Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

29 July 2019*

(Reference for a preliminary ruling — Environment — Espoo Convention — Aarhus Convention — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 6(3) — Definition of 'project' — Assessment of the effects on the site concerned — Article 6(4) — Meaning of 'imperative reasons of overriding public interest' — Conservation of wild birds — Directive 2009/147/EC — Assessment of the effects of certain public and private projects on the environment — Directive 2011/92/EU — Article 1(2)(a) — Definition of 'project' — Article 2(1) — Article 4(1) — Environmental impact assessment — Article 2(4) — Exemption from assessment — Phasing out of nuclear energy — National legislation providing, first, for restarting industrial production of electricity for a period of almost 10 years at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the date initially set by the national legislature for deactivating and ceasing production at that power station, and second, for deferral, also by 10 years, of the date initially set by the legislature for deactivating and ceasing industrial production of electricity at an active power station — No environmental impact assessment)

In Case C-411/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour constitutionnelle (Constitutional Court, Belgium), made by decision of 22 June 2017, received at the Court on 7 July 2017, in the proceedings

Inter-Environnement Wallonnie ASBL,

Bond Beter Leefmilieu Vlaanderen ASBL

v

Council of Ministers,

intervener:

Electrabel SA,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot (Rapporteur), A. Prechal, M. Vilaras, E. Regan, T. von Danwitz, C. Toader and C. Lycourgos, Presidents of Chambers, A. Rosas, M. Ilešič, J. Malenovský, M. Safjan, D. Šváby and C.G. Fernlund, Judges,

Advocate General: J. Kokott,

Registrar: V. Giacobbo-Peyronnel, Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 10 September 2018,

after considering the observations submitted on behalf of:

– Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL, by J. Sambon, avocat,

– Electrabel SA, by T. Vandenput and M. Pittie, avocats, and by D. Arts and F. Tulkens, advocaten,

– the Belgian Government, by M. Jacobs, C. Pochet and J. Van Holm, acting as Agents, and by G. Block and K. Wauters, avocats, and F. Henry,

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

– the German Government, originally represented by T. Henze and D. Klebs, and later by D. Klebs, acting as Agents,

– the Austrian Government, originally represented by C. Pesendorfer, and later by M. Oswald and G. Hesse, acting as Agents,

– the Portuguese Government, by L. Inez Fernandes, M. Figueiredo, J. Reis Silva and L. Medeiros, acting as Agents,

– the Finnish Government, by J. Heliskoski, acting as Agent,

– the United Kingdom Government, by S. Brandon, J. Kraehling, G. Brown and R. Fadoju, acting as Agents, and by D. Blundell, Barrister,

– the European Commission, by G. Gattinara, C. Zadra, M. Noll-Ehlers, R. Tricot and M. Patakia, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 November 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the Convention on Environmental Impact Assessment in a Transboundary Context, concluded at Espoo (Finland) on 25 February 1991 and approved on behalf of the European Community by Council Decision of 27 June 1997 ('the Espoo Convention'); of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, concluded at Aarhus (Denmark) on 25 June 1998 and approved on behalf of the Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) ('the Aarhus Convention'); 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), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Habitats Directive'); of 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), as amended by Directive 2013/17 ('the Birds Directive'), and of 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; 'the EIA Directive').

2 The request has been made in proceedings between Inter Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL, on the one hand, and the Conseil des ministres (Council of Ministers, Belgium), on the other, in relation to legislation whereby the Kingdom of Belgium, first, provided for the restarting of industrial production of electricity, for a period of almost 10 years, at a nuclear power station that had previously been shut down, and second, for deferral by 10 years of the date initially set for deactivating and ceasing industrial production of electricity at an active nuclear power station.

I. Legal context

A. International law

1. The Espoo Convention

3 Article 1 of the Espoo Convention, headed 'Definitions', provides:

'…

(v) "Proposed activity" means any activity or any major change to an activity subject to a decision of a competent authority in accordance with an applicable national procedure;

…

(ix) "Competent authority" means the national authority or authorities designated by a Party as responsible for performing the tasks covered by this Convention and/or the authority or authorities entrusted by a Party with decision-making powers regarding a proposed activity;

…'

4 Article 2 of the Espoo Convention states:

'1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.

2. Each Party shall take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II.

3. The Party of origin shall ensure that in accordance with the provisions of this Convention an environmental impact assessment is undertaken prior to a decision to authorise or undertake a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact.

…

6. The Party of origin shall provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and shall ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin.

7. Environmental impact assessments as required by this Convention shall, as a minimum requirement, be undertaken at the project level of the proposed activity. To the extent appropriate, the Parties shall endeavour to apply the principles of environmental impact assessment to policies, plans and programmes.

…'

5 Article 3(8) of the Espoo Convention provides that 'the concerned Parties shall ensure that the public of the affected Party, in the areas likely to be affected, be informed of, and be provided with possibilities for making comments or objections on, the proposed activity and for the transmittal of these comments or objections to the competent authority of the Party of origin, either directly to this authority, or, where appropriate, through the Party of origin'.

6 Article 5 of the Espoo Convention states:

'The Party of origin shall, after completion of the environmental impact assessment documentation, without undue delay enter into consultations with the affected Party concerning, inter alia, the potential transboundary impact of the proposed activity and measures to reduce or eliminate its impact. Consultations may relate to:

(a) Possible alternatives to the proposed activity, including the no-action alternative and possible measures to mitigate significant adverse transboundary impact and to monitor the effects of such measures at the expense of the Party of origin;

(b) Other forms of possible mutual assistance in reducing any significant adverse transboundary impact of the proposed activity; and

(c) Any other appropriate matters relating to the proposed activity.

The Parties shall agree, at the commencement of such consultations, on a reasonable time frame for the duration of the consultation period. Any such consultations may be conducted through an appropriate joint body, where one exists.'

7 Article 6(1) of the Espoo Convention states:

'The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the environmental impact assessment, including the environmental impact assessment documentation, as well as the comments thereon received pursuant to Article 3, paragraph 8 and Article 4, paragraph 2, and the outcome of the consultations as referred to in Article 5.'

8 Appendix I to the Espoo Convention, headed 'List of activities', refers, in point 2, to, inter alia, 'nuclear power stations and other nuclear reactors'.

9 The 'Background Note on the application of [the Espoo Convention] to nuclear energy-related activities' (ECE/MP.EIA/2011/5), issued on 2 April 2011 by the United Nations Economic Commission for Europe, mentions, among the major changes that are subject to the requirements of

the Espoo Convention, 'a substantial increase in the production or storage of radioactive waste from a facility (not only NPP [nuclear power plants]), for example by 25 per cent', and 'an extension of the lifetime of a facility'.

10 In the same note, a summary of its content includes the following:

'This note attempts to reflect the diverse and sometimes conflicting views expressed on the application of the [Espoo] Convention to nuclear energy-related activities, particularly nuclear power plants. It is not a guidance note, but rather is intended to encourage debate on key issues during the panel discussion on nuclear energy-related projects to be held during the fifth session of the Meeting of the Parties to the [Espoo Convention].

The note does not necessarily reflect the views of the United Nations Economic Commission for Europe or of the secretariat.'

11 The terms of reference for the drawing up of the 'Good Practice Recommendations on the application of [the Espoo Convention] to nuclear energy-related activities', approved by the Meeting of the Parties to the Espoo Convention, 7th Session (Minsk (Belarus), 13 to 16 June 2017) state that the object of that document is to 'describe existing good practice on environmental impact assessment [of] nuclear energy-related activities'.

12 The same terms of reference state that screening will have to determine whether nuclear activities, as well as major changes to them, fall under the scope of the Espoo Convention. It is also stated that that screening 'includes considerations relating to the extension, renewal and updating of the licence (for example, extension of the operating life), such as a substantial increase in levels of production or in the production/transport/storage of radioactive waste from a facility (not only an NPP) and decommissioning'.

2. The Aarhus Convention

13 Under Article 2(2) of the Aarhus Convention, the definition of 'public authority' in that Convention 'does not include bodies or institutions acting in a … legislative capacity'.

14 Article 6(1) and (4) of the Aarhus Convention, that article being headed 'Public participation in decisions on specific activities', provides:

'1. Each Party:

(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in Annex I;

(b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in Annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions;

…

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.'

15 Annex I to the Aarhus Convention, headed 'List of activities referred to in Article 6, paragraph 1 (a)', mentions, in the fifth indent of point 1, 'nuclear power stations and other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors'.

16 Point 22 of that annex reads as follows:

'Any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in this annex, shall be subject to Article 6, paragraph 1 (a) of this Convention. Any other change or extension of activities shall be subject to Article 6, paragraph 1 (b) of this Convention.'

17 The 'Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters' were approved by the Meeting of the Parties to the Aarhus Convention at the fifth session (Maastricht (Netherlands), 30 June to 1 July 2014). In the part of those recommendations entitled 'Summary', it is stated that those recommendations, though 'neither binding nor exhaustive', nonetheless provide 'helpful guidance on implementing Articles 6, 7 and 8 of [the Aarhus Convention]'.

B. EU law

1. The Habitats Directive

18 Article 2(2) of the Habitats Directive states:

'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.'

