Reports of Cases

JUDGMENT OF THE COURT OF JUSTICE (Third Chamber)

24 February 2022 *

(Request for a preliminary ruling – Environment – Directive 2011/92/EU – Assessment of the effects of certain projects on the environment – Directive 92/43/EEC – Conservation of natural habitats – Relationship between the assessment and consent procedure referred to in Article 2 of Directive 2011/92/EU and a national procedure for derogation from the species protection measures provided for by Directive 92/43/EEC – Concept of 'development consent' – Multi-stage decision-making process – Obligation to conduct an assessment – Material scope – Stage of the procedure at which public participation in the decision-making process must be ensured)

In Case C-463/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, Belgium), made by decision of 4 June 2020, received at the Court on 24 September 2020, in the proceedings

Namur-Est Environnement ASBL

v

Région wallonne,

intervener:

Cimenteries CBR SA,

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer (Rapporteur), F. Biltgen, L.S. Rossi and N. Wahl, Judges,

Advocate General: J. Kokott,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 9 September 2021,

* Language of the case: French.

after considering the observations submitted on behalf of:

– Namur-Est Environnement ASBL, by J. Sambon, avocat,

– Cimenteries CBR SA, by L. de Meeûs and C.–H. Born, avocats,

– the Belgian Government, by C. Pochet, M. Van Regemorter and S. Baeyens, acting as Agents, and by P. Moërynck, avocat,

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

– the European Commission, by C. Hermes, M. Noll–Ehlers and F. Thiran, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 October 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 1, 2 and 5 to 8 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, corrigendum OJ 2015 L 174, p. 44).

2 The request has been made in the context of a dispute between Namur-Est Environnement ASBL and the Région wallonne (Walloon Region, Belgium) concerning the decision by which the latter granted Sagrex SA a derogation from the animal and plant species protection measures provided for in the applicable legislation, with a view to the working of a limestone aggregate quarry ('the derogation decision').

Legal context

European Union law

Directive 92/43/EEC

3 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) provides, in Articles 12 and 13 thereof, that the Member States are to take the requisite measures to establish a system of strict protection for the animal and plant species listed in Annexes IV(a) and IV(b) to that directive.

4 Article 16 of Directive 92/43 states, in paragraph 1 thereof, that, provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range, Member States may derogate, inter alia, from Articles 12 and 13 of the same directive for one or more of the reasons set out in points (a) to (e) of that paragraph 1.

Directive 2011/92

5 Article 1(2) of Directive 2011/92 contains inter alia the following definitions:

‘(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;

…

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

…’

6 Article 2 of that directive provides, in paragraphs 1 and 2 thereof:

‘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. Those projects are defined in Article 4.

2. The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States …’

7 Article 3 of the said directive states:

‘The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case …, the direct and indirect effects of a project on the following factors:

(a) human beings, fauna and flora;

(b) soil, water, air, climate and the landscape;

(c) material assets and the cultural heritage;

(d) the interaction between the factors referred to in points (a), (b) and (c).’

8 Article 5 of the same directive provides, in paragraph 1 thereof, that, ‘in the case of projects which, pursuant to Article 4, are to be made subject to an environmental impact assessment in accordance with this article and Articles 6 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV’, in so far as that information is considered relevant in any given case and the developer may reasonably be required to compile it. By virtue of that annex, the information to be provided

must include, in particular, 'a description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, … fauna, flora … and the interrelationship between the above factors'.

9 Article 6 of Directive 2011/92 is worded as follows:

'1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. …

2. The public shall be informed … of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

(a) the request for development consent;

(b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;

…

(d) the nature of possible decisions or, where there is one, the draft decision;

(e) an indication of the availability of the information gathered pursuant to Article 5;

(f) an indication of the times and places at which, and the means by which, the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to paragraph 5 of this article.

3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

(a) any information gathered pursuant to Article 5;

(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this article;

(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, information other than that referred to in paragraph 2 of this article which is relevant for the decision in accordance with Article 8 of this directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose,

be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

…'

10 Article 7 of Directive 2011/92 lays down specific procedures for the environmental impact assessment in cases where a project is likely to have significant effects on the environment in several Member States.

