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JUDGMENT OF THE COURT (Seventh Chamber)

12 April 2018 (*)

(Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats — Special areas of conservation — Article 6(3) — Screening in order to determine whether or not it is necessary to carry out an assessment of the implications, for a special area of conservation, of a plan or project — Measures that may be taken into account for that purpose)

In Case C-323/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 10 May 2017, received at the Court on 30 May 2017, in the proceedings

People Over Wind,

Peter Sweetman

v

Coillte Teoranta,

THE COURT (Seventh Chamber),

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

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

‘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.’

Irish law

7 The High Court (Ireland) explains that development consent is regulated by the Planning and Development Acts and regulations made thereunder. The competent authority is the local planning authority and an appeal lies to An Bord Pleanála (the Irish Planning Board).

8 Certain types of development are classified as ‘exempted development’ and, subject to certain exceptions, do not require consent under the Planning and Development Acts. Thus, an example of exempted development is ‘the carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking’.

9 Nevertheless, ‘exempted development’ projects may be subject to other types of consent or a process of adoption. The European Communities (Birds and Natural Habitats) Regulations 2011 (‘the 2011 Regulations’) apply to projects other than developments requiring development consent within the meaning of the Planning and Development Acts. Furthermore, a development which comes within ‘exempted development’ must nevertheless be subject to consent under the Planning and Development Acts where appropriate assessment under Article 6(3) of the Habitats Directive is required.

10 Regulation 42 of the 2011 Regulations provides:

‘1. A screening for Appropriate Assessment of a plan or project for which an application for consent is received, or which a public authority wishes to undertake or adopt, and which is not directly connected with or necessary to the management of the site as a European Site, shall be carried out by the public authority to assess, in view of best scientific knowledge and in view of the conservation objectives of the site, if that plan or project, individually or in combination with other plans or projects is likely to have a significant effect on the European site.

- (a) In the absence of protective measures, there is potential for the release of suspended solids into waterbodies along the proposed route, including directional drilling locations.
- (b) With regards to [the Nore pearl mussel], if the construction of the proposed cable works was to result in the release of silt or pollutants such as concrete into the pearl mussel population area of river through the pathway of smaller streams or rivers, there would be a negative impact on the pearl mussel population. Sedimentation of gravels can prevent sufficient water flow through the gravels, starving juvenile [Nore pearl mussels] of oxygen.'
- 18 It is apparent from the file before the Court that 'protective measures' were also analysed by that report.
- 19 Subsequently, on the basis of that report, the following recommendation was drawn up for Coillte by the 'programme manager':
- 'As set out in detail in the ... appropriate assessment screening report, on the basis of the findings of that report and in light of the best scientific knowledge, the grid connection works will not have a significant effect on the relevant European sites in light of the conservation objectives of the European sites, alone or in combination with the Cullenagh wind farm and other plans or projects, and an appropriate assessment is not required. This conclusion was reached on the basis of the distance between the proposed Cullenagh grid connection and the European sites, and the protective measures that have been built into the works design of the project.'
- 20 Adopting the above reasons and recommendation, Coillte, as a public authority referred to in Regulation 42 of the 2011 Regulations, determined that no appropriate assessment, within the meaning of Article 6(3) of the Habitats Directive, was required in this instance.
- 21 The referring court considers that the decision that appropriate assessment was not required is based on the 'protective measures' referred to in the screening report. That court makes clear that the protective measures proposed and taken into account by the authors of that report are not as stringent as those required in condition 17(k) of the planning permission for the wind farm concerned.
- 22 In the light of the foregoing, the High Court decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Whether, or in what circumstances, mitigation measures can be considered when carrying out screening for appropriate assessment under Article 6(3) of the Habitats Directive?'

Consideration of the question referred

- 23 First of all, it should be noted that Article 6 of the Habitats Directive imposes upon the Member States a series of specific obligations and procedures designed, as is clear from Article 2(2) of the directive, to maintain, or as the case may be restore, at a favourable conservation status natural habitats and, in particular, special areas of conservation (judgments of 11 April 2013, *Sweetman and Others*, C-258/11, [EU:C:2013:220](#), paragraph 36 and the case-law cited, and of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, [EU:C:2016:583](#), paragraph 31).
- 24 According to the Court's case-law, the provisions of Article 6 of the Habitats Directive must be construed as a coherent whole in the light of the conservation objectives pursued by the directive. Indeed, Article 6(2) and Article 6(3) are designed to ensure the same level of protection of natural habitats and habitats of species, whilst Article 6(4) merely derogates from the second sentence of Article 6(3) (see, to that effect, judgment of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, [EU:C:2016:10](#), paragraph 52 and the case-law cited).
- 25 Thus, Article 6 of the Habitats Directive divides measures into three categories, namely conservation measures, preventive measures and compensatory measures, provided for in Article 6(1), (2) and (4) respectively. It is clear from the wording of Article 6 of the Habitats Directive that that provision contains no reference to any concept of 'mitigating measure' (see, to that effect, judgment of 21 July

light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project (see, to that effect, judgment of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, [EU:C:2016:583](#), paragraph 45 and the case-law cited).

- 35 As the applicants in the main proceedings and the Commission submit, the fact that, as the referring court has observed, measures intended to avoid or reduce the harmful effects of a plan or project on the site concerned are taken into consideration when determining whether it is necessary to carry out an appropriate assessment presupposes that it is likely that the site is affected significantly and that, consequently, such an assessment should be carried out.
- 36 That conclusion is supported by the fact that a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment.
- 37 Taking account of such measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive.
- 38 In that regard, the Court's case-law emphasises the fact that the assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the protected site concerned (judgment of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, [EU:C:2016:583](#), paragraph 50 and the case-law cited).
- 39 It is, moreover, from Article 6(3) of the Habitats Directive that persons such as the applicants in the main proceedings derive in particular a right to participate in a procedure for the adoption of a decision relating to an application for authorisation of a plan or project likely to have a significant effect on the environment (see, to that effect, judgment of 8 November 2016, *Lesoochránárske zoskupenie VLK*, C-243/15, [EU:C:2016:838](#), paragraph 49).
- 40 In the light of all the foregoing considerations, the answer to the question referred is that Article 6(3) of the Habitats Directive must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.

Costs

- 41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the

harmful effects of the plan or project on that site.