19 Article 3(1) of that directive provides:

'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.

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to [Council] Directive 79/409/EEC [of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)].'

20 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.'

21 Article 7 of the Habitats Directive provides:

'Obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive [79/409] in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive [79/409], where the latter date is later.'

2. The Birds Directive

22 Article 2 of the Birds Directive states:

'Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.'

23 Article 3 of that directive provides:

'1. In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.

2. The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:

(a) creation of protected areas;

(b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;

(c) re-establishment of destroyed biotopes;

(d) creation of biotopes.'

24 Article 4 of the Birds Directive states:

‘1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

…

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. …

…

4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.’

25 As is stated in the first paragraph of its Article 18, the Birds Directive repealed Directive 79/409. The second paragraph of Article 18 adds that references to the latter directive are to be construed as references to the Birds Directive and are to be read in accordance with the correlation table in Annex VII to that directive.

3. The EIA Directive

26 Recitals 1, 15 and 18 to 20 of the EIA Directive state:

‘(1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment [(OJ 1985 L 175, p. 40)] has been substantially amended several times. In the interests of clarity and rationality the said Directive should be codified.

…

(15) It is desirable to lay down strengthened provisions concerning environmental impact assessment in a transboundary context to take account of developments at international level. The European Community signed [the Espoo Convention] on 25 February 1991 and ratified it on 24 June 1997.

…

(18) The European Community signed [the Aarhus Convention] on 25 June 1998 and ratified it on 17 February 2005.

(19) Among the objectives of the Aarhus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

(20) Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not so listed which may have a significant effect on the environment.’

27 Article 1(2) and (4) of the EIA Directive provides:

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

(a) “project” means:

– the execution of construction works or of other installations or schemes,

– other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

(b) “developer” means the applicant for authorisation for a private project or the public authority which initiates a project;

(c) “development consent” means the decision of the competent authority or authorities which entitles the developer to proceed with the project;

…

4. This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.’

28 Article 2(1) and (4) of the EIA Directive provides:

‘1. Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.

…

4. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive.

In that event, the Member States shall:

(a) consider whether another form of assessment would be appropriate;

(b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the decision granting exemption and the reasons for granting it;

(c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.

The Commission shall immediately forward the documents received to the other Member States.

The Commission shall report annually to the European Parliament and to the Council on the application of this paragraph.’

29 Article 4(1) and (2) of the EIA Directive provides:

'1. Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

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).'

30 Article 5(3) of the EIA Directive provides that the information to be provided by a developer, for projects which, under Article 4 of that directive, must be subject to an environmental impact assessment, is to at least include: a description of the project comprising information on the site, design and size of the project; a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects; the data required to identify and assess the main effects which the project is likely to have on the environment; an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects; a non-technical summary of the above information.

31 The first subparagraph of Article 7(1) of the EIA Directive states:

'Where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, inter alia:

(a) a description of the project, together with any available information on its possible transboundary impact;

(b) information on the nature of the decision which may be taken.'

32 Annex I to that directive, headed 'Projects referred to in Article 4(1)', mentions, in point 2(b), 'Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors'.

33 The same Annex I refers, in point 24, to 'any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex'.

34 Annex II to the EIA Directive mentions, in point 13(a), 'any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)'.

C. Belgian law

1. The Law of 31 January 2003

35 The loi du 31 janvier 2003 sur la sortie progressive de l'énergie nucléaire à des fins de production industrielle d'électricité (Law of 31 January 2003 on the phasing out of nuclear energy for the purposes of industrial production of electricity (*Moniteur belge* of 28 February 2003, p. 9879; 'the Law of 31 January 2003'), laid down a timetable for phasing out industrial production of electricity by the fission of nuclear fuels in nuclear power stations.

36 Article 2 of that law provides:

'For the purposes of this Law, the following definitions shall apply:

1° "date of entry into service for industrial purposes": date on which the formal agreement between the electricity producer, the builders and the engineering consultancy firm finalises the project phase and initiates the production phase, as follows for the existing power stations:

– Doel 1: 15 February 1975

– Doel 2: 1 December 1975

– Doel 3: 1 October 1982

– Doel 4: 1 July 1985

– Tihange 1: 1 October 1975

– Tihange 2: 1 February 1983

– Tihange 3: 1 September 1985

…'

37 Article 4 of that law, in the initial version, provided:

'§ 1. Nuclear power stations used for the industrial production of electricity by the fission of nuclear fuels shall be deactivated 40 years after the date on which they were brought into service for industrial purposes and may no longer produce electricity thereafter.

'§ 2. All specific operating consents and consents for the industrial production of electricity by the fission of nuclear fuels issued for an unlimited period by the King … shall expire 40 years after the date on which the production facility concerned was brought into service for industrial purposes.'

38 According to Article 9 of that law:

'If the security of the electricity supply is threatened, the King may take the necessary measures by Royal Order, deliberated upon by the Conseil des Ministres (Council of Ministers) following an opinion from the Commission de Régulation de l'Électricité et du Gaz (Commission for the Regulation of Gas and Electricity, Belgium), without prejudice to Articles 3 to 7 of this Law, except in the event of *force majeure*. That opinion shall focus, in particular, on the effect of production price movements on security of supply.'

2. The Law of 28 June 2015

39 The loi du 28 juin 2015 modifiant la loi du 31 janvier 2003 sur la sortie progressive de l'énergie nucléaire à des fins de production industrielle d'électricité afin de garantir la sécurité d'approvisionnement sur le plan énergétique (Law of 28 June 2015 amending the Law of 31 January 2003 on the phasing out of nuclear energy for the purposes of the industrial production of electricity in order to ensure security of the energy supply (*Moniteur belge* of 6 July 2015, p. 44423; 'the Law of 28 June 2015'), entered into force on 6 July 2015.

40 The explanatory memorandum to the Law of 28 June 2015 stresses, in particular, that a number of scientific studies have highlighted the potentially problematic situation in relation to security of supply, and that, given the major uncertainties surrounding restarting the Doel 3 and Tihange 2 stations, and the planned closure of thermal power stations in 2015, combined with the fact that foreign capacity cannot in the short term be integrated into the Belgian grid, the Belgian Government decided, on 18 December 2014, to continue to operate the Doel 1 and Doel 2 power stations for a further 10 years, with the proviso that the operating life of those reactors may not be extended beyond the year 2025. The memorandum specifies that the extension will be implemented in accordance with the requirements in respect of 10-year safety reviews, which cover, inter alia, the measures set out in Electrabel SA's long-term plan for the operation of the power stations known as the 'Long Term Operation Plan' ('LTO plan'), which details the measures to be taken as a result of prolonging industrial electricity production at those two power stations, the adjustments to be made to the action plan on stress tests and the approvals needed from the Agence fédérale de contrôle nucléaire (Federal Nuclear Control Agency, AFCN).

41 Article 4(1) of the Law of 31 January 2003, as amended by the Law of 28 June 2015, states:

'The Doel 1 nuclear power station may resume electricity production upon entry into force of the [Law of 28 June 2015]. It shall be deactivated and may no longer produce electricity as from 15 February 2025. The other nuclear power stations used for the industrial production of electricity by the fission of nuclear fuels shall be deactivated on the following dates and may no longer produce electricity from those dates onward:

…

– Doel 2: 1 December 2025.'

42 Further, the Law of 28 June 2015 inserted a third paragraph into Article 4 of the Law of 31 January 2003, in the following terms:

'By order deliberated in the Council of Ministers, the King shall bring forward the date referred to in § 1 in respect of the Doel 1 and Doel 2 nuclear power stations to 31 March 2016, if the agreement referred to in Article 4/2, § 3, has not been concluded by 30 November 2015, at the latest.'

43 Finally, the Law of 28 June 2015 inserted an Article 4/2, into the Law of 31 January 2003, worded as follows:

'§ 1. The owner of the Doel 1 and Doel 2 nuclear power stations shall pay an annual fee to the Federal State, until 15 February 2025 for Doel 1 and 1 December 2025 for Doel 2, in return for the extension of the period authorised for the industrial production of electricity by the fission of nuclear fuels.

…

§ 3. The Federal State shall conclude an agreement with the owner of the Doel 1 and Doel 2 nuclear power stations, for the purpose of, in particular:

1° specifying the arrangements for calculating the fee referred to in paragraph l;

2° paying compensation to each party in respect of any breach of their contractual obligations.'

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

44 There are seven nuclear reactors in the Kingdom of Belgium: four in the territory of the Flemish Region at Doel (Doel 1, Doel 2, Doel 3 and Doel 4), and three in the territory of the Walloon Region at Tihange (Tihange 1, Tihange 2 and Tihange 3). For the purposes of the present judgment, each reactor will be treated as a separate nuclear power station.

45 The Doel 1 and Doel 2 power stations have been in service since 15 February 1975 and 1 December 1975, respectively. A single consent was issued in respect of both stations by Royal Order in 1974, for an indeterminate period.