11 Article 8 of that directive states that 'the results of consultations and the information gathered pursuant to Articles 5, 6 and 7 shall be taken into consideration in the development consent procedure'.

12 Annex I to Directive 2011/92 lists the projects that must be made subject, by virtue of Article 4(1) of that directive, to an assessment in accordance with Articles 5 to 10 thereof. Point 19 of that annex mentions 'quarries and open-cast mining where the surface of the site exceeds 25 hectares'.

Belgian law

13 Directive 92/43 was transposed into Belgian law by the Loi du 12 juillet 1973 sur la conservation de la nature (Law of 12 July 1973 on nature conservation) (*Moniteur belge*, 11 September 1973, p. 10306), as amended by the Décret de la Région wallonne du 6 décembre 2001 relatif à la conservation des sites Natura 2000 ainsi que de la faune et de la flore sauvages (Decree of the Walloon Region of 6 December 2001 on the conservation of Natura 2000 sites and of wild fauna and flora) (*Moniteur belge*, 22 January 2002, p. 2017) ('the Law on nature conservation').

14 Articles 2a, 3 and 3a of the Law on nature conservation establish a regime for the protection of a range of species of birds, mammals and plants which are either protected under Directive 92/43 or threatened in Wallonia. That regime is based on measures such as the prohibition of the trapping, capturing and killing, or the collecting, cutting and uprooting of the species concerned, the prohibition on disturbing those species intentionally, the prohibition of the keeping, transporting, exchanging, buying or selling or giving of those species and the prohibition on destroying or damaging their natural habitats.

15 Article 5 of that law states that the government of the Walloon Region may grant derogations from those measures, subject to certain conditions and for certain reasons.

16 Article 5a of the same law provides for the possibility of making an application for a derogation from those measures, while assigning to the government of the Walloon Region the responsibility for defining the form and content of that application, as well as the conditions and procedures for the grant of the derogation sought.

17 It is common ground that neither the Law on nature conservation nor the decision adopted by the government of the Walloon Region for its application provides, first, that an environmental impact assessment of the derogation sought must be conducted and, second, that the public concerned must be consulted before the derogation is granted.

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

18 On 4 November 2008, Sagrex submitted to the competent authority of the Walloon Region an application for a single permit for a project to resume working a quarry covering an area of over 50 hectares situated at Bossimé (Belgium), to construct installations and related developments, in particular on the banks of the Meuse.

19 On 12 May 2010, the Namur external management of the Département de la nature et des forêts (Department of Nature and Forests) of the Walloon Region issued an unfavourable opinion on that application, in which it stated, first, that the project at issue in the main proceedings adjoined a Natura 2000 site and covered two sites of significant biological interest and would lead to the total or partial destruction of the latter two sites and to the complete or partial disappearance of the natural habitats of various protected species of birds, insects, reptiles and plants found there. Second, it found that, despite that situation, the dossier accompanying the project made no mention of the existence of any authorisation to derogate from the measures for the conservation of protected species prescribed in the applicable legislation. Third and last, it expressed the view that the alterations which the developer planned to carry out before, during and after the construction works for with the project were not likely, given the nature and scale of the project, to mitigate or compensate for the impact on the natural habitats concerned.

20 On 1 September 2010, the competent authority of the Walloon Region invited Sagrex to submit to it amended plans and a supplementary environmental impact assessment for the project at issue in the main proceedings.

21 On 15 April 2016, Sagrex submitted to the Inspector General of the Department of Nature and Forests of the Walloon Region an application for derogation from the plant and animal species protection measures prescribed by the Law on nature conservation in connection with that project.

22 On 27 June 2016, the Inspector General adopted the derogation decision referred to in paragraph 2 above. That decision authorises Sagrex to disturb a certain number of protected plant and animal species and to cause the deterioration or destruction of certain areas of their respective natural habitats, in connection with the project at issue in the main proceedings, provided that it implements a series of mitigation measures.

23 On 30 September 2016, Sagrex submitted to the competent authority of the Walloon Region the amended plans and supplementary assessment for the project that had been requested of it on 1 September 2010.

24 A public inquiry into the project, as amended and supplemented, was held from 21 November to 21 December 2016 and generated numerous objections relating to the impact of the project at issue on protected species and on their habitats.

