

***357 Holohan v An Bord Pleanála**

(Case C-461/17)

European Court of Justice (Second Chamber)

7 November 2018

[2019] Env. L.R. 16

A. Prechal , President of the Third Chamber , acting as President of the Second Chamber , C. Toader (Rapporteur), and A. Rosas , JJ : J. Kokott , Advocate General :

7 November 2018

Appropriate assessments; Conservation; Development consent; Environmental impact; Environmental impact assessments; EU law; Expert evidence; Habitats; Protected species; Roads;

H1 EU law—nature conservation—environmental assessment—Habitats and EIA Directives—extent of species and habitats required to be considered in “appropriate assessment”—extent to which grant of consent leaving determination of certain parameters to later decision permissible—whether explicit and detailed reasons required for rejecting recommendations in scientific expert opinion—whether EIA required supply of information regarding all main alternatives considered by developer

H2 A request for a preliminary ruling was made in proceedings concerning the grant of development consent for a project to extend a ring-road. The proposed road crossed two Natura 2000 sites, designated under the [Birds Directive](#) , and two rivers that were Sites of Community Importance, listed under the [Habitats Directive](#) since 2004. The applicants claimed that: (i) the respondent (B) had erred in failing to consider the environmental effects of the main alternatives studied; (ii) the appropriate assessment purportedly carried out was deficient; and (iii) B had erred in approving the proposed development and the Natura Impact Statement submitted by the County Council, as that council had failed to carry out pre-consent ecological surveys.

H3 The first three questions referred asked, essentially: whether [art.6\(3\) of the Habitats Directive](#) : (1) required that an “appropriate assessment”, on the one hand, catalogued all the habitat types and species for which a site was protected, and, on the other, identified and examined both the effects of the proposed project on the species present on the site, but for which that site had not been listed, and the effects on habitat types and species to be found outside the boundaries of that site; (2) permitted the competent authority to grant development consent to a plan or project that left the determination of certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, for later decision and, if so, whether those parameters may, at that later stage, be determined *358 unilaterally by the developer and merely notified to that authority; and (3) meant that where the competent authority rejected the findings in a scientific expert opinion recommending that additional information be obtained, the “appropriate assessment” had to include an explicit and detailed statement of reasons capable of ensuring certainty that, despite the opinion, there was no reasonable scientific doubt as to the environmental impact of the work envisaged on the site.

H4 Two further questions were referred regarding the [EIA Directive](#) . The first was whether [art.5\(1\) & \(3\)](#) and [Annex IV](#) required the developer to supply information that expressly addressed the potentially significant impact on all the species identified in the statement that was supplied pursuant to those provisions. The second asked whether [art.5\(3\)\(d\)](#) required the developer to supply information in relation to the environmental effects of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for the choice, taking into account their environmental effects, even if such an alternative was rejected at an early stage.

H5 Held:

H6 (1) The conservation objective pursued by the [Habitats Directive](#) required that typical habitats or species were included in the appropriate assessment, if they were necessary to the conservation of the habitat types and species listed for the protected area. Accordingly, an “appropriate assessment” had to catalogue the entirety of habitat types and species for which a site was protected, and identify and examine both the implications of the proposed project for the

species present on that site, and for which that site had not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications were liable to affect the conservation objectives of the site.

H7 (2) [Article 6\(3\)](#) permitted the competent authority to grant development consent which left the developer free to determine such later parameters, but only if that authority was certain that the consent granted included conditions that were strict enough to guarantee that those parameters would not adversely affect the integrity of the site.

H8 (3) Where the competent authority rejected the findings in a scientific expert opinion recommending that additional information be obtained, the “appropriate assessment” had to include an explicit and detailed statement of reasons, capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.

H9 (4) [Article 5\(1\) & \(3\)](#) and [Annex IV](#) obliged the developer to supply information that expressly addressed the significant effects of its project on all species identified in the statement that was supplied pursuant to those provisions. The obligation imposed did not extend to all effects on all species present, but was restricted to the significant effects, interpreted in the light of [art.1\(1\)](#) and [art.2\(1\)](#).

H10 (5) The [EIA Directive](#) contained no definition of the concept of “main alternatives”, as referred to in [art.5\(3\)\(d\)](#). The decisive factor in identifying those alternatives that should be regarded as “main” alternatives was, however, whether or not those alternatives influenced the environmental effects of the project. In that regard, the time when an alternative was rejected by the developer was of no relevance. [Article 5\(3\)\(d\)](#) did not require the main alternatives studied to be subject to an impact assessment equivalent to that of the approved project. Only an outline of those alternatives had to be supplied. The developer was required, however, to indicate the reasons for the choice, taking into account the environmental effects. *359 That obligation ensured that the competent authority was then able to carry out a comprehensive environmental impact assessment that catalogued, described and assessed, in an appropriate manner, the effects of the approved project on the environment, in accordance with [art.3](#). The outline had to be supplied for all the main alternatives that were studied by the developer, whether initially envisaged by her or by the competent authority or recommended by some stakeholders.