46 The Law of 31 January 2003, in the initial version, first of all, prohibited the construction and commissioning of any new nuclear power stations in Belgium and, secondly, established a timetable for the phasing out of nuclear energy, whereby industrial electricity production by all active power stations would end on specified dates. For that purpose, the law provided that specific operating consents and consents for the industrial production of electricity would expire 40 years after the power station concerned was brought into service, but allowed the King to adjust the timetable if security of supply to the country were threatened.

47 However, the Law of 18 December 2013, amending the Law of 31 January 2003, postponed by 10 years the date on which industrial production of electricity by the Tihange 1 power station, brought into service on 1 October 1975, would end. That Law provided that only the consent for industrial production of electricity would expire on the deactivation date provided for in the timetable for the phasing out of nuclear energy and that the operating consent would remain valid until such time as it were 'adjusted'. The law also removed the possibility of the King altering the timetable for phasing out nuclear energy laid down in the Law of 31 January 2003.

48 On 18 December 2014 the Belgian Government decided that the period of electricity production at the Doel 1 and Doel 2 power stations would also be extended by 10 years.

49 On 13 February 2015 Electrabel, the owner-operator of those two power stations, notified the AFCN that the Doel 1 power station would be deactivated and that industrial electricity production at that station would cease on 15 February 2015 at midnight, in accordance with the timetable established by the Law of 31 January 2003. It was specified that the notification would be 'null and void', if and when legislation providing for a 10-year extension in respect of that power station were to enter into force and provided that the conditions relating thereto were accepted by Electrabel.

50 The Law of 28 June 2015 introduced further changes to the timetable laid down by the national legislature for phasing out nuclear energy, deferring the end of industrial electricity production at the Doel 1 and Doel 2 power stations by 10 years. That law also provided that the Doel 1 power station could resume electricity production.

51 Under that law, those two power stations must be deactivated and cease industrial electricity production on 15 February 2025, for the Doel 1 power station, and 1 December 2025, for the Doel 2 power station.

52 The order for reference indicates that members of parliament held a number of hearings in the course of the proceedings for the adoption of that law, and those heard from included the head of the national body on radioactive waste and enriched fissionable materials, who indicated that a 10-year extension of electricity production by those two power stations was likely to produce 350 m^3 of operational waste.

53 In September 2015 the AFCN confirmed the decision it had adopted in August 2015 not to carry out an environmental impact assessment in respect of the changes envisaged by the operator under the LTO plan.

54 An action was brought against that decision before the Conseil d'État (Council of State, Belgium).

55 A Royal Order of 27 September 2015 laid down the conditions for the operation of the Doel 1 and Doel 2 power stations, specifying that Electrabel should implement the LTO plan by the end of 2019 at the latest. An action against that decision was also brought before the Conseil d'État (Council of State).

56 On 30 November 2015 Electrabel and the Belgian State signed an agreement for a 'rejuvenation' investment plan of approximately EUR 700 million to extend the period of operation of the Doel 1 and Doel 2 power stations up until the date provided for in the Law of 28 June 2015 ('the Agreement of 30 November 2015').

57 The Belgian environmental protection associations Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen brought proceedings before the Cour constitutionnelle (Constitutional Court, Belgium) seeking annulment of the Law of 28 June 2015. They argue, in essence, that the adoption of that legislation was in breach of the requirements to carry out a prior assessment, under the Espoo Convention and the Aarhus Convention, as well as the EIA Directive, the Habitats Directive and the Birds Directive.

58 In those circumstances, the Cour constitutionnelle (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 2(1) to (3), (6) and (7), Article 3(8), Article 5 and Article 6(1) of the Espoo Convention, and point 2 of Appendix 1 to [the Epsoo Convention], be interpreted in accordance with the explanations provided in the background note on the application of the [Espoo Convention] to nuclear-energy related activities and the good practice recommendations on the application of the [Espoo Convention] to nuclear-energy related activities?

(2) May Article 1(ix) of the [Espoo Convention], which defines the "competent authority", be interpreted as excluding from the scope of that [Convention] legislative acts such as the [Law of 28 June 2015], having regard in particular to the various assessments and hearings carried out in connection with the adoption of that law?

(3) (a) Must Articles 2 to 6 of the [Espoo Convention] be interpreted as applying prior to the adoption of a legislative act such as the [Law of 28 June 2015], Article 2 of which postpones the date of deactivation and of the end of the industrial production of electricity of the Doel 1 and Doel 2 nuclear power stations?

(b) Does the answer to the question in point (a) differ depending on whether it relates to the Doel 1 or the Doel 2 power station, having regard to the need, in the case of the former power station, to adopt administrative acts implementing the abovementioned Law of 28 June 2015?

(c) May the security of the country's electricity supply constitute an overriding reason of public interest permitting a derogation from the application of Articles 2 to 6 of the [Espoo Convention] and/or suspension of the application of those provisions?

(4) Must Article 2(2) of the [Aarhus Convention] be interpreted as excluding from the scope of that [Convention] legislative acts such as the [Law of 28 June 2015], irrespective of whether the various assessments and hearings carried out in connection with the adoption of that law are taken into account?

(5) (a) Having regard in particular to the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters with respect to multi-stage decision-making, must Articles 2 and 6 of the [Aarhus Convention], in conjunction with Annex I.1 to that [Convention], be interpreted as applying prior to the adoption of a legislative act such as the [Law of 28 June 2015], Article 2 of which postpones the date of deactivation and of the end of the industrial production of electricity of the Doel 1 and Doel 2 nuclear power stations?

(b) Does the answer to the question in point (a) differ depending on whether it relates to the Doel 1 or the Doel 2 power station, having regard to the need, in the case of the former power station, to adopt administrative acts implementing the abovementioned Law of 28 June 2015?

(c) May the security of the country's electricity supply constitute an overriding ground of public interest permitting derogation from the application of Articles 2 and 6 of the [Aarhus Convention] and/or suspension of the application of those provisions?

(6) (a) Must Article 1(2) of the [EIA] Directive, in conjunction with point 13(a) of Annex II to that directive, read, where appropriate, in the light of the Espoo and Aarhus [Conventions], be interpreted as applying to the postponement of the date of deactivation and of the end of the industrial production of electricity of a nuclear power station, entailing, as in this instance, significant investment and security upgrades for the Doel 1 and 2 nuclear power stations?

(b) If the answer to the question in point (a) is in the affirmative, must Articles 2 to 8 and 11 of the [EIA] Directive and Annexes I, II and III to that directive be interpreted as applying prior to the adoption of a legislative act such as the [Law of 28 June 2015], Article 2 of which postpones the date of deactivation and the end of the industrial production of electricity of the Doel 1 and Doel 2 nuclear power stations?

(c) Does the answer to the questions in points (a) and (b) differ depending on whether it relates to the Doel 1 or the Doel 2 power station, having regard to the need, in the case of the former power station, to adopt administrative acts implementing the abovementioned Law of 28 June 2015?

(d) If the answer to the question set out in point (a) is in the affirmative, must Article 2(4) of the [EIA] Directive be interpreted as permitting an exemption for the postponement of the deactivation of a nuclear power station from the application of Articles 2 to 8 and 11 of the [EIA] Directive for overriding reasons in the public interest linked with the security of the country's electricity supply?

(7) Must the concept of "specific act of legislation" within the meaning of Article 1(4) of the [EIA] Directive be interpreted as excluding from the scope of that directive a legislative act such as the [Law of 28 June 2015], having regard to the various assessments and hearings carried out in connection with the adoption of that law, which might attain the objectives of that directive?

(8) (a) Must Article 6 of the [Habitats] Directive, in conjunction with Articles 3 and 4 of the [Birds] Directive, read, where appropriate, in the light of the [EIA] Directive and the Espoo and Aarhus [Conventions], be interpreted as applying to the postponement of the date of deactivation and of the end of the industrial production of electricity of a nuclear power station, entailing, as in this instance, significant investments and security upgrades for the Doel 1 and Doel 2 nuclear power stations?

(b) If the answer to the question in point (a) is in the affirmative, must Article 6(3) of the [Habitats] Directive be interpreted as applying prior to the adoption of a legislative act such as the [Law of 28 June 2015], Article 2 of which postpones the date of deactivation and of the end of the industrial production of electricity of the Doel 1 and Doel 2 nuclear power stations?

(c) Does the answer to the questions in points (a) and (b) differ depending on whether it relates to the Doel 1 or the Doel 2 power station, having regard to the need, in the case of the former power station, to adopt administrative acts implementing the abovementioned Law of 28 June 2015?

(d) If the answer to the question in point (a) is in the affirmative, must Article 6(4) of the [Habitats] Directive be interpreted as allowing grounds linked with the security of the country's electricity supply to be considered an imperative reason of overriding public interest, having regard in particular to the various assessments and hearings carried out in the context of the adoption of the abovementioned Law of 28 June 2015, which might be capable of attaining the objectives of that directive?

(9) If, on the basis of the answers to the preceding questions, the national court should conclude that the Law [of 28 June 2015] fails to fulfil one of the obligations arising under the abovementioned Conventions or directives, and the security of the country's electricity supply cannot constitute an imperative reason of overriding public interest permitting a derogation from those obligations, might the national court maintain the effects of the Law of 28 June 2015 in order to avoid legal uncertainty and to allow the environmental impact assessment and public participation obligations arising under those Conventions or directives to be fulfilled?'