25 On 21 December 2016, the Namur external management of the Department of Nature and Forests issued a favourable opinion, subject to conditions, on Sagrex's application for a single permit, in which it noted, in the first place, that the project at issue in the main proceedings partly adjoined a Natura 2000 site, but that there was no risk of any significant impact on that site. As regards, in the second place, the two sites of significant biological interest adjacent to the project, that management, first of all, considered that, absent special precautionary measures, the project was likely to have a significant impact on protected plant and animal species found there and on their

respective habitats. Next, it expressed the view that, by implementing the mitigation and compensatory measures proposed by Sagrex and specified by the derogation decision, the project would not harm those species and would bring about only a progressive destruction of their respective habitats, which would moreover be offset by the development of new natural habitats. Last, it concluded that, taking all those factors into account, it could reasonably be assumed that, at the end of the 30-year operating period planned by Sagrex, the sites affected by the quarry would still be of significant biological interest, such that the environmental impact of the project at issue in the main proceedings could be regarded as having been reduced to an acceptable level.

26 By a decree of 25 September 2017, the Walloon Region's Minister for the Environment and Town and Country Planning nevertheless refused to grant the single permit for which Sagrex had applied. The action for annulment of that decree brought by Sagrex's parent company, Cimenteries CBR SA, was subsequently dismissed by a judgment of the Conseil d'État (Council of State, Belgium) of 14 May 2020.

27 In the interim, Namur-Est Environnement brought before the Council of State an application for annulment of the derogation decision, in which it argues, inter alia, that that decision is part of the development consent procedure, within the meaning of Article 1(2) of Directive 2011/92, but was not preceded by a procedure meeting the requirements referred to in Articles 2 *et seq*. of that directive. In particular, that association maintains, in essence, that, in order to meet those requirements and to enable both the public concerned to participate effectively in the procedure and the competent authority to take account of that participation, the assessment of the environmental impact of a project such as that at issue in the main proceedings and the accompanying public consultation must take place before the adoption of a measure such as the derogation decision, not afterwards, as in this case.

28 The Walloon Region counters, in substance, that the derogation decision cannot be regarded as part of the development consent procedure, as defined in Directive 2011/92, since the Inspector General of the Department of Nature and Forests of the Walloon Region did no more than authorise Sagrex, not only in a targeted manner and prior to the assessment of the project at issue in the main proceedings by another authority but also without prejudging that assessment in any way, to derogate from the plant and animal species protective measures prescribed by the applicable legislation, in response to the interested party's application to that effect. More generally, it argues that the application for derogation and the application for a single permit also submitted by Sagrex fall under two different, albeit related, legal regimes and decision-making processes, and not the same legal regime or decision-making process.

29 Cimenteries CBR maintains also that the derogation decision is merely an ancillary measure that cannot, in itself, be regarded as amounting to development consent for the project at issue. In addition, that company considers that the assessment prescribed by Directive 2011/92 and the public consultation which must accompany it can – and indeed must – take place only after the derogation decision, in order that the public may participate usefully in the procedure and express its views on the project as fully as possible, so that the competent authority can then take full account of that participation.

30 Having weighed those various arguments, the referring court observes, first of all, in its request for a preliminary ruling, that projects such as that at issue in the main proceedings cannot receive development consent in the form of a single permit without the developer having first obtained a derogation such as that granted in the derogation decision. Consequently, the derogation decision may be regarded as a necessary prerequisite but not in itself sufficient for development consent to

be granted. The referring court also states that the principal decision entitling the developer to proceed with its project is the single permit, which may, following a public inquiry, be refused or granted on conditions stricter than those contained in the derogation decision, the authority responsible for issuing that permit being required to examine all of the environmental aspects of the project and as such being in a position to assess more strictly its impact against the parameters determined by the author of the derogation decision.

31 Next, the referring court questions whether, in that legal and factual context, measures such as the derogation decision and the subsequent decision by which a developer is granted a single permit are to be regarded, taken together, as forming part of a multi-stage decision-making process the end result of which is either the grant or the refusal of development consent for a project, as defined in Directive 2011/92. Lastly, it questions whether, in the affirmative, the participation of the public concerned in that multi-stage decision-making process must be ensured before a measure such as the derogation decision is adopted or whether it may take place between that adoption and the point at which the competent authority decides on the single permit sought by the developer.

