Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

22 February 2022 *

(Reference for a preliminary ruling – Environment – Directive 2001/42/EC – Assessment of the effects of certain plans and programmes on the environment – Article 2(a) – Concept of 'plans and programmes' – Article 3(2)(a) – Measures prepared for certain sectors and setting a framework for future development consent of projects listed in Annexes I and II to Directive 2011/92/EU – Article 3(4) – Measures setting a framework for future development consent of projects – Landscape conservation regulation adopted by a local authority)

In Case C-300/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 4 May 2020, received at the Court on 7 July 2020, in the proceedings

Bund Naturschutz in Bayern eV

v

Landkreis Rosenheim,

intervening parties:

Landesanwaltschaft Bayern,

Vertreter des Bundesinteresses beim Bundesverwaltungsgericht,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe, C. Lycourgos, E. Regan, S. Rodin, I. Jarukaitis and J. Passer (Rapporteur), Presidents of Chambers, M. Ilešič, F. Biltgen, P.G. Xuereb, N. Piçarra and L.S. Rossi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 7 June 2021,

* Language of the case: German.

after considering the observations submitted on behalf of:

– Bund Naturschutz in Bayern eV, by F. Heß, Rechtsanwältin,

– Landkreis Rosenheim, by Q. Zallinger, acting as Agent,

– Landesanwaltschaft Bayern, by M. Egner, J. Vogel and M. Höfler, acting as Agents,

– the German Government, initially by J. Möller, D. Klebs and S. Heimerl, and subsequently by J. Möller and D. Klebs, acting as Agents,

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

– Ireland, by M. Browne, J. Quaney, M. Lane and A. Joyce, acting as Agents, and by S. Kingston, Senior Counsel, and A. Carroll, Barrister-at-Law,

– 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 16 September 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(2)(a) and (4) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

2 The request has been made in proceedings between Bund Naturschutz in Bayern eV ('Bund Naturschutz') and Landkreis Rosenheim (Rural District of Rosenheim, Germany) concerning the legality of a regulation relating to a landscape conservation area.

Legal context

European Union law

3 Article 1 of Directive 2001/42, entitled 'Objectives', provides:

'The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.'

4 Article 2 of that directive is worded as follows:

‘For the purposes of this Directive:

(a) “plans and programmes” shall mean plans and programmes, including those co-financed by [the European Union], as well as any modifications to them:

– which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and

– which are required by legislative, regulatory or administrative provisions;

…’

5 Article 3 of that directive, entitled ‘Scope’, provides, in paragraphs 1 to 4 thereof:

‘1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to [Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40)], or

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 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)].

3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.

4. Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.’

6 Annex II to Directive 2001/42, which lays down the ‘criteria for determining the likely significance of effects referred to in Article 3(5)’, includes among those criteria, in point 1 thereof, ‘the characteristics of plans and programmes’, including, in the first indent of that point, ‘the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources’.

7 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), which entered into force on 17 February 2012, repealed and replaced Directive 85/337.

8 According to Article 1(2)(a) of Directive 2011/92, for the purposes of that directive, 'project' means 'the execution of construction works or of other installations or schemes', as well as 'other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources'.

9 According to the second paragraph of Article 14 of Directive 2011/92, 'references to [Directive 85/337] shall be construed as references to [Directive 2011/92]'.

German law

The BNatSchG

10 Paragraph 20(2) of the Gesetz über Naturschutz und Landschaftspflege (Bundesnaturschutzgesetz) (Law on Nature Conservation and Landscape Management (Federal Law on Nature Conservation)) of 29 July 2009 (BGBl. 2009 I, p. 2542), in the version applicable to the dispute in the main proceedings ('the BNatSchG'), provides:

'Parts of nature and the landscape may be protected

…

4. in accordance with Paragraph 26, as landscape conservation areas,

…'

11 Paragraph 26 of the BNatSchG, entitled 'Landscape conservation areas', provides:

'(1) Landscape conservation areas are areas the designation of which as such is legally binding and in which special protection for nature and the landscape is required

1. to assist the conservation, development or restoration of the productive and functional capacity of the ecosystem or of the regenerative capacity and sustainable use of natural assets, including the protection of biotopes and habitats of certain species of wild fauna and flora,

2. on account of the diversity, distinctiveness and beauty or the special cultural and historical significance of the landscape, or

3. on account of their special significance for recreational purposes.