III. Consideration of the questions referred

A. Questions 6 and 7, on the EIA Directive

1. Question 6(a) to (c)

59 By Question 6(a) to (c), which should be examined first, the referring court asks, in essence, whether the first indent of Article 1(2)(a) and Article 2(1) of the EIA Directive must be interpreted as meaning that restarting industrial production of electricity for a period of almost 10 years at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the date initially set by the national legislature for deactivating and ceasing production at that power station, and deferral, also by 10 years, of the date initially set by the legislature for deactivating and ceasing industrial production of electricity at an active power station, where those measures entail work to upgrade the power stations in question, constitute a project, within the meaning of that directive and if so, whether an environmental impact assessment must be carried out in respect of that work and those measures prior to the adoption of those measures by the national legislature. The referring court is also uncertain whether it is relevant that in order to implement the measures contested before that court, subsequent measures must be adopted in respect of one of the two power stations in question, such as the issue of a new specific consent for the production of electricity for industrial purposes.

60 Given that, as stated in recital 1 of the EIA Directive, that directive codifies Directive 85/337, the Court's interpretation of the provisions of the latter directive also applies to identical provisions of the EIA Directive.

(a) The definition of a 'project' for the purposes of the EIA Directive

61 The term 'project' in Article 1(2)(a) of the EIA Directive refers, in the first indent, to the execution of construction works or of other installations or schemes and in the second indent, to other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.

62 It follows from the case-law of the Court that the definition of the term 'project', specifically in the context of the wording of the first indent of Article 1(2)(a) of the EIA Directive, refers to work or interventions involving alterations to the physical aspect of the site (see, to that effect, judgment of 19 April 2012, *Pro-Braine and Others*, C-121/11, EU:C:2012:225, paragraph 31 and the case-law cited).

63 The referring court's question is whether that description applies to the measures at issue in the main proceedings, given that their implementation requires and would therefore inevitably be accompanied by substantial investment and major upgrading work to the two power stations concerned.

64 The evidence available to the Court indicates that the measures at issue in the main proceedings entail major work on the Doel 1 and Doel 2 power stations to upgrade them and ensure that current safety standards are met, as demonstrated by the EUR 700 million investment budget earmarked for those power stations.

65 According to the order for reference, the Agreement of 30 November 2015 makes provision for a 'rejuvenation' investment plan, which describes that work as what is needed in order to extend the operational life of both power stations and includes, in particular, investment approved by the AFCN under the LTO plan for the replacement of facilities due to ageing and the upgrading of other facilities, along with changes to be introduced under the Fourth Periodical Safety Review and stress tests carried out in the wake of the accident in Fukushima (Japan).

66 In particular, the documents provided to the Court indicate that work will focus, in particular, on upgrading the containment structures of the Doel 1 and Doel 2 power stations, renewal of the spent fuel pools, building a new pumping station and adaptation of the base to offer better protection to the power stations against flooding. That work would not be limited to improvements to existing structures, but would also involve the construction of three buildings, two to host ventilation systems and a third as a fire protection structure. Work of that nature is such as to alter the physical aspect of the sites in question, within the meaning of the Court's case-law.

67 Further, although no reference is made to that work in the Law of 28 June 2015, and it features instead in the Agreement of 30 November 2015, it is nonetheless closely linked to the measures adopted by the Belgian legislature.

68 Given the extent of the prolongation of industrial production of electricity provided for by those measures, those measures could not have been adopted unless the Belgian legislature had first been made aware of the nature and the technical and financial feasibility of the upgrading work required and the investment needed to implement it. Indeed, the explanatory memorandum and the *travaux préparatoires* of the Law of 28 June 2015 make specific reference to that upgrading work and that investment.

69 It must also be pointed out that the tangible link between the measures contested before the referring court and the investment referred to in the preceding paragraph is borne out by the fact that the Law of 28 June 2015 inserted a paragraph 3 into Article 4 of the Law of 31 January 2003, which provides that, in the absence of agreement between the owner of the Doel 1 and Doel 2 power stations and the Belgian State by 30 November 2015 at the latest, the King would bring forward the date of deactivation for those power stations to 31 March 2016.

70 The documents provided to the Court also show that the operator of both power stations took on a legal obligation to complete all work by the end of 2019.

71 In the light of those various factors, measures such as those at issue in the main proceedings cannot be artificially dissociated from the work to which they are inextricably linked when assessing, in the present instance, whether they constitute a project within the meaning of the first indent of Article 1(2)(a) of the EIA Directive. It must therefore be held that such measures and the upgrading work inextricably linked thereto together constitute a single project within the meaning of that provision, subject to findings of fact that are for the referring court to make.

72 The fact that the implementation of those measures requires the adoption of subsequent acts in respect of one of the power stations concerned, such as issue of a new specific consent for the production of electricity for industrial purposes, does not change that analysis.

(b) The need for an environmental impact assessment

73 It must, first, be recalled that, before consent is granted in respect of any project within the meaning of Article 1(2)(a) of the EIA Directive, an environmental impact assessment must be conducted on that project pursuant to Article 2(1) of that directive, if it is likely to have significant effects on the environment, by virtue of its nature, size or location.

74 Furthermore, the requirement imposed by Article 2(1) of the EIA Directive is not that all projects likely to have a significant effect on the environment be made subject to the assessment procedure provided for in that directive, but only those mentioned in Article 4 of that directive, which refers to the projects listed in Annexes I and II thereto (see, to that effect, judgment of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others*, C-275/09, EU:C:2011:154, paragraph 25).

75 Finally, Article 2(1) and Article 4(1) of the EIA Directive, read together, indicate that projects covered by Annex I to that directive, present an inherent risk of significant effects on the environment and therefore an environmental impact assessment is indispensable in those cases (see, to that effect, on the obligation to conduct an impact assessment, judgments of 24 November 2011, *Commission* v *Spain*, C-404/09, EU:C:2011:768, paragraph 74, and of 11 February 2015, *Marktgemeinde Straßwalchen and Others*, C-531/13, EU:C:2015:79, paragraph 20).

(1) The application of Annexes I and II to the EIA Directive

76 Point 2(b) of Annex I to the EIA Directive lists nuclear power stations and other nuclear reactors, including their dismantling and decommissioning, among the projects which under Article 4(1) of that directive are subject to an assessment in accordance with Articles 5 to 10 of that directive.

77 Consequently, it must be examined whether measures such as those at issue in the main proceedings, along with the work to which those measures are inextricably linked, may fall within the scope of point 24 of Annex I to the EIA Directive, which refers to 'any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex', or of point 13(a) of Annex II to that directive, which refers to 'any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)'.

78 As regards point 24 of Annex I to the EIA Directive, it is evident from the wording and general scheme of that provision that it applies to any change or extension to a project, which by virtue of, inter alia, its nature or scale, presents risks that are similar, in terms of their effects on the environment, to those posed by the project itself.

79 The measures at issue in the main proceedings, which have the effect of extending, by a significant period of 10 years, the duration of consents to produce electricity for industrial purposes with respect to both power stations in question, which had up until then been limited to 40 years by the Law of 31 January 2003, combined with major renovation works necessary due to the ageing of those power stations and the obligation to bring them into line with safety standards, must be found to be of a scale that is comparable, in terms of the risk of environmental effects, to that when those power stations were first put into service.

80 The Court therefore finds that those measures and that work fall within the scope of point 24 of Annex I to the EIA Directive. Such a project carries an inherent risk of significant effects on the environment, within the meaning of Article 2(1) of that directive, and must therefore be subject to an assessment of its environmental impact under Article 4(1) of that directive.

81 Furthermore, given that the Doel 1 and Doel 2 power stations are located close to the border of the Kingdom of Belgium and the Kingdom of the Netherlands, it is indisputable that the project could also have significant effects on the environment in the latter Member State, within the meaning of Article 7(1) of that directive.

(2) The stage at which the environmental impact assessment must be conducted

82 Article 2(1) of the EIA Directive states that the environmental impact assessment required by that directive must be conducted 'before consent is given' in respect of projects covered by that directive.

83 As the Court has previously pointed out, the requirement that such an assessment should precede consent is justified by the fact that it is necessary, in the decision-making process, for the competent authority to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than to counteract their effects subsequently (judgment of 31 May 2018, *Commission* v *Poland*, C-526/16, not published, EU:C:2018:356, paragraph 75 and the case-law cited).

84 It must also be stated that Article 1(2)(c) of the EIA Directive defines the term 'development consent' as the decision of the competent authority or authorities which entitles the developer to proceed with the project, a matter which should be determined, in principle, by the referring court, in the light of applicable national legislation.

85 Furthermore, where national law provides that the consent procedure is to be carried out in several stages, the environmental impact assessment in respect of a project must, in principle, be carried out as soon as it is possible to identify and assess all potential effects of the project on the environment (judgments of 7 January 2004, *Wells*, C-201/02, EU:C:2004:12, paragraph 52, and of 28 February 2008, *Abraham and Others*, C-2/07, EU:C:2008:133, paragraph 26).