32 Regarding those latter two aspects, the referring court indicates that the legal and factual context characterising the dispute in the main proceedings appears different from the situations involving multi-stage consent procedures that have been brought before the Court until now, from the judgment of 7 January 2004, *Wells* (C-201/02, EU:C:2004:12).

33 It is in those circumstances that the Conseil d'État (Council of State, Belgium) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do a decision "authorising the disturbance of animals and degradation of the areas of habitat of those species for the working of a quarry" and the decision authorising or refusing that working (single permit) form a single development consent (within the meaning of [Article 1(2)(c)] of … [Directive 2011/92]) relating to a single project (within the meaning of [Article 1(2)(a)] of that directive) where, first, that working cannot take place without the first of those decisions and, second, the authority responsible for issuing single permits retains the ability to determine the environmental effects of that working more strictly having regard to the parameters set by the body that issued the first decision?

(2) If the answer to that first question is in the affirmative, are the requirements laid down by that directive, specifically in Articles 2, 5, 6, 7 and 8, sufficiently met where the public participation phase takes place after adoption of the decision "authorising the disturbance of animals and degradation of the areas of habitat of those species for the working of a quarry" but before adoption of the principal decision entitling the developer to proceed to work the quarry?'

The questions referred for a preliminary ruling

The first question

34 By its first question, the referring court asks, in essence, whether Directive 2011/92 must be interpreted as meaning that a decision adopted under Article 16(1) of Directive 92/43 and which authorises a developer to derogate from the applicable species protection measures in order to carry out a project within the meaning of Article 1(2)(a) of Directive 2011/92 forms part of the development consent procedure, within the meaning of Article 1(2)(c) of that directive, where,

first, the project cannot be carried out without the developer having first obtained that decision and, second, the authority competent for granting development consent for such a project retains the ability to assess the project's environmental impact more strictly than was done in that decision.

Admissibility

35 In its written and oral observations, the Belgian Government has argued, in essence, that the first question should be dismissed as inadmissible on the ground that it is based on two incorrect legal premisses and because the correct interpretation of the provisions of EU law and of national law which the referring court mentions leads to the conclusion that that question is manifestly unrelated to the actual facts of the main action or its purpose. It alleges that the grant of a derogation from the species protection measures prescribed by the provisions of national law transposing Directive 92/43 may be requested, under those provisions, either before or after obtaining the single permit which realises that consent, with the result that the derogation decision is not a prerequisite for obtaining a single permit, but a legally independent act. That interpretation is consistent with EU law since no provision of that law requires that a decision like the derogation decision, which grants a derogation from those measures, must necessarily precede the grant of development consent for a project such as that at issue in the main proceedings, within the meaning of Directive 2011/92.

36 In that regard, it follows from the Court's case-law, in the first place, that arguments relating to the substance of a question referred by a national court cannot, by their very nature, lead to the inadmissibility of the question (judgments of 2 March 2021, *A. B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 80, and of 13 January 2022, *Minister Sprawiedliwości*, C-55/20, EU:C:2022:6, paragraph 83].

37 In the present case, it must be observed that a part of the Belgian Government's line of argument, summarised in paragraph 35 above, rests on an interpretation of the provisions of EU law mentioned by the referring court in its first question and that it therefore concerns the substance of that question.

38 In the second place, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (judgments of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 26, and of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115, paragraph 55). Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgments of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 25, and of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 115).

39 It follows that questions relating to EU law referred by the national courts enjoy a presumption of relevance and that the Court may refuse to rule on such questions only where it is quite obvious that the interpretation that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual

or legal material necessary to give a useful answer to those questions (judgments of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 27, and of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115, paragraph 56).

40 Moreover, the procedure laid down in Article 267 TFEU is based on a clear separation of functions between national courts and tribunals and the Court, the latter being empowered to rule on the interpretation or the validity of the acts of EU law referred to in that provision, taking account of the factual and legal context of the questions referred for a preliminary ruling, as described by the referring court, and not to decide whether the referring court's interpretation of provisions of national law is correct. Accordingly, a reference for a preliminary ruling cannot be examined in the light of the interpretation of national law relied on by the government of a Member State (see, to that effect, judgments of 26 September 2013, *Texdata Software*, C-418/11, EU:C:2013:588, paragraphs 28 and 29, and of 15 April 2021, *État belge (Circumstances subsequent to the transfer decision)*, C-194/19, EU:C:2021:270, paragraph 26).

