Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

11 July 2024*

(Reference for a preliminary ruling – Validity and interpretation – Conservation of natural habitats and of wild fauna and flora – Directive 92/43/EEC – Article 12(1) – System of strict protection for animal species – Annex IV – *Canis lupus* (wolf) – Equal treatment between Member States – Article 16(1) – National authorisation to take a specimen of a wild animal of the *canis lupus* species – Evaluation of the conservation status of populations of the species concerned – Geographical scope – Determination of the damage – Satisfactory alternative solution)

In Case C-601/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol, Austria), made by decision of 19 September 2022, received at the Court on 19 September 2022, in the proceedings

Umweltverband WWF Österreich,

ÖKOBÜRO – Allianz der Umweltbewegung,

Naturschutzbund Österreich,

Umweltdachverband,

Wiener Tierschutzverein

v

Tiroler Landesregierung,

THE COURT (First Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, T. von Danwitz, P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: T. Ćapeta,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 25 October 2023,

* Language of the case: German.

after considering the observations submitted on behalf of:

– Umweltverband WWF Österreich and ÖKOBÜRO – Allianz der Umweltbewegung, and subsequently Umweltdachverband, by G.K. Jantschgi, Rechtsanwältin,

– Wiener Tierschutzverein, by M. Lehner, and by C. Pichler, acting as expert,

– the Tiroler Landesregierung, by J. Egger and C. Ranacher, acting as Agents,

– the Austrian Government, by A. Posch, J. Schmoll and A. Kögl, acting as Agents,

– the Danish Government, by J.F. Kronborg and C.A.-S. Maertens, acting as Agents,

– the French Government, by R. Bénard and M. De Lisi, acting as Agents,

– the Finnish Government, by H. Leppo, acting as Agent,

– the Swedish Government, by F.-L. Göransson and H. Shev, acting as Agents,

– the Council of the European Union, by T. Haas and A. Maceroni, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 18 January 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity of Article 12(1) 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'), read in conjunction with Annex IV to that directive, and the interpretation of Article 16(1) of that directive.

2 The request has been made in proceedings between, on the one hand, several animal and environmental protection organisations, namely Umweltverband WWF Österreich, ÖKOBÜRO – Allianz der Umweltbewegung, Naturschutzbund Österreich, Umweltdachverband and Wiener Tierschutzverein, and, on the other, the Tiroler Landesregierung (Provincial Government of Tyrol, Austria) concerning a temporary derogation, granted by that government, from the prohibition on hunting a specimen of wild animal belonging to the *canis lupus* (wolf) species.

Legal context

European Union law

3 Article 1 of the Habitats Directive, entitled 'Definitions', states:

'For the purpose of this Directive:

…

(i) conservation status of a species means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2;

The conservation status will be taken as "favourable" when:

– population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and

– the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and

– there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

…'

4 Article 2 of that directive provides:

'1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

2. 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.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.'

5 Article 12(1) of that directive states that:

'Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

(a) all forms of deliberate capture or killing of specimens of these species in the wild;

(b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;

(c) deliberate destruction or taking of eggs from the wild;

(d) deterioration or destruction of breeding sites or resting places.'

6 Article 16(1) of that directive is worded as follows:

'Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15(a) and (b):

(a) in the interest of protecting wild fauna and flora and conserving natural habitats;

(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;

…'

7 The second paragraph of Article 19 of the Habitats Directive states that 'such amendments as are necessary for adapting Annex IV to technical and scientific progress shall be adopted by the Council [of the European Union] acting unanimously on a proposal from the [European] Commission'.

8 The animal species 'of Community interest in need of strict protection' listed in Annex IV(a) to the Habitats Directive ('the protected animal species') include, inter alia, the *canis lupus* (wolf), '(except the Greek populations north of the 39th parallel; Estonian populations, Spanish populations north of the Duero; Bulgarian, Latvian, Lithuanian, Polish, Slovak populations and Finnish populations within the reindeer management area as defined in paragraph 2 of the Finnish Act No 848/90 of 14 September 1990 on reindeer management)'.

Austrian law

9 Paragraph 36(2) of the Tiroler Jagdgesetz (Tyrolean Hunting Act), of 15 June 2004 (LGBl. 41/2004), in the version applicable to the facts of the dispute in the main proceedings ('the TJG 2004'), provides, in essence, that outside of the established hunting seasons, no wild species are to be hunted.

10 Paragraph 52a of the TJG 2004, entitled 'Special measures to prevent damage by bears, wolves and lynxes', provides, in essence, in subparagraph 8, that, on the basis of a recommendation from the Expert Committee, the Provincial Government of Tyrol may, state, by legislation, that a particular bear, wolf or lynx poses an imminent danger to the safety of persons or an imminent significant danger to grazing animals, agricultural crops and facilities.