86 Where one of those stages is a principal decision and another an implementing decision which cannot extend beyond the parameters set by the principal decision, the effects which the project may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision. It is only if those effects are not identifiable until the time of the procedure relating to the implementing decision that the assessment should be carried out in the course of the latter procedure (judgments of 7 January 2004, *Wells*, C-201/02, EU:C:2004:12, paragraph 52, and of 28 February 2008, *Abraham and Others*, C-2/07, EU:C:2008:133, paragraph 26).

87 In the present case, although it is for the referring court to determine, in the light of the applicable national legislation, whether the Law of 28 June 2015 constitutes development consent for the purposes of Article 1(2)(c) of the EIA Directive, it must be found that that legislation provides, in a

precise and unconditional manner, first for the restarting of industrial production of electricity, for a period of almost 10 years, at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the date initially set by the national legislature for deactivating and ceasing industrial production of electricity at that power station and, second, for deferral, also by a period of 10 years, of the date initially set by the national legislature at which industrial production of electricity at an active power station would cease.

88 Consequently, although further measures are required to implement those acts, in the context of a complex and regulated process designed, inter alia, to ensure compliance with safety and security standards applicable to industrial production of nuclear electricity, and those measures are subject, in particular, to prior approval by the AFCN, as is apparent from the explanatory memorandum to the Law of 28 June 2015, the fact remains that those measures, once adopted by the national legislature, define essential characteristics of the project and, a priori, should no longer be a matter for debate or reconsideration.

89 As regards the need for the issuing of a new specific consent for the production of electricity for industrial purposes in respect of one of the two power stations concerned in order to proceed with the project, that fact cannot justify postponing the environmental impact assessment until after the adoption of that legislation. Furthermore, the order for reference indicates that the amount of additional radioactive waste (350 m^3) likely to be generated as a result of the measures at issue in the main proceedings had been brought to the attention of the Belgian Parliament prior to its adoption.

90 Moreover, as stated in paragraphs 63 to 71 of the present judgment, the measures at issue in the main proceedings, together with the upgrading work inextricably linked thereto, constitute a project within the meaning of the first indent of Article 1(2)(a) of the EIA Directive.

91 Against that background, it would appear, prima facie, that the Law of 28 June 2015 constitutes development consent, within the meaning of Article 1(2)(c) of that directive, or at the very least, a first step in the process of obtaining consent for the project, as regards its essential characteristics.

92 As regards whether the environmental impact assessment should extend to work inextricably linked to the measures at issue in the main proceedings, that would be the case if both the work and its potential effects on the environment were sufficiently identifiable at that stage of the consent procedure, a finding that it is for the referring court to make. On that point, it is apparent from the order for reference, as previously noted in paragraph 68 of the present judgment, that both the nature and cost of the work entailed by the measures contained in the Law of 28 June 2015 were also known to the Belgian Parliament prior to the adoption of that law.

93 Furthermore, if the project at issue in the main proceedings is likely to have significant effects on the environment in another Member State, it must also be subject to a procedure for transboundary assessment under Article 7 of the EIA Directive.

94 In the light of all the foregoing, the answer to Question 6(a) to (c) is that the first indent of Article 1(2)(a), Article 2(1) and Article 4(1) of the EIA Directive must be interpreted as meaning that the restarting of industrial production of electricity for a period of almost 10 years at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the deadline initially set by the national legislature for deactivating and ceasing production at that power station, and deferral, also by 10 years, of the date initially set by the legislature for deactivating and ceasing industrial production of electricity at an active power station, measures which entail work to upgrade the power stations in question such as to alter the physical aspect of the sites, constitute a ‘project’, within the meaning of that directive, and subject to the findings that are for the referring court to make, an environmental impact assessment must, in principle, be carried out with respect to that project prior to the adoption of those measures. The fact that the implementation of those measures involves subsequent acts, such as the issue, for one of the power stations in question, of a new

specific consent for the production of electricity for industrial purposes, is not decisive in that respect. Work that is inextricably linked to those measures must also be made subject to such an assessment before the adoption of those measures if its nature and potential impact on the environment are sufficiently identifiable at that stage, a finding which it is for the referring court to make.

2. Question 6(d)

95 By Question 6(d), the referring court asks, in essence, whether Article 2(4) of the EIA Directive must be interpreted as permitting an exemption, in respect of a project such as that at issue in the main proceedings, from the requirement to conduct an environmental impact assessment on grounds linked with the security of the electricity supply in the Member State in question.

96 In accordance with the first subparagraph of Article 2(4) of the EIA Directive, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions of that directive, without prejudice, however, to Article 7 of that directive on the obligations incumbent on Member States in whose territory a project that is likely to have significant effects on the environment in another Member State is intended to be carried out.

97 Although it is conceivable that the need to ensure the security of the electricity supply to a Member State could amount to an exceptional case, within the meaning of the first subparagraph of Article 2(4) of the EIA Directive, which would justify exempting a project from environmental impact assessment, it should be noted that points (a) to (c) of the second subparagraph of Article 2(4) of that directive impose specific obligations upon Member States wishing to rely on that exemption.

98 In such a case, the Member States concerned are required to consider whether another form of assessment would be appropriate, make available to the public concerned the information thereby obtained, and inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information, if any, made available to their own nationals.

99 As noted by the Advocate General in point 150 of her Opinion, these obligations are not mere formal requirements, but conditions designed to ensure that the objectives of the EIA Directive are met, as far as possible.

100 In the present case, although it is a matter for the referring court to determine whether the Kingdom of Belgium has met those obligations, it may be noted at this stage that the Commission has stated in its written observations that it has not been informed by that Member State that such an exemption had been granted.

101 Moreover, the exemption of a project under Article 2(4) of the EIA Directive from the requirement to conduct an environmental impact assessment is only permissible if the Member State concerned can show that the alleged risk to security of the electricity supply is reasonably probable and that that project is sufficiently urgent to justify not carrying out such an assessment. Furthermore, as stated in paragraph 96 of the present judgment, the exemption is applicable without prejudice to Article 7 of that directive, on the assessment of projects with transboundary effects.

102 In the light of the foregoing, the answer to Question 6(d) is that Article 2(4) of the EIA Directive must be interpreted as meaning that a Member State may exempt a project such as that at issue in the main proceedings from the requirement to conduct an environmental impact assessment in order to ensure the security of its electricity supply only where that Member State can demonstrate that the risk to the security of that supply is reasonably probable and that the project in question is sufficiently urgent to justify not carrying out the assessment, subject to compliance with the obligations in points (a) to (c) of

the second subparagraph of Article 2(4) of that directive. However, that possibility of granting an exemption is without prejudice to the obligations incumbent on the Member State concerned under Article 7 of that directive.

3. Question 7

103 By Question 7, the referring court seeks, in essence, to ascertain whether Article 1(4) of the EIA Directive must be interpreted as meaning that national legislation such as that at issue in the main proceedings constitutes a specific act of national legislation, within the meaning of that provision, which is excluded, by virtue of that provision, from the scope of that directive.

104 In that regard, Article 1(4) of the EIA Directive, which reproduced the content of Article 1(5) of Directive 85/337, requires two conditions to be met if a project is to be excluded from the scope of the EIA Directive.

105 The first condition is that the project must be adopted by a specific act of legislation that has the same characteristics as a development consent. In particular, that act must grant the developer the right to proceed with the project (see, to that effect, judgment of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 32 and the case-law cited).

106 In addition, the project must be adopted in detail, that is to say, in a sufficiently precise and definitive manner, so that the legislative act adopting the project must include, like a development consent, following their consideration by the legislature, all the elements of the project relevant to the environmental impact assessment. The legislative act must demonstrate that the objectives of the EIA Directive have been achieved as regards the project in question (see, to that effect, judgment of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 33 and the case-law cited).

107 It follows that the details of a project cannot be considered to have been adopted by a legislative act, for the purposes of Article 1(4) of the EIA Directive, if that act does not include the elements necessary to assess the environmental impact of the project or if the adoption of other measures is needed in order for the developer to be entitled to proceed with the project (see, to that effect, judgment of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 34 and the case-law cited).

108 The second condition laid down in Article 1(4) of the EIA Directive is that the objectives of that directive, including that of making available information, are achieved through the legislative process. It follows from Article 2(1) of that directive that the essential objective of the directive is to ensure that projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are subject to an assessment with regard to their environmental effects before consent is given (see, to that effect, judgment of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 35 and the case-law cited).

109 Consequently, the legislature must have sufficient information at its disposal at the time when the project concerned is adopted. In that regard, it follows from Article 5(3) of the EIA Directive that the minimum information to be supplied by the developer is to include a description of the project comprising information on the site, design and size of the project, a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects, the data required to identify and assess the main effects which the project is likely to have on the environment, an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects, and a non-technical summary of the above information (see, to that effect, judgments of 18 October 2011, *Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, paragraph 43, and of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 37).

110 In the present case, it is for the referring court to determine whether those conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates (see, to that effect, judgments of 18 October 2011, *Boxus and Others*, C-128/09 to C-131/09, C-134/09 and C-135/09, EU:C:2011:667, paragraph 47, and of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 41).