Cases referred to:

Abraham v Region Wallonne (C-2/07) EU:C:2008:133; [2008] Env. L.R. 32

Air Transport Association of America v Secretary of State for Energy and Climate Change (C-366/10) EU:C:2011:864; [2013] P.T.S.R. 209; [2012] Env. L.R. D5

Anklagemyndigheden (Public Prosecutor) v PM Poulsen and Diva Navigation (C-286/90) EU:C:1992:453

Banco Privado Português and Massa Insolvente do Banco Privado Português (C-667/13)

Briels v Minister van Infrastructuur en Milieu (C-521/12) EU:C:2014:330; [2014] P.T.S.R. 1120

Brussels Hoofdstedelijk Gewest v Vlaams Gewest (C-275/09) EU:C:2011:154; [2011] Env. L.R. 26

Commission v Belgium (C-538/09)

Commission v Germany (C-98/03) EU:C:2006:3; [2006] Env. L.R. 36

Commission v Germany (Moorburg) (C-142/16)

Commission v Greece (C-518/04)

Commission v Ireland (C-418/04)

Commission v Ireland (C-183/05) EU:C:2007:14; [2007] Env. L.R. 23

Commission v Ireland (C-50/09) EU:C:2011:109; [2011] P.T.S.R. 1122; [2011] Env. L.R. 25

Commission v Poland (Białowieża Forest)(C-441/17)

Commission v Spain (Alto Sil/Spanish brown bear) (C-404/09)

Deutscher Naturschutzring - Dachverband der deutschen Natur- und Umweltschutzverbände eV v Germany (C-683/16) EU:C:2018:433; [2018] P.T.S.R. 1887

Grace An Bord Pleanála (C-164/17) EU:C:2018:593; [2018] Env. L.R. 37

Kadi v Council (C-402/05) EU:C:2008:461; [2009] 1 A.C. 1225; [2009] 3 W.L.R. 872

Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris van Landbouw, Natuurbeheer en Visserij (C-127/02) EU:C:2004:482; [2005] 2 C.M.L.R. 31; [2005] Env. L.R. 14

Lesoochranské Zoskupenie VLK v Ministerstvo Životného Prostredia Slovenskej Republiky (C-240/09) EU:C:2011:125; [2012] Q.B. 606; [2011] Env. L.R. 28

Leth v Austria (C-420/11) EU:C:2013:166; [2013] P.T.S.R. 805; [2013] Env. L.R. 26

North East Pylon Pressure Campaign Ltd v An Bord Pleanála (C-470/16) EU:C:2018:185; [2018] 3 C.M.L.R. 6; [2018] Env. L.R. 28

Orleans v Vlaams Gewest (C-387/15) EU:C:2016:583; [2017] Env. L.R. 12

People Over Wind v Coillte Teoranta (C-323/17) EU:C:2018:244; [2018] P.T.S.R. 1668; [2018] Env. L.R. 31

R. (on the application of Mellor) v Secretary of State for Communities and Local Government (C-75/08) EU:C:2009:279; [2010] P.T.S.R. 880; [2010] Env. L.R. 2

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R. (on the application of Wells) v Secretary of State for Transport, Local Government and the Regions (C-201/02) EU:C:2004:12; [2004] 1 C.M.L.R. 31; [2004] Env. L.R. 27

Societe Regie Networks v Direction de Controle Fiscal Rhone-Alpes Bourgogne (C-333/07)

EU:C:2008:764; [2009] 2 C.M.L.R. 20

Solvay v Region Wallonne (C-182/10) EU:C:2012:82; [2012] 2 C.M.L.R. 19; [2012] Env. L.R. 27

Sweetman v An Bord Pleanála (C-258/11) EU:C:2013:220; [2014] P.T.S.R. 1092; [2015] Env. L.R. 18

Syndicat Professionnel Coordination des Pecheurs de l'Etang de Berre et de la Region v Electricite de France (EDF) (C-213/03) EU:C:2004:464; [2004] 3 C.M.L.R. 19; [2005] Env. L.R. 13

Legislation referred to:

[TFEU arts 191 , 267 & 296](#)

Charter of the European Union art.37

[Directive 85/337 on the assessment of the effects of certain public and private projects on the environment \(EIA\) Annex III](#)

Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) 1991 arts 2 , 4 & 17 and Annex II

[Directive 92/43 on the conservation of natural habitats and of wild fauna and flora \(Habitats\) arts 1, 2, 3 , 6, 7 & 12 and Annex I](#)

[Directive 97/11 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment \(amending EIA\)](#)

[Directive 2001/42 on the assessment of the effects of certain plans and programmes on the environment \(SEA\)](#)

[Directive 2009/147 on the conservation of wild birds \(Birds\) art.4](#)

[Directive 2011/92 on the effects of public and private projects on the environment \(EIA\) arts 1, 2, 3, 4 & 5 and Annex IV](#)

[Directive 2014/52 on the assessment of the effects of public and private projects on the environment \(amending EIA\) art.3](#)

H13 Representation

D. Browne and C. Hugues , Barristers-at-law, and P. O'Higgins and J. Devlin , Senior Counsel, instructed by C. Herlihy , L. O'sullivan and B. Harrington , Solicitors, appeared on behalf of the applicants.