11 Under Paragraph 52a(9) of the TJG 2004:

'Where an ordinance is issued pursued to subparagraph 8, the Provincial Government shall, where the Expert Committee has made a recommendation and there is no satisfactory alternative, and the derogation is not detrimental to the maintenance of the populations of the species concerned

at a "favourable conservation status" in their "natural range", adopt a decision excluding certain bears, wolves or lynxes from the prohibition in the first sentence of Paragraph 36(2). Those derogations may only be granted:

(a) in the interest of protecting other wild fauna and flora and conserving their natural habitats;

(b) to prevent serious damage to crops, livestock, forests, fisheries and water and other types of property;

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature or having beneficial consequences of primary importance for the environment; and

(d) for the purpose of research and education.'

12 Paragraph 52a(10) of the TJG 2004 states:

'The derogation decision adopted under subparagraph 9 shall in any event specify:

(a) the purposes for which the derogation is granted;

(b) the animal species covered by the derogation as well as, where appropriate, gender, age, or other identification details of the specimen(s) concerned;

(c) the period for which the derogation is granted;

(d) the geographical area for which the derogation is granted, and

(e) the measures authorised by the provisions of this Law and regulations adopted under it, such as the use of certain weapons or ammunition, certain capture devices or the application of certain methods;

(f) where appropriate, other personal and material restrictions to which the derogation is subject.'

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

13 In an opinion dated 25 July 2022, an independent expert committee noted that, between 10 June and 2 July 2022, an identified wolf, namely wolf 158MATK, had killed approximately 20 sheep from a herd on unprotected pastures within the Province of Tyrol. Taking the view that that wolf represented an imminent significant danger to the grazing animals and since the Alpine pastures in question were impossible to protect, that committee recommended that that wolf be removed.

14 Following that opinion, the Provincial Government of Tyrol, by regulation of 26 July 2022, found that the wolf with the designation 158MATK represented an imminent significant danger to grazing animals and to agricultural installations and crops. That regulation entered into force on 29 July 2022 for an unlimited period.

15 Consequently, by decision of 29 July 2022, the Provincial Government of Tyrol authorised the removal of wolf 158MATK, excluding it from the permanent protection provided for by the TJG 2004. In addition, that decision provides that the derogation from the permanent protection of the wolf species is limited in time, ending on 31 October 2022 and becoming obsolete before that date if the presence of wolf 158MATK well outside the geographical area concerned is established on several occasions by molecular biology techniques.

16 In the first place, in order to justify that derogation, the Provincial Government of Tyrol relied, in the abovementioned decision, on three categories of damage which have occurred or are likely to occur. First, the damage is attributable to wolf 158MATK in the form of direct and indirect economic losses linked to the loss of the animals killed, to the extra cost of the premature descent from the Alpine pastures, to the loss of value for rearing, to the increase in the costs of maintaining and feeding the animals now kept on the farm of origin, and to the long-term reduction of livestock farming in the event of the cessation of alpine grazing. Second, it concerns non-material damage resulting from the loss of the joy of rearing livestock and the psychological stress suffered by the farmers of the Alpine pastures concerned. Third, what is at issue is indirect damage, which is not attributable to wolf 158MATK, and which results from the abandonment of farms and the resulting reduction in the total number of animals. That situation has its origin in the failure to use the fodder that grows on Alpine pastures, the encroachment of forests, the overgrowth of Alpine pastures, soil erosion, the loss of biodiversity and the loss of attractive landscapes that are so important for leisure activities and tourism.

17 In the second place, in its decision of 29 July 2022, the Provincial Government of Tyrol notes the absence of a satisfactory alternative, stating, first, that the removal of an adult wolf from the wild in order to keep it permanently in captivity does not constitute an adequate less radical measure in view of the significant suffering that it would cause to the wolf which, having lived in the wild until then, could not adapt to a life in captivity. Second, herd protection measures are not a satisfactory alternative either.

18 In the third place, as regards the conservation status of the populations of the species concerned in its natural range, the Provincial Government of Tyrol stated that, in the present case, the taking of a specimen of the wolf species does not have the effect of affecting the favourable conservation status of the Alpine population of that species and that, even if only Austrian territory, in which the conservation status is not yet favourable, were taken into account, there would be no reason to expect that that status would worsen or that recovery to a favourable conservation status would be hindered.

19 The applicants in the main proceedings brought an action against the decision of 29 July 2022 before the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol, Austria), namely the referring court, claiming that that decision does not satisfy the requirements laid down in Article 16(1) of the Habitats Directive.

20 That court states, as a preliminary point, that, notwithstanding the fact that the decision of 29 July 2022 of the Provincial Government of Tyrol authorising the hunting of a specimen of wolf is in force only until 31 October 2022, an answer to the present request for a preliminary ruling is nevertheless relevant in the context of the dispute in the main proceedings, given that the regulation of the Province of Tyrol on which that decision is based does not, for its part, have any temporal limitation, with the result that a new decision concerning wolf 158MATK could be adopted at any time.