(2) In the light in particular of Paragraph 5(1) and in accordance with more detailed provisions, any activity within a landscape conservation area which alters the character of that area or which runs counter to the special conservation objective pursued shall be prohibited.'

The BayNatSchG

12 Article 12(1) of the Bayerisches Gesetz über den Schutz der Natur, die Pflege der Landschaft und die Erholung in der freien Natur (Bayerisches Naturschutzgesetz) (Bavarian Law on Nature Conservation, Landscape Management and Outdoor Recreation (Bavarian Law on Nature Conservation)) of 23 February 2011 (GVBl. p. 82), in the version applicable to the dispute in the main proceedings ('the BayNatSchG'), provides:

'Parts of nature and the landscape shall be placed under protection, in accordance with Paragraph 20(2), points 1, 2, 4, 6 and 7, of the BNatSchG, by means of a regulation, unless this Law provides otherwise. …'

13 Under Article 51(1) of the BayNatSchG:

'The bodies below shall be competent to do as follows:

…

3. Landkreise (rural districts) and independent authorities, to adopt regulations on landscape conservation areas within the meaning of Paragraph 26 of the BNatSchG

…'

The Inntal Süd Regulation

14 Paragraph 1 of the Verordnung des Landkreises Rosenheim über das Landschaftsschutzgebiet 'Inntal Süd' (Regulation of the Rural District of Rosenheim on the 'Inntal Süd' landscape conservation area) of 10 April 2013 ('the Inntal Süd Regulation'), entitled 'Object of protection', provides:

'The landscape to the east and west of the River Inn between the State border with Austria in the municipality of Kiefersfelden and the border of the town of Rosenheim shall be protected as a landscape conservation area under the name "Inntal Süd".

This protection shall cover the course of the River Inn, including its basin and alluvial plains.'

15 Paragraph 3 of the Inntal Süd Regulation, entitled 'Conservation objective', provides:

'The objective of the "Inntal Süd" landscape conservation area is

1. to ensure the productive capacity of the ecosystem; in particular to conserve, promote and restore alluvial forests and backwaters, as well as the living conditions of the typical species of fauna and flora adapted to the foregoing and of their biocenoses;

2. to preserve the diversity, distinctiveness and beauty of the natural landscape; in particular, to strengthen its character as a riverscape and conserve the rural cultural landscape;

3. to preserve and optimise the functionality of the water regime in order also to promote the continuity of the course of the River Inn and its tributaries, and the retention of surface water;

4. to safeguard and preserve for the general public the parts of the landscape that are significant for the purposes of recreational activity, while at the same time respecting nature and the landscape as much as possible, and to channel recreational traffic.'

16 Under Paragraph 4 of that regulation, entitled 'Prohibitions':

'In the landscape conservation area, any activity which alters the character of that area or which runs counter to the conservation objective pursued (Paragraph 3) shall be prohibited.'

17 Paragraph 5 of that regulation, entitled 'Compulsory permits', provides:

'(1) A permit from the Landratsamt Rosenheim [(administrative authority of the Rural District of Rosenheim)], as the lower authority responsible for nature conservation (Article 43(2), point 3, of the BayNatSchG) must be obtained by anyone who, in a landscape conservation area, intends

1. to erect, change or change the use of any kind of construction (Article 2(1) of the Bayerische Bauordnung [(Bavarian Building Code)]), even if this does not require a building permit; such constructions include in particular:

(a) buildings such as dwellings, agricultural and forestry buildings, weekend homes, boathouses, bathing huts, tool sheds, sales kiosks …;

(b) enclosures and other barriers;

(c) jetties and riverbank constructions;

(d) changes to the land surface as a result of excavation or filling, in particular the creation and operation of new quarries, gravel pits, sand pits, loam pits or clay pits and other boreholes, and spoil heaps. This does not apply to fillings or excavations the surface area of which is up to 500 m^2 and the height or depth of which is up to 0.3 m which are created for the purpose of improving the land on sites already in agricultural use;