41 In the present case, the first question concerns, quite clearly, the interpretation of EU law, as mentioned in paragraph 37 above. Moreover, the considerations underlying that question, summarised in paragraphs 30 to 32 above, attest both to the relevance of that question, in the specific factual context which characterises the dispute in the main proceedings, and to the need, in the referring court's opinion, for an answer from the Court.

42 Having regard to all those matters, the first question is not manifestly unrelated to the actual facts of the dispute in the main action or its purpose. Consequently, it must be held to be admissible.

Substance

43 In the first place, Article 1(2)(a) of Directive 2011/92 and Article 1(2)(c) thereof define respectively the terms 'project' and 'development consent', for the purposes of that directive, the first referring to the execution of construction works or of other installations or schemes and other interventions in the natural surroundings and landscape, the second referring to the decision of the competent authority or authorities entitling the developer to proceed with the project.

44 However, those textual elements do not in themselves enable an answer to be given to the first question, by which the referring court seeks to establish, in essence, whether a decision such as the derogation decision must – even though it does not constitute a 'decision of the competent authority or authorities which entitles the developer to proceed with the project' to which it relates – be regarded as forming part of the development consent for the project given the links it has with that decision. Admittedly, the said elements define the concept of 'development consent' by referring to a decision different in nature from the derogation decision and they exclude, consequently, that latter decision from being regarded, in isolation and as such, as amounting to a 'development consent', within the meaning of Article 1(2)(c) of Directive 2011/92, for the project to which it relates. Nevertheless, those elements do not preclude such a decision from being regarded, when taken together with the subsequent decision on the developer's entitlement to proceed with the project, as forming part of the development consent for that project or, as the case may be, of the refusal of development consent for it.

45 In those conditions, in accordance with the settled case-law of the Court, in interpreting Directive 2011/92, it is appropriate to consider not only the wording of the provisions mentioned in the two preceding paragraphs, but also the context in which they occur and the objectives pursued by the

rules of which they are a part (judgments of 7 June 2005, *VEMW and Others*, C-17/03, EU:C:2005:362, paragraph 41, and of 21 January 2021, *Germany* v *Esso Raffinage*, C-471/18 P, EU:C:2021:48, paragraph 81).

46 As regards, in the second place, the context in which the definitions given in points (a) and (c) of Article 1(2) of the directive occur, it must be observed, first of all, that, as is apparent from the directive as a whole, the development consent decision is meant to be taken upon the conclusion of the entire process for the assessment of projects likely to have significant effects on the environment, which are referred to in Article 2(1) of the same directive.

47 Those provisions thus make it clear that the grant of development consent for a project is the end point of a decision-making process which begins with the developer submitting an application and which, from a procedural perspective, includes each and every step that is required in order to process that application.

48 Next, those provisions show that, from a substantive rather than procedural perspective, that decision-making process must lead the competent authority to take full account of the effects that projects subject to the dual requirement for assessment and development consent laid down in Article 2(1) of Directive 2011/92 are likely to have on the environment, as the Advocate General observed in point 44 of her Opinion.

49 Thus, Article 2(1) of Directive 2011/92 refers generally to the 'significant effects on the environment' that such projects are likely to have, without referring specifically to any one type of significant effect or excluding any other type of significant effect from its scope. Similarly, Article 3 of the directive refers generally to the 'direct and indirect effects' of those projects on the environment.

50 It follows that the decision-making process instituted by Directive 2011/92 must address, in particular, the significant effects that a project subject to the directive is likely to have on the fauna and flora present in the various areas that may be affected by the project, such as the construction zone and the areas adjacent to it, as indeed has already been made clear in the Court's case-law (see, to that effect, judgment of 24 November 2011, *Commission* v *Spain*, C-404/09, EU:C:2011:768, paragraphs 84 to 87).

51 It is, moreover, for that reason that Article 5 of Directive 2011/92 requires the developer to supply specific information on that subject to the competent authority.