21 As regards the substance, the referring court notes, first of all, that, in accordance with Annex IV to the Habitats Directive, certain wolf populations within the European Union, which do not include the population of the species on Austrian territory, are excluded from the system of strict protection established by Article 12 of that directive. Taking the view that the wolf population in Austria has developed and, therefore, can no longer be regarded as isolated, that court is uncertain whether maintaining that population in Austria on the list of animal species which must be strictly protected is not contrary to the principle of equal treatment of Member States, as enshrined in Article 4(2) TEU, if and in so far as the Member States, including the Republic of Austria, are currently in the same situation or, at the very least, in a comparable situation.

22 Next, it raises the question of the extent of the territory to be taken into consideration for the purpose of assessing the favourable conservation status of the wolf species, as required for the purpose of granting a derogation based on Article 16(1) of the Habitats Directive, in so far as the Court has indicated, in the judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola* (C-674/17, EU:C:2019:851, paragraph 58), that, in the context of such an assessment, 'it is for the competent national authority to determine [that conservation status], in particular at national level or, where applicable, at the level of the biogeographical region in question where the borders of that Member State straddle several biogeographical regions, or if the natural range of the species so requires and, to the extent possible, at a cross-border level'.

23 The referring court also points out that it is apparent from the Guidance document on the strict protection of animal species of Community interest under the Habitats Directive C(2021) 7301 final, communicated by the Commission on 12 October 2021 ('the Guidance document'), that the concept of 'serious damage' takes account of economic interests, so that that court is uncertain whether an indirect future economic loss, not attributable to a wolf specimen, such as the failure to use the fodder that grows on Alpine pastures, the encroachment of forests, the overgrowth of Alpine pastures, soil erosion, the loss of biodiversity and the loss of attractive landscapes that are so important for leisure activities and tourism, could be taken into account in assessing that concept.

24 Lastly that court refers to the specific situation of the Province of Tyrol, which is characterised by small farms and Alpine pastures which cannot be protected or cannot be protected by reasonable and proportionate measures for the protection of herds such as the construction of fences, the use of sheepdogs or the accompanying of the herds by shepherds. Accordingly, it asks whether it is possible to take those specific features into account when determining a 'satisfactory alternative' within the meaning of Article 16(1) of the Habitats Directive.

25 In those circumstances, the Landesverwaltungsgericht Tirol (Regional Administrative Court, Tyrol) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Article 12 [of the Habitats Directive] read in conjunction with [its] Annex IV … according to which wolves are covered by the system of strict protection, exempting populations in several Member States, while no such exemption has been provided for Austria, infringe the "principle of equal treatment of Member States" enshrined in Article 4(2) TEU?

(2) Is Article 16(1) of [the Habitats Directive], according to which a derogation from the system of strict protection of wolves is only permitted if, inter alia, the derogation is not detrimental to the maintenance of the populations of the species concerned with a "favourable conservation status" in their "natural range", to be interpreted as meaning that the favourable conservation status must be maintained or restored not in relation to the territory of a Member State, but to the natural range of a population, which may encompass a significantly larger, cross-border biogeographical region?

(3) Is Article 16(1)(b) of [the Habitats Directive] to be interpreted as meaning that, in addition to direct damage caused by a particular wolf, "serious damage" also encompasses indirect (future) "economic" damage that cannot be attributed to a particular wolf?

(4) Is Article 16(1) of [the Habitats Directive] to be interpreted as meaning that "satisfactory alternatives" are to be examined purely on the basis of actual feasibility or also on the basis of economic criteria, given the prevailing topographical, Alpine farming and business conditions in the Province of Tyrol?'

Consideration of the questions referred

The first question

26 By its first question, the referring court asks, in essence, whether Article 12(1) of the Habitats Directive, read in conjunction with Annex IV to that directive, is valid in the light of the principle of equal treatment between Member States, as enshrined in Article 4(2) TEU, in so far as Annex IV exempts wolf populations situated in the territory of certain Member States from the system of strict protection established in Article 12 of that directive, but does not exempt the wolf population present in Austria.

27 In particular, the referring court questions the validity of Article 12 on the ground that, in the light of developments since the entry into force of the Habitats Directive, the distinction between, on the one hand, Member States whose wolf population is exempt from the system of strict protection and, on the other hand, the Republic of Austria on whose territory that animal species does not benefit from such an exemption, is no longer justified given that, in Austria, the wolf population is no longer an isolated population in comparison with other wolf populations. That court is therefore uncertain whether the absence of an exemption to the system of strict protection as regards the Republic of Austria infringes the principle of equal treatment.