2. in so far as the constructions in question are not already covered in point 1,

(a) to erect billboards and posters, including advertising devices, with a surface area in excess of 0.5 m^2, provided that they do not constitute residential or business names on residential or business premises;

(b) to lay aboveground or underground wires, cables or pipelines and to erect masts;

(c) to construct or substantially alter roads, paths or spaces, in particular campsites, sports fields, playgrounds and bathing areas or similar facilities;

(d) to set up vending vans or to erect, secure and operate sales kiosks and vending machines;

3. to drive or park motor vehicles of any kind anywhere other than on roads, paths and spaces dedicated to public traffic; …

4. to abstract water above ground or underground to an extent beyond that of permitted public use, to alter bodies of water, their banks or beds, the inflow or outflow of water or the piezometric level, to create new bodies of water or to construct drainage systems;

5. to drain, dry out or otherwise destroy or cause significant damage to biotopes of special ecological value within the meaning of Paragraph 30 of the BNatSchG and Article 23 of the BayNatSchG, in particular bogs, swamps, reed beds, large sedge bogs, wet meadows rich in sedges and rushes, moor grass meadows, natural streams or springs, bog woodland, marshy forests, swamp forests and alluvial forests, as well as natural or semi-natural areas of flowing or standing inland waters, including their banks and associated natural or semi-natural riparian vegetation, and natural or semi-natural siltation areas, backwaters and periodically flooded areas; …

6. to plough, convert into multi-harvest grassland, fertilise, graze or afforest litter meadows;

7. to pursue, capture or kill wild animals or to remove their breeding sites, habitats or clutches of eggs;

8. to clear, fell or otherwise remove individual trees, hedges, hedgerows, living fences, or copses or field shrubs that characterise the landscape anywhere in the wild other than in woodlands; …

9. to clear forest stands in full or in part, carry out initial afforestation or perform associated clear-cutting of more than 0.5 hectares, convert deciduous, mixed or alluvial forests into forests with a predominantly coniferous content or establish specialised crops (such as tree nurseries) there;

10. to destroy or substantially alter, on the banks of bodies of water, riparian vegetation, reed beds or populations of aquatic plants, invade reed beds or populations of aquatic plants, or use chemical means to remove or control reed beds or clear ditches; …

11. to deposit waste, rubble and other objects, in so far as they are not already subject to the waste regulations, on sites other than those authorised for that purpose, even if the intention is not to landfill within the meaning of the building regulations;

12. to camp or park caravans (including folding trailers) or motorised dwelling vehicles anywhere other than on authorised sites, or allow others to do so;

13. to allow aircraft within the meaning of the Luftverkehrgesetz [(Law on Air Traffic)] to take off or land anywhere other than at authorised aerodromes.

(2) The permit shall be issued, without prejudice to other legislative provisions, provided that the intended measure does not produce any of the effects referred to in Paragraph 4 or provided that any such effects can be offset by ancillary provisions.

…’

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

18 On 10 April 2013, the Rural District of Rosenheim adopted the Inntal Süd Regulation without having carried out an environmental assessment beforehand in accordance with Article 3(2)(a) of Directive 2001/42 or, at the very least, without having carried out a study in order to determine whether that regulation was likely to have significant environmental effects, pursuant to Article 3(4) of that directive.

19 That regulation placed an area of around 4 021 hectares under protection, that is to say an area around 650 hectares smaller than the area covered by the previous regulations adopted in 1952 and 1977 and repealed in full or in part by that regulation.

20 Bund Naturschutz, an environmental association which had taken part in the procedure for preparing the Inntal Süd Regulation, challenged that regulation before the Bayerischer Verwaltungsgerichtshof (Higher Administrative Court, Bavaria, Germany), which dismissed its application as inadmissible.

21 The Bundesverwaltungsgericht (Federal Administrative Court, Germany) is called upon to rule on the appeal on a point of law (*Revision*) brought by Bund Naturschutz against the decision handed down at first instance.