111 However, having regard to the information brought to the attention of the Court, that does not appear to be the case.

112 While the referring court mentions that studies and hearings were conducted prior to the adoption of the Law of 28 June 2015, the documents before the Court do not indicate that the national legislature had the information referred to in paragraph 109 of the present judgment on the measures at issue in the main proceedings or the work inextricably linked thereto, which have, together, been held to comprise a single project, in the answer to Question 6(a) to (c).

113 Furthermore, as is apparent from, in particular, paragraph 91 of the present judgment, a law such as that of 28 June 2015 could merely be the first step in the process of granting development consent in respect of the project at issue in the main proceedings, as regards the work that project entails, with the result that it also fails to satisfy one of the prerequisites of the project concerned being excluded from the scope of the EIA Directive under Article 1(4) thereof, namely that it was adopted in detail, by a specific legislative act.

114 In the light of the foregoing, the answer to Question 7 is that Article 1(4) of the EIA Directive must be interpreted as meaning that national legislation such as that at issue in the main proceedings is not a specific act of national legislation, within the meaning of that provision, that is excluded, by virtue of that provision, from the scope of that directive.

B. Question 8, on the Habitats Directive

1. Question 8(a) to (c)

115 By Question 8(a) to (c), the referring court asks, in essence, whether Article 6(3) of the Habitats Directive, read together with Articles 3 and 4 of the Birds Directive and, where relevant, in the light of the EIA Directive, must be interpreted as meaning that the measures at issue in the main proceedings constitute, given the upgrading work and work to ensure compliance with safety standards, a plan or project subject to assessment, under Article 6(3), and, if so, whether that assessment should be conducted before they are adopted by the legislature. The referring court also asks whether a distinction should be drawn dependent on whether the measures relate to one or other of the two power stations at issue in the main proceedings, having regard to the need to adopt subsequent administrative acts in respect of one power station, such as issue of a new specific consent for the production of electricity for industrial purposes.

(a) Preliminary observations

116 Article 6 of the Habitats Directive imposes upon the Member States a set 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 favourable conservation status, natural habitats and species of wild fauna and flora of Community interest, in order to attain the more general aim pursued by that directive, which is to ensure a high level of environmental protection for the sites protected pursuant to it (see, to that effect, judgment of 17 April 2018, *Commission* v *Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 106 and the case-law cited).

117 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 (judgments of 17 April 2018, *Commission* v *Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 108 and the case-law cited, and of 25 July 2018, *Grace and Sweetman*, C-164/17, EU:C:2018:593, paragraph 38).

118 Article 6(3) distinguishes two stages in the prescribed assessment procedure.

119 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 the directive (judgment of 25 July 2018, *Grace and Sweetman*, C-164/17, EU:C:2018:593, paragraph 32).

120 Furthermore, 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 7 November 2018, *Holohan and Others*, C-461/17, EU:C:2018:883, paragraph 33 and the case-law cited).

121 Furthermore, with regard to areas classified as special protection areas, the obligations arising from Article 6(3) of the Habitats Directive replace, in accordance with Article 7 of that directive, any obligations arising under the first sentence of Article 4(4) of the Birds Directive, as from the date of classification under the Birds Directive, where that date is later than the date of implementation of the Habitats Directive (judgments of 17 April 2018, *Commission* v *Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 109 and the case-law cited, and of 25 July 2018, *Grace and Sweetman*, C-164/17, EU:C:2018:593, paragraph 27).

(b) The definition of a 'project', for the purposes of the Habitats Directive

122 As the Habitats Directive does not define the term 'project', for the purposes of Article 6(3), account should be taken of the definition of 'project' in Article 1(2)(a) of the EIA Directive (see, to that effect, judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, paragraphs 23, 24 and 26; of 14 January 2010, *Stadt Papenburg*, C-226/08, EU:C:2010:10, paragraph 38; of 17 July 2014, *Commission* v *Greece* C-600/12, not published, EU:C:2014:2086, paragraph 75; and of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraph 60).

123 The Court has previously held that if an activity is covered by the EIA Directive, it must, a fortiori, be covered by the Habitats Directive (judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraph 65).

124 It follows that if an activity is regarded as a 'project' within the meaning of the EIA Directive, it may constitute a 'project' within the meaning of the Habitats Directive (judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraph 66).

125 Given the answer to Question 6(a) to (c), it must be held that measures such as those at issue in the main proceedings, together with the work inextricably linked thereto, constitute a project, for the purposes of the Habitats Directive.

126 Further, it is not disputed that the project at issue in the main proceedings is neither linked to nor necessary for the management of a protected site.

127 Last, the fact that a recurrent activity has been authorised under national law before the entry into force of the Habitats Directive does not constitute, in itself, an obstacle to such an activity being regarded, at the time of each subsequent intervention, as a distinct project for the purposes of that directive, at the risk of permanently excluding that activity from any prior assessment of its implications for that site (see, to that effect, judgments of 14 January 2010, *Stadt Papenburg*, C-226/08, EU:C:2010:10, paragraph 41, and of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraph 77).

128 To that end, it must be determined whether, having regard in particular to the regularity or nature of some activities or the conditions under which they are carried out, they must be regarded as constituting a single operation, and can be considered to be one and the same project for the purposes of Article 6(3) of the Habitats Directive (see, to that effect, judgments of 14 January 2010, *Stadt Papenburg*, C-226/08, EU:C:2010:10, paragraph 47, and of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraph 78).

129 That would not be the case where there is no continuity in the activity, inter alia when the location and conditions in which it is carried out are not the same (judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraph 83).

130 In the present case, while industrial electricity production by the Doel 1 and Doel 2 power stations was authorised before the entry into force of the Habitats Directive for an unlimited period, the Law of 31 January 2003 limited that period of activity to 40 years, up until 15 February 2015 for the Doel 1 power station and 1 December 2015 for the Doel 2 power station. As noted by the referring court, that legislative choice was modified by the measures at issue in the main proceedings, with the result, in particular, that one of those two power stations had to be restarted.

131 It is also undisputed that upon implementation of those measures, industrial production at those two power stations will not be carried out under operational conditions identical to those initially authorised, if only due to scientific developments and new safety standards, the latter of which justify, as stated in paragraphs 64 to 66 of the present judgment, proceeding with major upgrading work. Furthermore, the order for reference indicates that a production consent was granted to the operator of those power stations after the Habitats Directive had entered into force, following an increase in their capacity.

132 It follows that the measures at issue in the main proceedings, together with the work inextricably linked thereto, constitute a distinct project, subject to the rules of assessment provided for in Article 6(3) of the Habitats Directive.

133 The fact that the national authority that is competent to approve the plan or project in question is the legislature has no bearing in this matter. In contrast to the provisions of the EIA Directive, no derogation is possible from the assessment under Article 6(3) of the Habitats Directive on the grounds that the competent authority to grant consent to the project in question is the legislature (see, to that effect, judgment of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 69).

(c) The risk of a protected site being significantly affected

134 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 the Habitats Directive 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 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 (see, to that effect, judgment of 17 April 2018, *Commission* v *Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraphs 111 and 112 and the case-law cited).

135 In the present case, as apparent from extracts of parliamentary proceedings on the Law of 28 June 2015, reproduced in the order for reference, and as noted by the Advocate General in points 24 to 26 of her Opinion, the power stations that are the subject of the measures at issue in the main proceedings are located on the banks of the Scheldt, close to protected areas under the Habitats Directive and the Birds Directive, designated as such specifically for protected species of fish and cyclostomata in that river.

136 In that regard, the fact that a project is located outside a Natura 2000 area is not sufficient to exempt it from the requirements under Article 6(3) of the Habitats Directive (see, to that effect, judgments of 10 January 2006, *Commission* v *Germany*, C-98/03, EU:C:2006:3, paragraphs 44 and 51, and of 26 April 2017, *Commission* v *Germany*, C-142/16, EU:C:2017:301, paragraph 29).

137 In the present case, it is abundantly clear, given the scale of the work involved and the length of the extension granted for industrial production of electricity at the two power stations, that the project at issue in the main proceedings is likely to undermine the conservation objectives for nearby protected sites, if only because of how those power stations operate, in particular, by collecting large volumes of water from the nearby river for use in the cooling system, which are then discharged into that river, but also the risk of a serious accident (see, by analogy, judgments of 10 January 2006, *Commission* v *Germany*, C-98/03, EU:C:2006:3, paragraph 44, and of 26 April 2017, *Commission* v *Germany*, C-142/16, EU:C:2017:301, paragraph 30), there being no need to distinguish the two power stations.

138 Accordingly, a project such as that at issue in the main proceedings is likely to have a significant effect on protected sites within the meaning of Article 6(3) of the Habitats Directive.

139 It follows from the foregoing that Article 6(3) of the Habitats Directive must be interpreted as meaning that measures such as those at issue in the main proceedings, together with the work inextricably linked thereto, constitute a project in respect of which an appropriate assessment of its effects on the site concerned must be conducted under that directive, there being no need to distinguish whether those measures relate to one or other of the two power stations in question.

(d) When the assessment should take place

140 The second sentence of Article 6(3) of the Habitats Directive specifies that following an appropriate assessment, the competent national authorities are to 'agree' to the 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.