Admissibility

28 As a preliminary point, it should be noted that, at the hearing, Umweltverband WWF Österreich, ÖKOBÜRO – Allianz der Umweltbewegung and Umweltdachverband submitted that the first question was inadmissible since the answer to that question would have no bearing on the outcome of the dispute in the main proceedings. According to the Council, that question is inadmissible since the dispute in the main proceedings concerns only Article 16 of the Habitats Directive, and not Article 12 thereof, to which the same question relates. The Commission, in essence, concurred with that line of argument put forward by the Council.

29 In that regard, it should be borne in mind that where questions referred for a preliminary ruling by a national court, under its own responsibility, concern the validity of a rule of EU law, the Court is in principle bound to give a ruling, unless, in particular, the requirements concerning the content of the request for a preliminary ruling in Article 94 of the Rules of Procedure of the Court of Justice are not satisfied or it is quite obvious that the interpretation of a provision of EU law, or the assessment of its validity, which is sought by the national court, bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical (judgment of 9 June 2022, *Préfet du Gers and Institut national de la statistique et des études économiques*, C-673/20, EU:C:2022:449, paragraph 87 and the case-law cited).

30 In the present case, it is sufficient to note, as the Advocate General observes in points 40 and 41 of her Opinion, that, if the Court were to find that Article 12(1) of the Habitats Directive, read in conjunction with Annex IV thereto, is invalid, that would have an impact on the dispute in the main proceedings in so far as it concerns Article 16(1) of that directive. Indeed, that latter provision constitutes a derogation from Article 12. A derogation cannot exist without the primary rule. In other words, in such a situation, it would first be necessary to determine the new content of Article 12 of the Habitats Directive, read in conjunction with Annex IV to that directive, before assessing whether the derogation in Article 16(1) of that directive would applicable to the dispute in the main proceedings or even whether it would still be necessary to have recourse to that derogation.

31 In the light of the foregoing, the first question is admissible.

Substance

32 It must be borne in mind that Article 4(2) TEU provides that the Union is to respect the equality of Member States before the Treaties.

33 Moreover, the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, to that effect, judgment of 18 April 2024, *Dumitrescu and Others* v *Commission and Court of Justice*, C-567/22 P to C-570/22 P, EU:C:2024:336, paragraph 67 and the case-law cited).

34 According to settled case-law, a breach of the principle of equal treatment as a result of different treatment presupposes that the situations concerned are comparable, having regard to all the elements which characterise them. The elements which characterise various situations, and hence their comparability, must in particular be determined and assessed in the light of the subject matter of the provisions in question and of the aim they pursue, whilst account must be taken for that purpose of the principles and objectives of the field to which the measure at issue relates (judgment of 30 November 2023, *MG* v *EIB*, C-173/22 P, EU:C:2023:932, paragraph 46 and the case-law cited).

35 In order to answer the first question referred by the national court, it should be recalled at the outset that the legality of an EU act must be assessed in the light of the information available to the EU legislature on the date of the adoption of the rules in question (judgment of 22 February 2022, *Stichting Rookpreventie Jeugd and Others*, C-160/20, EU:C:2022:101, paragraph 67 and the case-law cited).

36 In the present case, the Habitats Directive was adopted on 21 May 1992 and was amended by the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1) following the accession of the Republic of Austria to the European Union on 1 January 1995.

37 In that regard, as is apparent from the documents before the Court, it must be held that the Republic of Austria did not, on that latter date, express any reservation as to the inclusion in Annex IV to the Habitats Directive of the wolf population present on its territory, nor has it adduced any evidence such as to show that it was in a situation comparable to that of the other Member States whose wolf population was, on the same date, exempted from the system of strict protection.

38 It must also be stated that both the Provincial Government of Tyrol and the Austrian Government merely call into question, in their observations, the validity of Article 12(1) of the Habitats Directive, read in conjunction with Annex IV to that directive, on account of the favourable development of the wolf population on Austrian territory Austria since the accession of the Republic of Austria to the European Union, such as set out in paragraph 27 of the present judgment, which corresponds precisely to one of the objectives pursued by that directive, as set out in Article 2 thereof.

39 In addition, it is apparent from the same directive that it enables account to be taken of developments likely to occur in the area covered by the Habitats Directive, that of EU policy on the environment, which Article 191(2) TFEU provides is to aim at a 'high level of protection taking into account the diversity of situations in the various regions of the Union' and is to be based, inter alia, on the precautionary principle and the principle that preventive action should be taken. In order to adapt that complex technical framework of an evolving nature, the EU legislature inserted, in Article 19(2) of that directive, a development clause enabling the Council, acting unanimously on a proposal from the Commission, to adapt Annex IV to that directive to technical and scientific progress.

40 In that regard, it should be noted that the Austrian Government submits, in essence, that the EU legislature should have had recourse to Article 19(2) of the Habitats Directive for the purpose of removing the wolf population in Austria from the system of strict protection provided for in Article 12 of that directive.