22 According to the referring court, the appeal is not admissible unless, under Directive 2001/42, the Rural District of Rosenheim had an obligation to carry out, prior to the adoption of the Inntal Süd Regulation, an environmental assessment in accordance with Article 3(2)(a) of that directive or, at the very least, to carry out a study in order to determine whether that regulation was likely to have significant environmental effects, pursuant to Article 3(4) of that directive. In such a situation, it would also be necessary to uphold the appeal on the merits.

23 In that context, the referring court considers that the Inntal Süd Regulation constitutes a plan or programme within the meaning of Article 2(a) of Directive 2001/42.

24 However, it has doubts, first, as to whether that regulation is to be regarded as setting a framework for future development consent of projects for the purposes of Article 3(2)(a) of that directive. It notes that, although that regulation lays down general prohibitions and makes provision for compulsory permits in respect of a large number of projects and uses, it does not contain specific rules concerning the grant of the projects listed in Annexes I and II to Directive 2011/92 but is intended primarily to prevent those projects or, at the very least, to adjust them having regard to the objective of nature conservation. The question thus arises as to whether, in order for a plan or programme to fall within the scope of Article 3(2)(a) of Directive 2001/42, it is necessary for that plan or programme to be geared towards, or to have a specific connection with those projects, or whether it is sufficient for a plan or programme, inter alia because of the extent of its scope, also to cover, albeit coincidentally, those projects, without that plan or programme taking those projects into account as such or explicitly regulating the grant of those projects.

25 Second, the referring court questions whether the 'preparation' of a plan or programme as referred to in Article 3(2)(a) of Directive 2001/42 requires the plan or programme concerned to be specifically geared towards one of the sectors referred to in that provision or whether it is sufficient for that plan or programme to have an effect in practice on some of those sectors, such as agriculture, forestry or land use, even if it was prepared in respect of a sector not covered by that provision, such as nature conservation and landscape management, as is the case here.

26 Third and lastly, in the event that it must be considered that the Rural District of Rosenheim was not required, pursuant to Article 3(2)(a) of Directive 2001/42, to carry out an environmental assessment in respect of the Inntal Süd Regulation, the referring court questions whether Article 3(4) of that directive also requires there to be a specific link between the plan or programme, on the one hand, and the projects, on the other, in order for that provision to be applicable. If so, it will be necessary to clarify the degree of specificity required with regard to that link.

27 In those circumstances the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 3(2)(a) of [Directive 2001/42] to be interpreted as meaning that a framework for future development consent of projects listed in Annexes I and II to [Directive 2011/92] is set where a regulation on nature conservation and landscape management provides for general prohibitions (with possible exemptions) and compulsory permits which do not specifically relate to projects listed in the annexes to [Directive 2011/92]?

(2) Is Article 3(2)(a) of [Directive 2001/42] to be interpreted as meaning that plans and programmes were prepared for agriculture, forestry, land use, [and so on,] if their objective was to establish a reference framework for one or more of those areas? Or does it suffice if, for the purpose of nature conservation and landscape management, general prohibitions and [compulsory permits] are regulated which have to be assessed in the permit procedure for a variety of projects and uses and which may indirectly impact (“by default”) one or more of those areas?

(3) Is Article 3(4) of [Directive 2001/42] to be interpreted as meaning that a framework for future development consent of projects is set if a regulation adopted for the purpose of nature conservation and landscape management lays down prohibitions and [compulsory permits] for a variety of projects and measures in the protected area which are described in abstract terms, where there are no actual foreseeable or envisaged projects when it is adopted and therefore it does not specifically relate to actual projects?’

28 The German Government, pursuant to the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, has requested that the Court sit as the Grand Chamber.

Request for the oral part of the procedure to be reopened

29 Following the delivery of the Opinion of the Advocate General, Bund Naturschutz, by document lodged at the Court Registry on 13 October 2021, asked the Court to order the reopening of the oral part of the procedure, pursuant to Article 83 of the Rules of Procedure of the Court of Justice.