141 It follows that the assessment must be conducted before agreement is given.

142 Furthermore, while the Habitats Directive does not define the conditions governing how the authorities 'agree' to a given project under Article 6(3) of that directive, the definition of 'development consent' in Article 1(2)(c) of the EIA Directive is relevant in defining that term.

143 Accordingly, by analogy with the Court's findings on the EIA Directive, if national law provides for a number of steps in the consent procedure, the assessment under Article 6(3) of the Habitats Directive, should, in principle, be carried out as soon as the effects which the project in question is likely to have on a protected site are sufficiently identifiable.

144 Consequently, for reasons similar to those set out in paragraphs 87 to 91 of the present judgment, national legislation such as the Law of 28 June 2015 has the characteristics of an agreement given by the authorities in respect of the project concerned, for the purposes of Article 6(3) of the Habitats Directive, and the fact that subsequent acts must be adopted in order to proceed with that project, specifically a new specific consent for production of electricity for industrial purposes at one of the two power stations in question, does not justify the failure to conduct an appropriate assessment of those effects before the adoption of that legislation. Moreover, as regards the work that is inextricably linked to the measures at issue in the main proceedings, if its nature and potential effects on the protected sites are sufficiently identifiable, a finding which it is for the national court to make, an assessment must be conducted of that work at that stage of the consent procedure.

145 In the light of the foregoing, the answer to Question 8(a) to (c) is that Article 6(3) of the Habitats Directive must be interpreted as meaning that measures such as those at issue in the main proceedings, together with the work of upgrading and of ensuring compliance with current safety standards, constitute a project in respect of which an appropriate assessment of its effects on the protected sites concerned should be conducted. Such an assessment should be conducted in respect of those measures before they are adopted by the legislature. The fact that the implementation of those measures involves subsequent acts, such as the issue, for one of the power stations in question, of a new specific consent for the production of electricity for industrial purposes, is not decisive in that respect. Work that is inextricably linked to those measures must also be subject to such an assessment before the adoption of those measures if its nature and potential impact on the protected sites are sufficiently identifiable at that stage, a finding which it is for the referring court to make.

2. Question 8(d)

146 By Question 8(d), the referring court asks, in essence, whether Article 6(4) of the Habitats Directive must be interpreted as meaning that the objective of ensuring the security of a Member State's electricity supply constitutes an imperative reason of overriding public interest, within the meaning of that provision.

147 As a provision derogating from the criterion for authorisation laid down in the second sentence of Article 6(3) of the Habitats Directive, Article 6(4) thereof must be interpreted strictly and can be applied only after the implications of a plan or project have been analysed in accordance with Article 6(3) (judgment of 17 April 2018, *Commission* v *Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 189 and the case-law cited).

148 Under the first subparagraph of Article 6(4) of the Habitats Directive, if, in spite of the findings of an assessment carried out in accordance with the first sentence of Article 6(3) of that directive being negative, 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 is to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected (see, to that effect, judgments of 20 September 2007, *Commission* v *Italy*, C-304/05, EU:C:2007:532, paragraph 81, and of 17 April 2018, *Commission* v *Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 190).

149 Moreover, where the site concerned hosts a priority natural habitat type or a priority species, the second subparagraph of Article 6(4) of the Habitats Directive provides that the only considerations which may be raised are those relating to human health or public safety, or beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

150 Knowledge of the effects of a plan or project, in the light of the conservation objectives relating to the site at issue, is thus a necessary prerequisite for the application of Article 6(4) of the Habitats Directive, since, in the absence thereof, no condition for 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. In addition, in order to determine the nature of any compensatory measures, the damage to the site concerned must be precisely identified (judgments of 20 September 2007, *Commission* v *Italy*, C-304/05, EU:C:2007:532, paragraph 83, and of 17 April 2018, *Commission* v *Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 191 and the case-law cited).

151 In the present case, it is apparent from the order for reference that Question 8(d) is based on the premiss that the studies and hearings conducted in the course of the procedure for the adoption of the measures at issue in the main proceedings made it possible to conduct an assessment that meets the requirements laid down in Article 6(3) of the Habitats Directive.

152 However, aside from the fact that it is not apparent from the documents before the Court that those studies and hearings made it possible to conduct an environmental impact assessment under the EIA Directive, the referring court would have to assess, in any event, whether such an assessment may be deemed to satisfy also the requirements of the Habitats Directive (see, by analogy, judgments of 22 September 2011, *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 62, and of 10 September 2015, *Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 58).

153 Whatever the situation, it is necessary in particular, as noted in paragraph 120 of the present judgment, that all the aspects of the plan or project which can, either by themselves or in combination with other plans or projects, affect the conservation objectives of the protected sites concerned should be identified, in the light of the best scientific knowledge in the field (see, to that effect, judgments of 17 April 2018, *Commission* v *Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 113 and the case-law cited, and of 25 July 2018, *Grace and Sweetman*, C-164/17, EU:C:2018:593, paragraph 40).

154 The referring court should also verify, if necessary, whether negative findings emerged from the studies and hearings conducted in the context of the procedure for the adoption of the measures at issue in the main proceedings, because, if not, Article 6(4) of the Habitats Directive would not be applicable.

155 As regards the question whether the objective of ensuring the security of a Member State's electricity supply constitutes an imperative reason of overriding public interest within the meaning of the first subparagraph of Article 6(4) of the Habitats Directive, it should be noted that an interest capable of justifying proceeding with a plan or project must be both 'public' and 'overriding', which means that it must be of such an importance that it can be weighed against that directive's objective of the conservation of natural habitats and wild fauna, including birds, and flora (judgment of 11 September 2012, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, C-43/10, EU:C:2012:560, paragraph 121).

156 In that regard, it may be noted that Article 194(1)(b) TFEU identifies security of energy supply in the European Union as one of the fundamental objectives of EU policy in the field of energy (judgment of 7 September 2016, *ANODE*, C-121/15, EU:C:2016:637, paragraph 48).

157 Furthermore, and in any event, the objective of ensuring the security of electricity supply in a Member State at all times fulfils the conditions specified in paragraph 155 of the present judgment.

158 However, if a protected site likely to be affected by a project hosts a priority natural habitat type or species, within the meaning of the Habitats Directive, in circumstances such as those in the main proceedings, the only ground capable of constituting a public security ground for the purposes of the second subparagraph of Article 6(4) of that directive that would justify proceeding with the project is the need to nullify a genuine and serious threat of rupture of that Member State's electricity supply.

159 It follows that the answer to Question 8(d) is that the first subparagraph of Article 6(4) of the Habitats Directive must be interpreted as meaning that the objective of ensuring security of the electricity supply in a Member State at all times constitutes an imperative reason of overriding public interest, within the meaning of that provision. The second subparagraph of Article 6(4) of that directive must be interpreted as meaning that if a protected site likely to be affected by a project hosts a priority natural habitat type or priority species, a finding which it is for the referring court to make, only a need to nullify a genuine and serious threat of rupture of that Member State's electricity supply constitutes, in circumstances such as those in the main proceedings, a public security ground, within the meaning of that provision.

C. Questions 1 to 3, on the Espoo Convention

160 By Questions 1 to 3, the referring court asks, in essence, whether the Espoo Convention must be interpreted as meaning that the environmental impact assessment provided for by that Convention must be conducted in respect of measures such as those at issue in the main proceedings.

161 However, as noted in paragraph 93 of the present judgment, measures such as those at issue in the main proceedings form part of a project that is likely to have significant effects on the environment in another Member State, and that project must undergo an assessment procedure of its transboundary effects in accordance with Article 7 of the EIA Directive, which takes account of the requirements of the Espoo Convention, as indicated by recital 15 of the EIA Directive.

162 As a result, there is no need to answer Questions 1 to 3, in relation to the Espoo Convention.

D. Questions 4 and 5, on the Aarhus Convention

163 By its Questions 4 and 5, the referring court asks, in essence, whether Article 6 of the Aarhus Convention must be interpreted as meaning that the public participation requirements under that Convention apply to measures such as those at issue in the main proceedings.

164 It is apparent from the order for reference that the Cour constitutionnelle (Constitutional Court) raises those questions on account of its doubts as to whether the EIA Directive applies to those measures, yet, as is apparent from recitals 18 to 20 of that directive, the EIA Directive is intended to take account of the provisions of the Aarhus Convention.

165 It follows, however, from the answers to Questions 6 and 7 that measures such as those at issue in the main proceedings, together with the work inextricably linked thereto, constitute a project in respect of which, prior to its adoption, an environmental impact assessment must be conducted under the EIA Directive.

166 Consequently, there is no need to answer Questions 4 and 5.

E. Question 9, on maintaining the effects of the law in question in the main proceedings

167 By Question 9, the referring court asks, in essence, whether EU law allows a national court to maintain the effects of measures such as those at issue in the main proceedings for the time necessary to remedy any infringement of the EIA Directive and the Habitats Directive.

168 In that regard, while Article 2(1) of the EIA Directive imposes an obligation to conduct a prior assessment of projects covered by that provision, the Habitats Directive also provides, in respect of projects subject to assessment under Article 6(3) of that directive, that Member States may agree to a project only after they have ascertained that it will not adversely affect the integrity of the site concerned.