41 In so doing, it must be held that that government does not call into question the validity as such of that directive, but is in fact challenging any inaction on the part of the EU legislature. As the Court has already held, a national court cannot ask the Court to declare, by way of preliminary ruling, that an EU institution has failed to act, a failure to act which can be established only in the context of an action to that effect brought by a Member State, on the basis of Article 265 TFEU, against an institution, body, office or agency of the European Union (see, to that effect, judgment of 26 November 1996, *T. Port*, C-68/95, EU:C:1996:452, paragraph 53). As the Austrian Government stated at the hearing, the Republic of Austria has not, to date, brought such an action.

42 Therefore, even if the EU legislature were required to act by adapting, on the basis of Article 19 of the Habitats Directive, Annex IV to that directive in order to remove the wolf present in Austria from the system of strict protection, the fact remains that any failure on the part of the EU

legislature in that regard cannot be a reason, as the Advocate General states in point 60 of her Opinion, for finding the invalidity of Article 12(1) of that directive, read in conjunction with Annex IV.

43 In any event, it must be pointed out, first, that the classification of wolves has been maintained in the list of species referred to in Appendix II to the Convention on the Conservation of European Wildlife and Natural Habitats, signed on 19 September 1979 in Berne (Switzerland) (OJ 1982 L 38, p. 3) ('the Berne Convention'), which is strictly protected under that convention, to which the European Union is a party and which is binding on it under international law, as the Council and the Commission have observed and as the Advocate General also stated in point 56 of her Opinion.

44 Second, as the Court has already held, it follows from the objectives of the Habitats Directive, which seek to maintain or restore, a favourable conservation status, natural habitats and species of wild fauna and flora of interest to the European Union, that, in so far as that directive also seeks to 'maintain' a favourable conservation status, the view has to be taken that the species which have achieved such a conservation status must be protected against any deterioration of that status. Consequently, it must be held that Article 12(1) of the Habitats Directive cannot be interpreted as meaning that the protection which that provision affords ceases to apply to species which have achieved a favourable conservation status (see, to that effect, judgment of 4 March 2021, *Föreningen Skydda Skogen*, C-473/19 and C-474/19, EU:C:2021:166, paragraphs 65 and 66).

45 In the present case, as is apparent from the documents submitted to the Court, although the wolf population has certainly returned to Austrian territory, the fact remains that, as the Austrian Government itself admitted in its observations and confirmed at the hearing, that population is not at a favourable conservation status.

46 In the light of the foregoing considerations, the answer to the first question is that the examination of that question has disclosed no factor of such a kind as to affect the validity of Article 12(1) of the Habitats Directive, read in conjunction with Annex IV thereto.

The second question

47 By its second question, the referring court asks, in essence, whether Article 16(1) of the Habitats Directive must be interpreted as meaning that the condition laid down therein, according to which the derogation granted under that provision must not be detrimental to the maintenance of the populations of the species concerned with a favourable conservation status in their natural range, must be assessed taking account solely of the local and national territory of the Member State concerned or on the basis of the entire biogeographical region, which extends beyond national borders.

48 In particular, the referring court is inclined to the view that, in the light of the judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola* (C-674/17, EU:C:2019:851), it is appropriate, in the context of the examination to be carried out under Article 16(1) of the Habitats Directive, to take into account a geographical region which is larger than that of the territory of the Republic of Austria, with the result that there is no risk of deterioration of the favourable conservation status of the wolf species which prevails in that region.

49 In that regard, it should first of all be recalled that, according to settled case-law, even though Article 16(1) of the Habitats Directive allows Member States to derogate from the provisions of Articles 12 to 14 and Article 15(a) and (b) thereof, a derogation adopted on that basis, in so far as it allows those Member States to sidestep the obligations under the system of strict protection of natural species, is subject to the conditions that there is no satisfactory alternative and that that derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range (judgment of 11 June 2020, *Alianța pentru combaterea abuzurilor*, C-88/19, EU:C:2020:458, paragraph 24 and the case-law cited).

50 It must be noted, next, that Article 16(1) of the Habitats Directive, which defines in a precise and exhaustive manner the circumstances in which Member States may derogate from Articles 12 to 14 and Article 15(a) and (b) thereof, constitutes an exception to the system of protection provided for by that directive, which must be interpreted restrictively and which imposes on the authority taking the decision the burden of proving that those conditions are present for each derogation (judgment of 11 June 2020, *Alianța pentru combaterea abuzurilor*, C-88/19, EU:C:2020:458, paragraph 25 and the case-law cited).

51 Lastly, the Court has stated that a derogation based on Article 16(1) of the Habitats Directive must be applied appropriately in order to deal with precise requirements and specific situations (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 41 and the case-law cited).

52 As is apparent from paragraph 49 of the present judgment, the conditions set out in Article 16(1) of the Habitats Directive include the condition that the derogation must not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range. The favourable conservation status of those populations in their natural range is a necessary precondition in order for the derogations for which Article 16(1) provides to be granted (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 55 and the case-law cited).