30 In support of its request, Bund Naturschutz indicated, in essence, that the Advocate General’s Opinion refers to a new element, namely the amendment of the German legislation following the oral hearing; an element that is relevant for the response to be given by the Court to the request for a preliminary ruling, in particular as regards the question whether or not it is necessary to limit the temporal effects of the judgment to be delivered. In that regard, Bund Naturschutz refers, inter alia, to points 120, 122, 129, 130 and 132 of that Opinion.

31 Under Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

32 In this instance, the Court considers, however, after hearing the Advocate General, that it has, at the end of the written procedure and the hearing which has been held before it, all the necessary information to give a ruling and that the new facts relied on by Bund Naturschutz are not of such a nature as to be capable of being a decisive factor for the decision which the Court is called upon to make. It notes, in addition, that the present case must not be decided on the basis of arguments which have not been debated between the interested persons. In those circumstances, there is no need to order the reopening of the oral part of the procedure.

Consideration of the questions referred

Preliminary observations

33 By its questions, the referring court asks the Court of Justice whether a national measure such as the Inntal Süd Regulation, which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits, is among the plans and programmes referred to in Article 3(2)(a) of Directive 2001/42 in respect of which an environmental assessment must be carried out, or, at the very least, is among those referred to in Article 3(4) of that directive in respect of which the Member States must determine whether they are likely to have significant environmental effects.

34 However, the premiss on which those questions are based, that is to say, that such a regulation constitutes a plan or programme within the meaning of Article 2(a) of Directive 2001/42, is challenged both by the Rural District of Rosenheim and by the Landesanwaltschaft Bayern (Public Prosecutor's Office for the Land of Bavaria, Germany), an intervener in the dispute in the main proceedings.

35 In that regard, Article 2(a) of Directive 2001/42 defines 'plans and programmes' for the purposes of that directive as being those which satisfy the two cumulative conditions set out in that provision, namely that they are subject to preparation and/or adoption by an authority at national, regional or local level or are prepared by an authority for adoption, through a legislative procedure, by a parliament or government (the first condition), and that they are required by legislative, regulatory or administrative provisions (the second condition) (see, to that effect, judgment of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, EU:C:2020:503, paragraph 33).

36 In this instance, the first condition is satisfied since, according to the statements made by the referring court, the Inntal Süd Regulation was adopted by the Rural District of Rosenheim, which constitutes a local authority.

37 As regards the second condition, it is apparent from the settled case-law of the Court that plans and programmes the adoption of which is regulated by national legislative or regulatory provisions, which determine the competent authorities for adopting them and the procedure for preparing them, must be regarded as 'required' within the meaning, and for the application, of Directive 2001/42 (judgments of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraph 31; of 7 June 2018, *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 43; and of 12 June 2019, *Terre wallonne*, C-321/18, EU:C:2019:484, paragraph 34). Thus, in view of the intended purpose of that provision, which is to provide for a high level of protection of the environment, and in order to preserve the effectiveness of that provision, a plan or programme must be regarded as 'required' where there exists, in national law, a particular legal basis authorising the competent authorities to adopt that plan or programme, even if such adoption is not mandatory (see, to that effect, judgment of 7 June 2018, *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraphs 38 to 40).

38 Although the Public Prosecutor's Office for the Land of Bavaria questions whether that case-law is well founded, it should be noted that that case-law was confirmed by the Court in its judgment of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)* (C-24/19, EU:C:2020:503, paragraphs 36 to 52), following a comprehensive examination of the wording, in various language versions, of Article 2(a) of Directive 2001/42, the context and legislative history of that provision, the objectives of that directive, and the European Union's international undertakings.

39 In this instance, it is apparent from the documents before the Court that the Inntal Süd Regulation was adopted on the basis of point 4 of Paragraph 20(2) and Paragraph 26 of the BNatSchG, in conjunction with the first sentence of Article 12(1) and point 3 of Article 51(1) of the BayNatSchG. It therefore appears that the second condition, set out in the second indent of Article 2(a) of Directive 2001/42, is satisfied.