52 It follows that, in the specific case where the execution of a project subject to the dual requirement for assessment and development consent laid down in Article 2(1) of Directive 2011/92 involves the developer applying for and obtaining a derogation from the plant and animal species protection measures prescribed by the provisions of national law transposing Articles 12 and 13 of Directive 92/43 and where, consequently, the project is likely to have an impact on those species, the assessment of the project must address, in particular, that impact.

53 It is therefore irrelevant that Directive 92/43 does not itself lay down any obligation to assess the impact that that a derogation is likely to have on the species concerned, that directive being independent in scope from Directive 2011/92 and applying without prejudice to the environmental impact assessment obligation introduced by the latter directive, the scope of which is general, as is apparent from the Court's case-law (see, to that effect, judgments of

21 September 1999, *Commission* v *Ireland*, C-392/96, EU:C:1999:431, paragraph 71; of 31 May 2018, *Commission* v *Poland*, C-526/16, not published, EU:C:2018:356, paragraph 72; and of 12 June 2019, *CFE*, C-43/18, EU:C:2019:483, paragraph 52).

54 Lastly, it becomes clear on considering the context of the provisions mentioned by the referring court in its first question that the assessment of the environmental impact of a given project may take place not only in the course of the procedure leading to the development consent decision referred to in Article 1(2)(c) of Directive 2011/92, but also in the course of a procedure leading to a decision prior to that development consent decision, in which case those various decisions may be regarded as forming part of a complex decision-making process in that it is carried out in several stages (see, by analogy, judgments of 7 January 2004, *Wells*, C-201/02, EU:C:2004:12, paragraphs 47, 52 and 53, and of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others*, C-275/09, EU:C:2011:154, paragraph 32).

55 Article 2(2) of Directive 2011/92 expressly provides that that environmental impact assessment may be integrated into existing national consent procedures, which implies, first, that that assessment need not necessarily be conducted in the context of a procedure specially created for that purpose and, second, that it need not necessarily be conducted in the course of single procedure.

56 The Member States therefore have a discretion enabling them to determine the procedural conditions under which that assessment is to be conducted and to apportion the various competences relating to that assessment among several different authorities, in particular by conferring on each of them decision-making powers in the matter, as the Court has already observed (see, to that effect, judgment of 3 March 2011, *Commission* v *Ireland*, C-50/09, EU:C:2011:109, paragraphs 72 to 74).

57 Nevertheless, that discretion must be exercised in accordance with the requirements laid down by Directive 2011/92 and in full compliance with the directive's aims (judgment of 3 March 2011, *Commission* v *Ireland*, C-50/09, EU:C:2011:109, paragraph 75).

58 It is important to note in this connection, first, that the environmental impact assessment of a project must, in any event, be a full assessment and must take place before a development consent decision is taken with regard to the project (see, to that effect, judgment of 3 March 2011, *Commission* v *Ireland*, C-50/09, EU:C:2011:109, paragraphs 76 and 77).

59 It follows that, where a Member State confers power to assess some of the environmental effects of a project and to take a decision upon the conclusion of that partial assessment on an authority other than the one on which it confers power to give development consent for the project, that decision must necessarily be adopted before development consent is given. If it were otherwise, the development consent would be given on an incomplete basis and would not, therefore, meet the applicable requirements (see, to that effect, judgment of 3 March 2011, *Commission* v *Ireland*, C-50/09, EU:C:2011:109, paragraphs 81 and 84).

60 Second, it follows expressly from Article 3 of Directive 2011/92 that the obligation to carry out a full assessment of the environmental effects of a project, mentioned in paragraphs 48 and 58 above, means that account must be taken not only of each of those effects taken individually, but also of the interaction between them, and thus of the project's overall impact on the environment.

Similarly, Annex IV to Directive 2011/92 requires the developer to provide information, inter alia, on the interrelationship between the effects that a project may simultaneously have on various aspects of the environment, such as fauna and flora.

61 That overall assessment may lead the competent authority to conclude that, having regard to the interaction or interrelationship between the various environmental effects of a project, those effects must be assessed more strictly or, as the case may be, less strictly than one or other effect, considered in isolation, has been assessed beforehand.