53 In that regard, it must be noted that Article 1(i) of the Habitats Directive characterises a conservation status as favourable when, first, population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, second, the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and third, there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 56).

54 A derogation under Article 16(1) of the Habitats Directive must therefore be based on criteria defined in such a manner as to ensure the long-term preservation of the dynamics and social stability of the species in question (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 57 and the case-law cited).

55 It follows that, when assessing the grant of a derogation based on Article 16(1), it is for the competent national authority to determine, in particular at national level or, where applicable, at the level of the biogeographical region in question where the borders of that Member State straddle several biogeographical regions or if the natural range of the species so requires and, to the extent possible, at a cross-border level, as a first step, the conservation status of the

populations of the species in question and, as a second step, the geographical and demographic effects that the envisaged derogations are capable of having on them (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 58).

56 In addition, the assessment of the impact of a derogation at the level of the territory of a local population is generally necessary in order to determine its impact on the conservation status of the population concerned on a larger scale. In so far as such a derogation must deal with specific requirements and specific situations, as is apparent from paragraph 51 of the present judgment, the most direct effects of such a derogation are generally felt in the local area to which it relates (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 59).

57 It follows from the foregoing, as regards the first stage of the assessment of the derogation based on Article 16(1) of the Habitats Directive, as described in paragraph 55 of the present judgment, that, as the Advocate General noted, in essence, in points 73 and 75 of her Opinion, the favourable conservation status of the animal species concerned must exist and be assessed, in the first place and necessarily, at local and national level, so that an unfavourable conservation status on the territory of a Member State or a part thereof is not hidden by the effect of an assessment carried out solely at a cross-border level which would show that that species is at a favourable conservation status.

58 Thus, it is only when the conservation status of the animal species concerned is favourable at local and national level that the assessment may, in the second place, if the available data allow, be considered at a cross-border level. As the Advocate General stated in point 78 of her Opinion, the purpose of taking into consideration the conservation status at the latter level is to avoid the grant, under Article 16(1) of the Habitats Directive, of a derogation in favour of a Member State on whose territory the conservation status of that species is favourable, even though that conservation status would be unfavourable at a cross-border level.

59 That interpretation also applies to the second stage of the assessment to be carried out under that provision, as set out in paragraph 55 of the present judgment, namely the determination of the effect of such a derogation on the conservation status of the animal species concerned.

60 Therefore, in accordance with the case-law cited in paragraphs 55 and 56 of the present judgment, it must be held that the assessment of the impact of a derogation granted under Article 16(1) of the Habitats Directive must be carried out, in the first place, at local and national level and, in the event of a favourable conservation status at that level, as far as possible, in the second place, at a cross-border level.

61 Such a conclusion is, moreover, supported by a reading of point 3-64 of the Guidance document in which the Commission states, first, that, having regard in particular to the wording of Article 16 of the Habitats Directive, which refers to the ‘populations of the species concerned’, the abovementioned assessment ‘will in most cases have to be at a lower level [(for example, at site level, of the population)] than the biogeographic region in order to be meaningful in ecological terms’ and to address specific problems. Second, it states that ‘the assessment at a lower level would then have to be assessed against the situation on a larger scale (e.g. biogeographic, cross-border or national), for a complete picture of the situation.’

62 By contrast, it should be noted, next, that the Court has already held that it cannot be accepted that, for the purposes of that assessment, account should be taken of the part of the natural range of the population in question extending to certain parts of the territory of a third country which is not bound by an obligation of strict protection of species of interest for the European Union (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 60).

63 In the present case, as the Provincial Government of Tyrol and the Austrian Government point out, the territories of the Swiss Confederation and the Principality of Liechtenstein could, in the eventuality referred to in paragraphs 58 and 60 of the present judgment and subject to verification by the referring court, be taken into consideration, in the context of the cross-border assessment of the impact of the derogation granted under Article 16(1) of the Habitats Directive on the conservation status of wolves, given that those non-Member States are subject to compliance with the provisions of the Berne Convention.

64 Finally, it must also be noted that, in accordance with the precautionary principle enshrined in Article 191(2) TFEU, if, after examining the best scientific data available, there remains uncertainty as to whether or not a derogation will be detrimental to the maintenance or restoration of populations of an endangered species at a favourable conservation status, the Member State must refrain from granting or implementing that derogation (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 66).

65 Therefore, for the purpose of applying Article 16(1) of the Habitats Directive, it is for the referring court to examine, in particular, whether the wolf population is at a favourable conservation status, in the first place, at the level of the Province of Tyrol and at national level and, if appropriate, in the light of the data available, in the second place, at cross-border level.