40 The Rural District of Rosenheim and the Public Prosecutor's Office for the Land of Bavaria nonetheless maintain that, in any event, a regulation such as the Inntal Süd Regulation constitutes neither a 'plan' nor a 'programme' because general and abstract provisions laying down general requirements for an undefined number of situations cannot fall within the scope of Directive 2001/42.

41 In that regard, however, it should be borne in mind that the general nature of the measures at issue does not preclude those measures from being classified as 'plans and programmes' within the meaning of Article 2(a) of that directive. While it is clear from the wording of that provision that the concept of 'plans and programmes' can cover normative acts that are legislative, regulatory or administrative, that directive does not contain any special provisions in relation to policies or general legislation that would call for them to be distinguished from plans and programmes for the purpose of that directive. The fact that a national measure is to some extent abstract and pursues an objective of transforming an existing geographical area is illustrative of its planning and programming aspect and does not prevent it from being included in the concept of 'plans and programmes' (judgment of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, EU:C:2020:503, paragraph 61 and the case-law cited).

The first and second questions

42 By its first and second questions, which must be examined together, the referring court asks, in essence, whether Article 3(2)(a) of Directive 2001/42 is to be interpreted as meaning that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits falls within the scope of that provision.

43 As a preliminary point, it should be borne in mind, first, that, under Article 1 thereof, the objective of Directive 2001/42 is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with that directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

44 Second, given the intended purpose of Directive 2001/42, which is to provide for such a high level of protection of the environment, the provisions which delimit the scope of the directive, in particular those setting out the definitions of the measures envisaged by that directive, must be interpreted broadly (judgment of 12 June 2019, *CFE*, C-43/18, EU:C:2019:483, paragraph 36 and the case-law cited).

45 Furthermore, the Court has repeatedly held that the concept of 'plans and programmes' includes not only their preparation, but also their modification, this being intended to ensure that provisions which are likely to have significant environmental effects are subject to an environmental assessment (judgment of 12 June 2019, *CFE*, C-43/18, EU:C:2019:483, paragraph 71 and the case-law cited).

46 In that context, it is apparent from Article 3(1) of Directive 2001/42 that an environmental assessment must be carried out for the plans and programmes referred to in Article 3(2) to (4) thereof which are likely to have significant environmental effects.

47 Under Article 3(2)(a) of that directive, such an environmental assessment must be carried out systematically for all plans and programmes which satisfy two cumulative conditions, namely they are prepared for the sectors referred to in that provision (the first condition) and they set the framework for future development consent of projects listed in Annexes I and II to Directive 2011/92 (the second condition).

The first condition laid down in Article 3(2)(a) of Directive 2001/42

48 Under Article 3(2)(a) of Directive 2001/42, in order to be covered by that provision, plans and programmes must be prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use.

49 Regarding the requirement that plans and programmes must be 'prepared for' the sectors listed in Article 3(2)(a) of Directive 2001/42, the Court has previously held that that requirement is met where the plan or programme in question 'concerns' one of those sectors (see, to that effect, judgments of 27 October 2016, *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 44, and of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, EU:C:2020:503, paragraph 66).

50 In that regard, it should be noted, more specifically, that the fact that Article 3(2)(a) of Directive 2001/42 refers both to 'town and country planning' and to 'land use' clearly shows that 'town and country planning or land use' is not limited to land use *stricto sensu*, namely the dividing of land into areas and the determination of the activities permitted within those areas, but is necessarily broader in its scope (judgments of 7 June 2018, *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 48, and of 7 June 2018, *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraph 43).

51 In addition, the fact that the main objective of a plan or programme is the protection of the environment, which includes protection of the landscape, does not mean that that plan or programme may not also 'concern' one of the sectors listed in Article 3(2)(a) of that directive, including town and country planning or land use (see, to that effect, judgment of 10 September 2015, *Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraphs 20 and 46).

52 Moreover, the very essence of plans and programmes prepared with a view to the protection of the environment, in particular measures of general application which, like the Inntal Süd Regulation, pursue such an objective, is, as a general rule, precisely to regulate human activities having significant environmental effects, namely – inter alia – those covered by the sectors listed in Article 3(2)(a) of Directive 2001/42 (see, by way of example, judgments of 17 June 2010, *Terre wallonne and Inter-Environnement Wallonie*, C-105/09 and C-110/09, EU:C:2010:355, and of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103).

