate assessment of the implications of a plan or project under Article 6(3) of Directive 92/43 is conditional on there being a likelihood or a risk that the plan or project will have a significant effect on the site concerned. Having regard to the precautionary principle, in particular, such a risk is deemed to be present where it cannot be ruled out, having regard to the best scientific knowledge in the field, that the plan or project at issue might affect the conservation objectives for the site. The assessment of that risk must be made in the light, in particular, of the characteristics and specific environmental conditions of the site concerned by such a plan or project (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 134 and the case-law cited).
- 38 Second, it is settled case-law that an appropriate assessment of the implications of a plan or project implies that, before the plan or project is approved, 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. The competent national authorities are to authorise an activity only if they have made certain that it will not adversely affect the integrity of that site. That is so where there is no reasonable scientific doubt as to the absence of such effects (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 120 and the case-law cited).
- 39 In accordance with the case-law, that assessment 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 proposed works on the site concerned (judgments of 25 July 2018, *Grace and Sweetman*, C-164/17, EU:C:2018:593, paragraph 39 and the case-law cited, and of 7 November 2018, *Holohan and Others*, C-461/17, EU:C:2018:883, paragraph 49).
- 40 Such a requirement entails that the competent authority should be in a position, following an appropriate assessment, to state to the requisite legal standard the reasons why it was able, prior to the granting of the authorisation at issue, to achieve certainty, notwithstanding any opinions to the contrary expressed, that there was no reasonable scientific doubt with respect to the environmental impact of the work envisaged on the site concerned (see, to that effect, judgment of 7 November 2018, *Holohan and Others*, C-461/17, EU:C:2018:883, paragraph 51).
- 41 Such requirements to state reasons must also be satisfied where, as in the present case, the competent authority approves a project likely to have an effect on a protected site without requiring an appropriate assessment within the meaning of Article 6(3) of Directive 92/43.
- 42 It follows that, although, where a competent authority decides to authorise such a project without requiring an appropriate assessment within the meaning of that provision, EU law does not require that authority to respond, in the statement of reasons for such a decision, one by one, to all the points of law and of fact raised by the interested parties during the administrative procedure, the said authority must nevertheless state to the requisite standard the reasons why it

was able, prior to the granting of such authorisation, to achieve certainty, notwithstanding any opinions to the contrary and any reasonable doubts expressed therein, that there was no reasonable scientific doubt as to the possibility that that project would significantly affect that site.

- 43 In the light of the foregoing considerations, the answer to the fifth question is that Article 6(3) of Directive 92/43 must be interpreted as meaning that although, where a competent authority decides to authorise a plan or project likely to have a significant effect on a site protected under that directive without requiring an appropriate assessment within the meaning of that provision, that authority is not required to respond, in the statement of reasons for its decision, to all the points of law and of fact raised during the administrative procedure, it must nevertheless state to the requisite standard the reasons why it was able, prior to the granting of such authorisation, to achieve certainty, notwithstanding any opinions to the contrary and any reasonable doubts expressed therein, that there was no reasonable scientific doubt as to the possibility that that project would significantly affect that site.

The fourth question

- 44 By its fourth question, the referring court asks, in essence, whether Article 6(3) of Directive 92/43 must be interpreted as meaning that, in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site protected under that directive, account may be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing the harmful effects of the plan or project on that site, where those features have been incorporated into that plan or project as standard features, irrespective of any effect on the site.
- 45 It is apparent from the request for a preliminary ruling that that court asks that question in particular in the light of the judgment of 12 April 2018, *People Over Wind and Sweetman* (C-323/17, EU:C:2018:244). Specifically, it is asking whether, in the light of that judgment, An Bord Pleanála was entitled to take account of the measures described in paragraph 9 above for the purposes of its decision not to require an appropriate assessment of the implications of the project at issue in the main proceedings on the areas referred to in paragraph 7 above.
- 46 In that regard, it should be noted that, in paragraph 40 of the judgment of 12 April 2018, *People Over Wind and Sweetman* (C-323/17, EU:C:2018:244), the Court held that Article 6(3) of Directive 92/43 must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.
- 47 The Court *inter alia* considered, in the same judgment, that the fact that measures intended to avoid or reduce the harmful effects of a plan or project on the site concerned are taken into consideration when determining whether it is necessary to carry out an appropriate assessment presupposes that it is likely that the site is affected significantly and that, consequently, such an assessment should be carried out, that conclusion being supported by the fact that a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment. Moreover, according to the Court, taking account of such measures at the screening stage would be liable to compromise the practical effect of Directive 92/43 in general, and the assessment stage in particular, as the latter stage would be deprived of its

purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive (see, to that effect, judgment of 12 April 2018, *People Over Wind and Sweetman*, C-323/17, EU:C:2018:244, paragraphs 35 to 37).

- 48 However, such considerations cannot have the effect of precluding the taking into account, during the screening phase of a project, of all the constituent elements of that project inherent in it which have the effect of reducing the harmful effects of the project on the site concerned.
- 49 Thus, where such elements are incorporated into the design of a project not with the aim of reducing the negative effects of that project on the site concerned, but as standard features required for all projects of the same type, those elements cannot, *inter alia*, be regarded as indicative of probable significant harm to that site, contrary to the measures referred to in paragraphs 46 and 47 above.
- 50 Subject to the verifications which it is for the referring court to carry out, it appears that the incorporation of the measures referred to in paragraph 9 above into the design of projects such as that at issue in the main proceedings is required, generally, by planning acts and that, in the case at hand, it was required by the Meath County Development Plan 2013-2019, which, moreover, has been the subject of an environmental assessment under 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).
- 51 Article 6(3) of Directive 92/43, interpreted in the light of the precautionary principle, does not therefore preclude the taking into account of such measures during the screening phase of those projects.
- 52 In the light of the foregoing considerations, the answer to the fourth question is that Article 6(3) of Directive 92/43 must be interpreted as meaning that, in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site, account may be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing the harmful effects of the plan or project on that site, where those features have been incorporated into that plan or project as standard features, inherent in such a plan or project, irrespective of any effect on the site.

Costs

- 53 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:

- 1. EU law must be interpreted as not precluding a national procedural rule according to which, first, an application for judicial review, both under national law and under provisions of EU law such as Article 4(2) to (5) of, and Annex III to, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, or 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 state precisely each ground, giving particulars where appropriate and identify in respect of each ground the facts or matters relied upon as supporting that ground and, second, an applicant may not rely upon any grounds or any relief sought at the hearing other than those set out in that statement.

2. Article 6(3) of Directive 92/43

must be interpreted as meaning that:

although, where a competent authority decides to authorise a plan or project likely to have a significant effect on a site protected under that directive without requiring an appropriate assessment within the meaning of that provision, that authority is not required to respond, in the statement of reasons for its decision, to all the points of law and of fact raised during the administrative procedure, it must nevertheless state to the requisite standard the reasons why it was able, prior to the granting of such authorisation, to achieve certainty, notwithstanding any opinions to the contrary and any reasonable doubts expressed therein, that there was no reasonable scientific doubt as to the possibility that that project would significantly affect that site.

3. Article 6(3) of Directive 92/43

must be interpreted as meaning that:

in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site, account may be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing the harmful effects of the plan or project on that site, where those features have been incorporated into that plan or project as standard features, inherent in such a plan or project, irrespective of any effect on the site.

Prechal

Arastey Sahún

Biltgen

Wahl

Passer

Delivered in open court in Luxembourg on 15 June 2023.

A. Calot Escobar
Registrar

A. Prechal
President of the Chamber