66 In the light of all the foregoing considerations, the answer to the second question is that Article 16(1) of the Habitats Directive must be interpreted as meaning that the condition laid down therein, according to which the derogation granted under that provision must not be detrimental to the maintenance of the populations of the species concerned with a favourable conservation status in their natural range, may be assessed by taking account, in the light of the available data, of the level of the biogeographical region, which extends beyond national borders, only where it has been established in advance that that derogation does not adversely affect the maintenance of such a favourable conservation status at the level of the local and national territory of the Member State concerned.

The third question

67 By its third question, the referring court asks, in essence, whether Article 16(1)(b) of the Habitats Directive must be interpreted as meaning that the concept of 'serious damage', set out in that provision, covers future indirect damage which is not attributable to the specimen of the animal species which forms the subject matter of the derogation granted under that provision.

68 In particular, that court is uncertain as to the indirect damage, which is not attributable solely to the wolf which was responsible for attacks on sheep on the territory of the Province of Tyrol and which results from the abandonment of farms and the consequent reduction in the total number of herds.

69 In that regard, it should be noted at the outset that, under Article 16(1)(b) of the Habitats Directive, Member States may derogate from Article 12 of that directive in order to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property.

70 Thus, it is apparent from the very wording of Article 16(1)(b) of the Habitats Directive that that provision does not require serious damage to be sustained before derogating measures can be adopted (judgment of 14 June 2007, *Commission* v *Finland*, C-342/05, EU:C:2007:341, paragraph 40). Since that provision is intended to prevent serious damage, the high probability that such damage will occur is sufficient in that regard.

71 However, it is also necessary, as the Commission points out, in essence, in point 3-24 of its Guidance document, that, first, that future damage is not purely hypothetical, which must be demonstrated by evidence, and, second, it must be, at least largely attributable to the animal species targeted by the derogation.

72 In the present case, as has been stated in paragraph 68 of the present judgment, the category of damage set out by the referring court in the context of the third question does not relate to specific economic interests, but to possible long-term macroeconomic developments, with the result that it is more akin to an abstract risk, the high probability of occurrence of which has not been demonstrated.

73 Furthermore, to accept that such damage, which is not attributable to the specimen of the wolf population which is the subject of the derogation provided for in Article 16(1)(b) of the Habitats Directive and which may be caused by various and multiple causes, may fall within the scope of that provision would be tantamount to disregarding the requirement, referred to in paragraph 71 of the present judgment, of a causal link between, on the one hand, the grant of the derogation and, on the other hand, the damage caused by the animal species concerned by that derogation.

74 In those circumstances, it must be held that the concept of 'serious damage', as referred to in Article 16(1)(b) of the Habitats Directive, does not cover future indirect damage which is not attributable to the specimen of the animal species covered by the derogation granted under that provision.

75 In the light of all the foregoing considerations, the answer to the third question is that Article 16(1)(b) of the Habitats Directive must be interpreted as meaning that the concept of 'serious damage', set out in that provision, does not cover future indirect damage which is not attributable to the specimen of the animal species which is the subject of the derogation granted under that provision.

The fourth question

76 By its fourth question, the referring court asks, in essence, whether Article 16(1) of the Habitats Directive must be interpreted as meaning that, when determining whether there is a 'satisfactory alternative' within the meaning of that provision, the competent national authorities are required to assess solely the technical feasibility of other alternative measures or whether they must also take account of economic criteria.

77 In that regard, the national court questions whether measures for the protection of herds, which include the erection of fences, the use of sheepdogs or the accompaniment of herds by shepherds, constitute a satisfactory alternative to the slaughter of the wolf responsible for the attacks, within the meaning of Article 16(1) of the Habitats Directive, where the implementation of such measures entails particularly high costs.

78 In order to answer that question, it should be noted at the outset that a derogation may only be granted under Article 16(1) of the Habitats Directive where there is no alternative measure that could achieve the objective pursued in a satisfactory manner, whilst complying with the prohibitions laid down in that directive (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 47).

79 Furthermore, the Court has held that that provision requires the Member States to provide a clear and sufficient statement of reasons as to the absence of a satisfactory alternative by means of which the objectives relied upon in support of a derogation could be achieved. Accordingly, it is for the competent national authorities to establish, taking account in particular of the best relevant scientific and technical evidence and in the light of the circumstances of the specific situation in question, that there is no satisfactory alternative that can achieve the objective pursued (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraphs 49 and 51).

80 The condition that there be no other satisfactory solution for the purpose of justifying the grant of a derogation under Article 16(1) of the Habitats Directive is therefore a specific expression of the principle of proportionality, which, as a general principle of EU law, requires that the measures adopted do not go beyond what is appropriate and necessary for attaining the legitimate objectives pursued by the legislation at issue; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, to that effect, judgment of 16 February 2022, *Hungary* v *Parliament and Council*, C-156/21, EU:C:2022:97, paragraph 340 and the case-law cited).