62 It follows that, where a Member State confers the power to assess some of the environmental effects of a project and to take a decision upon the conclusion of that partial assessment on an authority other than the one on which it confers the power to give development consent for the project, that partial assessment must not prejudge the overall assessment that the authority competent for granting development consent must in any event carry out and that preliminary decision must not prejudge the decision adopted on the conclusion of the overall assessment, as the Advocate General essentially observed in points 73 and 74 of her Opinion.

63 In the present case, the information given in the order for reference, and in particular that summarised in paragraph 30 above, and the wording of the first question indicate that those requirements have been observed, subject to the checks to be carried out by the referring court. Indeed, they make it apparent, first, that development consent for a project such as that at issue in the main action cannot be given without the project developer having obtained a decision authorising it to derogate from the applicable species protection measures, which means that that decision must necessarily be adopted prior to that development consent. Second, the authority competent for granting development consent retains the ability to assess the environmental impact of the project more strictly than was done in the derogation decision.

64 Lastly, in the third place, as regards the objectives pursued by Directive 2011/92, and in particular its essential objective of ensuring a high level of protection of the environment and of human health by laying down minimum requirements for the assessment of the environmental impact of projects, the interpretation which emerges from the contextual elements considered in paragraphs 46 to 63 above contributes to the attainment of such an objective, by enabling the Member States to entrust a given authority with the responsibility for adopting a preliminary, focussed decision on certain environmental effects of projects subject to assessment, while reserving to the authority competent for granting development consent the task of conducting a full and final assessment of the project.

65 Indeed, if the outcome of that partial assessment is negative, the developer may then either abandon its project, without having to continue with the complex assessment and consent procedure instituted by Directive 2011/92, or modify the project in such a way as to remedy the negative effects highlighted by the partial assessment, leaving it to the competent authority to take the final decision on the modified project. Conversely, if the outcome is positive, the authority will be free to take account of the decision previously taken, even though it does not bind it in its final assessment or with regard to the legal consequences to be drawn from that final assessment. The existence of a partial assessment giving rise to a preliminary decision is thus liable to constitute, in all cases, a factor of quality, effectiveness and increased consistency of the assessment and consent procedure.

66 In the light of all the foregoing considerations, the answer to the first question is that Directive 2011/92 must be interpreted as meaning that a decision adopted under Article 16(1) of Directive 92/43 and which authorises a developer to derogate from the applicable species protection measures in order to carry out a project within the meaning of Article 1(2)(a) of Directive 2011/92 forms part of the development consent procedure, within the meaning of Article 1(2)(c) of that directive, where, first, the project cannot be carried out without the developer having first obtained that decision and, secondly, the authority competent for granting development consent for such a project retains the ability to assess the project's environmental impact more strictly than was done in that decision.

The second question

67 By its second question, which is asked should its first question be answered in the affirmative, the referring court asks, in essence, whether Directive 2011/92 must be interpreted, having regard in particular to Articles 6 and 8 thereof, as meaning that the adoption of a preliminary decision authorising a developer to derogate from the applicable species protection measures in order to carry out a project, within the meaning of Article 1(2)(a) of that directive, need not necessarily be preceded by public participation, provided that such participation is ensured before the adoption of the decision to be taken by the competent authority for the possible development consent for the project.

68 In this connection, Article 6 of Directive 2011/92 provides, in paragraphs 2 and 3 thereof, that a set of information relating to projects subject to the dual requirement for assessment and development consent introduced by that directive must be communicated to the public or made available to it, depending on the case, 'early in the … decision-making procedures … and, at the latest, as soon as information can reasonably be provided'. That article also states, in paragraph 4 thereof, that 'the public concerned shall be given early and effective opportunities to participate in the … decision-making procedures … and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken'.

69 For its part, Article 8 of that directive states that the results of consultations and the information gathered, inter alia, as a result of public participation, are to be taken into account by the competent authority when deciding whether or not to grant development consent for the project concerned.

70 As follows from those provisions, they require the Member States to take the necessary measures to ensure that, in the course of the procedure for assessing and granting consent for projects subject to Directive 2011/92, public participation takes place in accordance with a set of requirements.

71 First of all, both the communication to the public or the making available to the public of the information which is to serve as a basis for that participation and the opportunity for the public to express comments and opinions on that information and, more generally, on the project concerned and its environmental impact, must occur at an early stage and, in any event, before a decision is taken on whether to grant development consent for the project.