169 However, neither the EIA Directive nor the Habitats Directive specify what action should be taken in the event of infringement of the obligations laid down by those directives.

170 Nonetheless, under the principle of sincere cooperation laid down in Article 4(3) TEU, Member States are required to nullify the unlawful consequences of that infringement of EU law. The competent national authorities are therefore under an obligation to take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment, for example by revoking or suspending consent already granted in order to carry out such an assessment (see, to that effect, judgment of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 35 and the case-law cited).

171 That obligation is also incumbent on national courts before which an action against a national measure including such a consent has been brought. The detailed procedural rules applicable to such actions are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (the principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (the principle of effectiveness) (see, to that effect, judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 45 and the case-law cited).

172 Consequently, courts before which actions are brought in that regard must adopt, on the basis of their national law, measures to suspend or annul the project adopted in breach of the obligation to carry out an environmental assessment (see, to that effect, judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre Wallonne*, C-41/11, EU:C:2012:103, paragraph 46 and the case-law cited).

173 It is true that the Court has also held that EU law does not preclude national rules which, in certain cases, permit the regularisation of operations or measures which are unlawful in the light of EU law (judgment of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 37 and the case-law cited).

174 However, such a possible regularisation would have to be subject to the condition that it does not offer the parties concerned the opportunity to circumvent the rules of EU law or to refrain from applying them, and should remain the exception (judgment of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 38 and the case-law cited).

175 Consequently, in the event of failure to carry out an assessment of the environmental impact of a project required under the EIA Directive, although Member States are required to nullify the unlawful consequences of that failure, EU law does not preclude regularisation through the conducting of such an assessment while the project is under way or even after it has been completed, on the twofold condition, first, that national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EU law or to refrain from applying them, and second, that an assessment carried out for regularisation purposes is not conducted solely in

respect of the project's future environmental impact, but must also take into account its environmental impact since the time of completion of that project (see, to that effect, judgments of 26 July 2017, *Comune di Corridonia and Others*, C-196/16 and C-197/16, EU:C:2017:589, paragraph 43, and of 28 February 2018, *Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraph 30).

176 By analogy, it must be held that EU law does not preclude such regularisation, subject to the same conditions, in the event of failure to conduct a prior impact assessment of the effects of the project concerned on a protected site, as required by Article 6(3) of the Habitats Directive.

177 It must be added that only the Court of Justice may, in exceptional cases, for overriding considerations of legal certainty, allow temporary suspension of the ousting effect of a rule of EU law with respect to national law that is contrary thereto. If national courts had the power to give provisions of national law primacy in relation to EU law contravened by those provisions, even temporarily, the uniform application of EU law would be undermined (see, to that effect, judgments of 8 September 2010, *Winner Wetten*, C-409/06, EU:C:2010:503, paragraphs 66 and 67, and of 28 July 2016, *Association France Nature Environnement*, C-379/15, EU:C:2016:603, paragraph 33).

178 However, the Court has also held, in paragraph 58 of its judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103), that a national court may, given the existence of an overriding consideration relating to the protection of the environment, as applied in the case giving rise to that judgment, and provided that the conditions specified in that judgment are met, exceptionally be authorised to make use of a provision of its national law empowering it to maintain certain effects of an annulled national measure. It is thus apparent from that judgment that the Court intended to afford, on a case-by-case basis and by way of exception, a national court the power to adjust the effects of annulment of a national provision held to be incompatible with EU law, with due regard to the conditions laid down by the Court's case-law (see, to that effect, judgment of 28 July 2016, *Association France Nature Environnement*, C-379/15, EU:C:2016:603, paragraph 34).

179 In this instance, in accordance with the case-law cited in paragraph 177 of the present judgment, it is for the Court of Justice alone to determine the circumstances in which it may be justifiable, by way of exception, to maintain the effects of measures such as those at issue in the main proceedings on account of overriding considerations relating to the security of the electricity supply of the Member State concerned. In that regard, such considerations could justify maintaining the effects of national measures adopted in breach of the obligations under the EIA Directive and the Habitats Directive only if, in the event that the effects of those measure were annulled or suspended, there was a genuine and serious threat of disruption to the electricity supply of the Member State concerned, which could not be remedied by any other means or alternatives, particularly in the context of the internal market.

180 It is for the referring court to assess whether, given the other means and alternatives available to the Member State concerned for the purpose of ensuring electricity supply within its territory, the need to respond to such a threat justifies maintaining, exceptionally, the effects of the measures contested before that court.

181 In any event, the effects may only be maintained for as long as is strictly necessary to remedy the breach.

182 In the light of the foregoing, the answer to Question 9 is that EU law must be interpreted as meaning that if domestic law allows it, a national court may, by way of exception, maintain the effects of measures, such as those at issue in the main proceedings, adopted in breach of the obligations laid down by the EIA Directive and the Habitats Directive, where such maintenance is justified by overriding considerations relating to the need to nullify a genuine and serious threat of rupture of the

electricity supply in the Member State concerned, which cannot be remedied by any other means or alternatives, particularly in the context of the internal market. The effects may only be maintained for as long as is strictly necessary to remedy the breach.

IV. Costs

183 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

1. **The first indent of Article 1(2)(a), Article 2(1) and Article 4(1) of Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment must be interpreted as meaning that the restarting of industrial production of electricity for a period of almost 10 years at a nuclear power station that had previously been shut down, with the effect of deferring by 10 years the deadline initially set by the national legislature for deactivating and ceasing production at that power station, and deferral, also by 10 years, of the date initially set by the legislature for deactivating and ceasing industrial production of electricity at an active power station, measures which entail work to upgrade the power stations in question such as to alter the physical aspect of the sites, constitute a 'project', within the meaning of that directive, and subject to the findings that are for the referring court to make, an environmental impact assessment must, in principle, be carried out with respect to that project prior to the adoption of those measures. The fact that the implementation of those measures involves subsequent acts, such as the issue, for one of the power stations in question, of a new specific consent for the production of electricity for industrial purposes, is not decisive in that respect. Work that is inextricably linked to those measures must also be made subject to such an assessment before the adoption of those measures if its nature and potential impact on the environment are sufficiently identifiable at that stage, a finding which it is for the referring court to make.**

2. **Article 2(4) of Directive 2011/92 must be interpreted as meaning that a Member State may exempt a project such as that at issue in the main proceedings from the requirement to conduct an environmental impact assessment in order to ensure the security of its electricity supply only where that Member State can demonstrate that the risk to the security of that supply is reasonably probable and that the project in question is sufficiently urgent to justify not carrying out the assessment, subject to compliance with the obligations in points (a) to (c) of the second subparagraph of Article 2(4) of that directive. However, that possibility of granting an exemption is without prejudice to the obligations incumbent on the Member State concerned under Article 7 of that directive.**

3. **Article 1(4) of Directive 2011/92 must be interpreted as meaning that national legislation such as that at issue in the main proceedings is not a specific act of national legislation, within the meaning of that provision, that is excluded, by virtue of that provision, from the scope of that directive.**

4. **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 such as those at issue in the main proceedings, together with the work of upgrading and of ensuring compliance with current safety standards, constitute a project in respect of which an appropriate assessment of its effects on the protected sites concerned should be conducted. Such an assessment should be conducted in respect of those measures before they are**

adopted by the legislature. The fact that the implementation of those measures involves subsequent acts, such as the issue, for one of the power stations in question, of a new specific consent for the production of electricity for industrial purposes, is not decisive in that respect. Work that is inextricably linked to those measures must also be subject to such an assessment before the adoption of those measures if its nature and potential impact on the protected sites are sufficiently identifiable at that stage, a finding which it is for the referring court to make.

5. **The first subparagraph of Article 6(4) of Directive 92/43 must be interpreted as meaning that the objective of ensuring security of the electricity supply in a Member State at all times constitutes an imperative reason of overriding public interest, within the meaning of that provision. The second subparagraph of Article 6(4) of that directive must be interpreted as meaning that if a protected site likely to be affected by a project hosts a priority natural habitat type or priority species, a finding which it is for the referring court to make, only a need to nullify a genuine and serious threat of rupture of that Member State's electricity supply constitutes, in circumstances such as those in the main proceedings, a public security ground, within the meaning of that provision.**

6. **EU law must be interpreted as meaning that if domestic law allows it, a national court may, by way of exception, maintain the effects of measures, such as those at issue in the main proceedings, adopted in breach of the obligations laid down by Directive 2011/92 and Directive 92/43, where such maintenance is justified by overriding considerations relating to the need to nullify a genuine and serious threat of rupture of the electricity supply in the Member State concerned, which cannot be remedied by any other means or alternatives, particularly in the context of the internal market. The effects may only be maintained for as long as is strictly necessary to remedy the breach.**

Lenaerts	Silva de Lapuerta	Bonichot
Prechal	Vilaras	Regan
von Danwitz	Toader	Lycourgos
Rosas	Ilešič	Malenovský
Safjan	Šváby	Fernlund

Delivered in open court in Luxembourg on 29 July 2019.

[Signatures]