81 It follows that the assessment of that condition requires a balancing of all the interests involved and the criteria to be taken into consideration, such as ecological, economic and social advantages and disadvantages, in order to determine the best possible solution. To that end, as the Commission proposes, in essence, in point 3-51 of its Guidance document, the competent national authorities must examine the possibility of using non-lethal preventive means consisting, inter alia, in the implementation of preventive measures in respect of herds, such as, inter alia, those referred to in paragraph 77 of the present judgment, and the adoption of measures designed to adapt, where possible, the human practices giving rise to the conflicts, in order to promote a culture of coexistence between the wolf population, herds and breeders, the need for which the Austrian Government acknowledged at the hearing.

82 In that regard, it should be recalled that, under Article 2(3) of the Habitats Directive, measures taken pursuant to that directive are to take account of economic, social and cultural requirements and regional and local characteristics, so that the economic costs of a technically feasible alternative measure may, inter alia, be taken into account under one of the criteria to be balanced, but without however being decisive. It cannot be accepted that another satisfactory alternative may be rejected at the outset solely on the ground that the economic cost of its implementation is particularly high.

83 It should be noted, in that regard, that the assessment of the proportionality of the alternative measure in terms of economic cost must be carried out, as the Advocate General stated in points 108, 112 and 114 of her Opinion, in the light of the obligations of the Member States to draw up, under Article 12 of the Habitats Directive, systemic measures and management plans necessary for the strict protection of the animal species concerned, which may be the subject of financing programmes at, inter alia, EU level. In particular, the implementation of those programmes and management plans may introduce changes in the agricultural activities concerned, such as those referred to in paragraph 81 of the present judgment, which are necessarily accompanied by certain costs and which, in view of the objectives of the Habitats Directive, recalled in paragraph 44 of the present judgment, which seek to maintain or restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of interest for the European Union, cannot constitute a sufficient ground for derogating, under Article 16(1)(b) of the Habitats Directive, from the prohibitions laid down in Article 12 of that directive (see, to that effect, judgment of 15 March 2012, *Commission* v *Poland*, C-46/11, EU:C:2012:146, paragraph 31).

84 Accordingly, it is important, in order to attain the objectives pursued by the Habitats Directive, that the economic cost of an alternative measure to the taking of a specimen of a strictly protected animal species be weighed against the ecological cost of taking that specimen. In that regard, it should be specified that, in the present case, the Provincial Government of Tyrol stated, at the hearing, the failure of the removal measure consisting of culling the specimen of wolf at issue.

85 Accordingly, it is for the referring court to ensure that the Provincial Government of Tyrol, in its decision of 29 July 2022, correctly evaluated, on the basis of the best available scientific and technical knowledge, other satisfactory alternatives, such as Alpine pasture protection measures, taking account, in particular, of their economic implications, without those implications being decisive, and by weighing them against the general objective of maintaining or restoring the wolf population at a favourable conservation status on its territory.

86 In the light of all the foregoing considerations, the answer to the fourth question is that Article 16(1) of the Habitats Directive must be interpreted as meaning that, in the context of determining whether there is a ‘satisfactory alternative’ within the meaning of that provision, the competent national authorities are required to assess, on the basis of the best available scientific and technical knowledge, the other possible solutions, taking account, in particular, of their economic implications, without those implications being decisive, and balancing them with the general objective of maintaining or restoring the animal species concerned at a favourable conservation status.

Costs

87 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 (First Chamber) hereby rules:

1. **The examination of the first question has disclosed no factor of such a kind as to affect the validity of Article 12(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2013/17/EU of 13 May 2013, read in conjunction with Annex IV to Directive 92/43, as amended by Directive 2013/17.**

2. **Article 16(1) of Directive 92/43, as amended by Directive 2013/17, must be interpreted as meaning that the condition laid down therein, according to which the derogation granted under that provision must not be detrimental to the maintenance of the populations of the species concerned with a favourable conservation status in their natural range, may be assessed by taking account, in the light of the available data, of the level of the biogeographical region, which extends beyond national borders, only where it has been established in advance that that derogation does not adversely affect the maintenance of such a favourable conservation status at the level of the local and national territory of the Member State concerned.**

3. **Article 16(1)(b) of Directive 92/43, as amended by Directive 2013/17, must be interpreted as meaning that the concept of 'serious damage', set out in that provision, does not cover future indirect damage which is not attributable to the specimen of the animal species which is the subject of the derogation granted under that provision.**

4. **Article 16(1) of Directive 92/43, as amended by Directive 2013/17, must be interpreted as meaning that, in the context of determining whether there is a 'satisfactory alternative' within the meaning of that provision, the competent national authorities are required to assess, on the basis of the best available scientific and technical knowledge, the other possible solutions, taking account, in particular, of their economic implications, without those implications being decisive, and balancing them with the general objective of maintaining or restoring the animal species concerned at a favourable conservation status.**

[Signatures]