72 Secondly, that participation must be effective, which means that the public should be able to express views on the project concerned and its environmental impact not only in a useful and comprehensive manner, but also at a juncture when all options are open.

73 Third, the results of that public participation must be taken into account by the competent authority when deciding whether or not to grant development consent for the project concerned.

74 It may, however, prove more difficult to reconcile those various requirements in the context of a multi-stage decision-making process, depending on the different stages of the process and the distribution of competences among the various authorities called upon to take part in it.

75 Such is the case, in particular, where a given authority is called upon to assess, at a preliminary or intermediate stage of such a decision-making process, only some of the environmental effects of the project concerned. In such a case, public participation may be confined to the part of the environmental effects of the project which fall within that authority's competence, to the exclusion not only of those which do not, but also of the interaction or interrelationship between them.

76 In such a situation, it should be considered that the requirement of early public participation in the decision-making process must be interpreted and applied in a manner which accommodates the equally important requirement of effective public participation in the process.

77 On this point, it follows from the Court's settled case-law that, where a project is the subject of a decision-making process that is carried out in several stages and involves the adoption of, first, a principal decision and, subsequently, an implementing decision, the obligation imposed by Directive 2011/92 to assess the environmental impact of the project must, in principle, be discharged before the principal decision is adopted, except where it is impossible to identify and assess all of the effects on the environment at that stage, in which case a global impact assessment must be carried out before the implementing decision is adopted (judgments of 7 January 2004, *Wells*, C-201/02, EU:C:2004:12, paragraphs 52 and 53, of 28 February 2008, *Abraham and Others*, C-2/07, EU:C:2008:133, paragraph 26, and of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraphs 85 and 86).

78 The requirement for public participation set out by that directive is intimately linked with that obligation to conduct an assessment, as follows from paragraphs 47 and 68 above.

79 In view of that link, it must be considered, by analogy, that, in the situation described in paragraph 75 above, the requirement of early participation of the public in the decision-making process provided for in Article 6 of Directive 2011/92 does not mean that the adoption of a preliminary decision relating to some of the project's effects on the environment must be preceded by public participation, provided that that participation is effective, a requirement which implies, first, that it takes place before the adoption of the decision to be taken by the competent authority on development consent for that project, secondly, that it enables the public to express its views in a useful and comprehensive manner on all the environmental effects of that project and, third, that the authority competent for granting consent for the project may take full account of that participation.

80 It is for the national court alone to verify that those conditions have been met in this instance and thus that the public was able to express its views, in a useful and comprehensive manner, on all the environmental effects of the project at issue in the main proceedings between the date of adoption of the preliminary decision that authorised the developer to derogate from the applicable species protection measures, with a view to carrying out that project, and the date at which the authority competent for granting development consent for the project announced its decision.

81 In the light of all the foregoing considerations, the answer to the second question is that Directive 2011/92 must be interpreted, having regard in particular to Articles 6 and 8 thereof, as meaning that the adoption of a preliminary decision authorising a developer to derogate from the applicable species protection measures in order to carry out a project, within the meaning of Article 1(2)(a) of that directive, need not necessarily be preceded by public participation, provided that such participation is effectively ensured before the adoption of the decision to be taken by the competent authority for the possible development consent for the project.

Costs

82 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 (Third Chamber) hereby rules:

1. **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 must be interpreted as meaning that a decision adopted under Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and which authorises a developer to derogate from the applicable species protection measures in order to carry out a project within the meaning of Article 1(2)(a) of Directive 2011/92 forms part of the development consent procedure, within the meaning of Article 1(2)(c) of that directive, where, first, the project cannot be carried out without the developer having first obtained that decision and, second, the authority competent for granting development consent for such a project retains the ability to assess the project's environmental impact more strictly than was done in that decision.**

2. **Directive 2011/92 must be interpreted, having regard in particular to Articles 6 and 8 thereof, as meaning that the adoption of a preliminary decision authorising a developer to derogate from the applicable species protection measures in order to carry out a project, within the meaning of Article 1(2)(a) of that directive, need not necessarily be preceded by public participation, provided that such participation is effectively ensured before the adoption of the decision to be taken by the competent authority for the possible development consent for the project.**

[Signatures]