53 In this instance, as was emphasised, in essence, by the Advocate General in points 65 to 67 of his Opinion, the Inntal Süd Regulation contains rules which concern activities falling within, inter alia, the following sectors: agriculture (point 6 of Paragraph 5(1)), forestry (points 8 and 9 of Paragraph 5(1)), transport (points 3 and 13 of Paragraph 5(1)), water management (point 4 of Paragraph 5(1)), and town and country planning or land use (points 1 and 2 of Paragraph 5(1)).

54 Thus, it appears that the first condition laid down in Article 3(2)(a) of Directive 2001/42 is satisfied, which it is, however, for the referring court to ascertain.

The second condition laid down in Article 3(2)(a) of Directive 2001/42

55 It follows from Article 3(2)(a) of Directive 2001/42 that the second condition laid down by that provision is satisfied where, first, the plans or programmes in question set the framework for future development consent of projects and, second, those projects are among those listed in Annexes I and II to Directive 2011/92.

56 Regarding, in the first place, the question whether a regulation such as the Inntal Süd Regulation covers the projects listed in Annex I or Annex II to Directive 2011/92, it should be noted that the concept of 'project', as defined in Article 1(2)(a) of Directive 2011/92, cannot be regarded as covering certain activities which that regulation makes subject to authorisation, such as those consisting of '[setting] up vending vans' (point 2(d) of Paragraph 5(1)), '[pursuing], [capturing] or [killing] wild animals' (point 7 of Paragraph 5(1)), or '[allowing] aircraft … to take off or land' (point 13 of Paragraph 5(1)). It follows from case-law that that concept refers to work or interventions involving alterations to the physical aspect of the site (judgment of 9 September 2020, *Friends of the Irish Environment*, C-254/19, EU:C:2020:680, paragraph 32 and the case-law cited).

57 However, besides the fact that Paragraph 4 of the Inntal Süd Regulation prohibits, in landscape conservation areas, 'any activity which alters the character of that area or which runs counter to the conservation objective pursued', Paragraph 5(1) of that regulation provides that a permit must be obtained, inter alia, in order to construct or substantially alter roads, paths or spaces, in particular campsites, sports fields, playgrounds and bathing areas or similar facilities (point 2(c)), to alter bodies of water, their banks or beds, the inflow or outflow of water or the piezometric level, to create new bodies of water or to construct drainage systems (point 4), and to clear forest stands in full or in part, carry out initial afforestation or perform associated clear-cutting of more than 0.5 hectares (point 9).

58 Such activities are capable of being covered by the projects listed in Annexes I and II to Directive 2011/92, in particular in point 7(b) and (c) of Annex I, as well as in point 1(c) and (d), point 10(e) and (f) and point 12(d) of Annex II.

59 In addition, the activities consisting of erecting, changing or changing the use of any kind of construction which are referred to in Paragraph 5(1) of the Inntal Süd Regulation are capable of being covered by several of the projects listed in both Annex I and Annex II to Directive 2011/92.

60 Regarding, in the second place, the question whether a regulation such as the Inntal Süd Regulation sets the framework for future development consent of projects, it should be borne in mind that the concept of 'plans and programmes' relates to any measure which establishes, by defining rules and procedures for scrutiny applicable to the sector concerned, a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment (judgment of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, EU:C:2020:503, paragraph 67 and the case-law cited).

61 Such an interpretation is intended to ensure that provisions which are likely to have significant environmental effects are subject to an environmental assessment (judgment of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, EU:C:2020:503, paragraph 68 and the case-law cited).

62 The requirement laid down in Article 3(2)(a) of Directive 2001/42, according to which the plan or programme concerned must set the framework for future development consent of projects listed in Annexes I and II to Directive 2011/92, must therefore be regarded as met where that plan or programme establishes a significant body of criteria and detailed rules for the grant and implementation of one or more of those projects, inter alia with regard to the location, nature, size and operating conditions of such projects, or the allocation of resources connected with those projects.

63 By contrast, that requirement is not met in the case of a plan or programme which, while targeting projects listed in Annexes I and II to Directive 2011/92, does not lay down such criteria or detailed rules.

64 In this instance, it appears that Paragraph 5(1) of the Inntal Süd Regulation merely, in the conservation area defined in Paragraph 1 thereof, makes a certain number of activities and projects, including projects in the nature of those listed in Annexes I and II to Directive 2011/92, subject to obtaining a compulsory permit.

65 It is true that that provision defines, for some of those projects, the size above which the implementation of those projects calls for prior authorisation. However, even in such cases, that provision does not lay down criteria or detailed rules for the grant and implementation of those projects.

66 As regards Paragraph 5(2) of the Inntal Süd Regulation, it is apparent from its own wording that it makes the issuing of a permit, 'without prejudice to other legislative provisions' subject to a single general condition, namely 'that the intended measure does not produce any of the effects referred to in Paragraph 4 or … that any such effects can be offset by ancillary provisions'.

67 It should be added in that regard that it is common ground that, first, the prohibition, laid down in Paragraph 4 of the Inntal Süd Regulation, of 'any activity which alters the character of [the landscape conservation] area or which runs counter to the conservation objective [referred to in Paragraph 3 of that regulation]' corresponds, in essence, to the prohibition already laid down in Paragraph 26(2) of the BNatSchG.

68 Second, it is not disputed that Paragraph 3 of the Inntal Süd Regulation sets out that conservation objective in general terms without laying down specific criteria or detailed rules compliance with which is required in order to obtain authorisation to implement the various projects referred to in Paragraph 5(1) of that regulation.

69 Consequently, while it is true that the adoption of the Inntal Süd Regulation may have a certain influence on the location of projects, by making it harder to implement them within the conservation area defined in Paragraph 1 thereof and, by contrast, easier to do so outside that area, including in areas which were included in the conservation area defined before that regulation was adopted, it appears that that regulation does not establish a significant body of criteria and detailed rules for the grant and implementation of one or more projects listed in Annexes I and II to Directive 2011/92, which it is, however, for the referring court to ascertain.

70 Having regard to the foregoing, the answer to the first and second questions is that Article 3(2)(a) of Directive 2001/42 must be interpreted as meaning that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits without laying down sufficiently detailed rules regarding the content, preparation and implementation of the projects referred to in Annexes I and II to Directive 2011/92 does not fall within the scope of that provision.

The third question

71 By its third question, the referring court asks, in essence, whether Article 3(4) of Directive 2001/42 is to be interpreted as meaning that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits falls within the scope of that provision.

72 Under that provision, Member States are to determine whether plans and programmes, other than those referred to in Article 3(2) of Directive 2001/42, which set the framework for future development consent of projects, are likely to have significant environmental effects.

73 The obligation laid down in Article 3(4) of Directive 2001/42 is therefore dependent on a condition which corresponds to the second condition laid down in Article 3(2)(a) of that directive, namely that the plan or programme in question must set the framework for future development consent of projects (see, to that effect, judgment of 12 June 2019, *CFE*, C-43/18, EU:C:2019:483, paragraph 60).

74 Thus, in view of the considerations relating to that condition set out in paragraphs 60 to 69 of the present judgment, the answer to the third question is that Article 3(4) of Directive 2001/42 must be interpreted as meaning that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits without laying down sufficiently detailed rules regarding the content, preparation and implementation of projects does not fall within the scope of that provision.

Costs

75 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 (Grand Chamber) hereby rules:

1. **Article 3(2)(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment must be interpreted as meaning that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits without laying down sufficiently detailed rules regarding the content, preparation and implementation of the projects referred to in Annexes I and II to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment does not fall within the scope of that provision.**

2. **Article 3(4) of Directive 2001/42 must be interpreted as meaning that a national measure which is intended to protect nature and the landscape and, to that end, lays down general prohibitions and makes provision for compulsory permits without laying down sufficiently detailed rules regarding the content, preparation and implementation of projects does not fall within the scope of that provision.**

[Signatures]