F. Valentine , Barrister-at-law, and N. Butler , Senior Counsel, instructed by M. Larkin and A. Doyle , solicitors, appeared on behalf of the respondent.

M. Browne , G. Hodge and A. Joyce , acting as Agents, G. Simons , Senior Counsel, and M. Gray , Barrister-at-law, appeared on behalf of Ireland.

M. Smolek , J. Vlášil and L. Dvořáková , acting as Agents, appeared on behalf of the Czech Government.

G. Brown , acting as Agent, C. Banner , Barrister, R. Fadoju and J. Kraehling , acting as Agents, and T. Buley and C. Banner , Barristers, appeared on behalf of the United Kingdom.

C. Hermes , E. Manhaeve and M. Noll-Ehlers , acting as Agents, appeared on behalf of the Commission.

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OPINION

I. Introduction ¹

AG1 EU environmental law provides for a number of environmental assessments. Of particular relevance in the case of individual projects are the environmental impact assessment under the [EIA Directive](#)² and the appropriate assessment of implications for the conservation objectives of protected areas under the [Habitats Directive](#) .³

AG2 The present request for a preliminary ruling, which has its origin in the approval of a ring road round Kilkenny, Ireland, gives the Court an opportunity to clarify the substantive requirements applicable to those assessments, in particular as regards the species affected by a project and the assessment of alternatives.

AG3 The questions concerning the treatment of alternatives in the environmental impact assessment are particularly problematic, although all answers to the questions referred are capable of making a valuable contribution to legal certainty in the conduct of those two assessments.

II. Legal framework

A. EU law

The Habitats Directive

AG4 [Article 1\(e\) of the Habitats Directive](#) defines the conservation status of a natural habitat as follows:

“the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2.

The conservation status of a natural habitat will be taken as “favourable when:

— its natural range and areas it covers within that range are stable or increasing, and

- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future and
- the conservation status of its typical species is favourable as defined in (i).”

AG5 [Article 2\(2\) and \(3\) of the Habitats Directive](#) sets out the objectives essential to its application:

“(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. *362

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

AG6 The assessment of plans and projects is regulated as follows in [art.6\(3\) of the Habitats Directive](#) :

“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”

AG7 In accordance with [art.7 of the Habitats Directive](#) , [art.6\(2\) to \(4\)](#) are also to apply to the special protection areas that were provided for in [art.4 of the Birds Directive](#) .⁴

The EIA Directive

AG8 The essential content of the environmental impact assessment is laid down in [art.3 of the EIA Directive](#) :

“The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 12, the direct and indirect effects of a project on the following factors:

- (a) human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape;
- (c) material assets and the cultural heritage;
- (d) the interaction between the factors referred to in points (a), (b) and (c).”

AG9 [Article 5\(1\)](#) and [\(3\) of the EIA Directive](#) lays down the information to be supplied by the developer:

“1. In the case of projects which, pursuant to Article 4, are to be made subject to an environmental impact assessment in accordance with this Article and Articles 6 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental factors likely to be affected; ***363**

(b) the Member States consider that a developer may reasonably be required to compile this information having regard, inter alia, to current knowledge and methods of assessment.

2. ...

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

(a) a description of the project comprising information on the site, design and size of the project;

(b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;

(c) the data required to identify and assess the main effects which the project is likely to have on the environment;

(d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects;

(e) a non-technical summary of the information referred to in points (a) to (d).”

AG10 [Annex IV to the EIA Directive](#) sets out in detail the information to be provided in accordance with [art.5](#) , in particular as regards the alternatives and specific environmental effects to be examined:

“2. An outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects.

3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.”

AG11 Recital 13 of the [EIA Directive](#) refers to the scoping procedure provided for in [art.5\(2\) of the EIA Directive](#) :

“It is appropriate to lay down a procedure in order to enable the developer to obtain an opinion from the competent authorities on the content and extent of the information to be elaborated and supplied for the assessment. Member States, in the framework of this procedure, may require the developer to provide, inter alia, alternatives for the projects for which it intends to submit an application.”

III. Facts and request for a preliminary ruling

AG12 An Bord Pleanála (The Planning Board) is the body competent in Ireland for granting development consent for proposed road construction projects and, as part of that process, for determining the scale of the environmental impact assessment necessary and providing advice based on the information provided to it.

AG13 In 2008, the developer, Kilkenny County Council, submitted to An Bord Pleanála an application for approval of a road construction project involving the construction of a new road and a bridge over the River Nore, as well as for the compulsory purchase of the land needed for the project. The purpose of the bypass road is to ***364** complete a full ring road around the city of Kilkenny and thereby, inter alia, to reduce traffic congestion in the inner city. The proposed road cuts through a number of protected natural areas: the River Nore Special Protection Area (“River Nore SPA”) designated under the [Birds Directive](#) (Natura 2000 Code: IE0004233); a candidate Special Area of Conservation (SAC) under the [Habitats Directive](#), that is to say the “River Barrow and River Nore SAC” (Natura 2000 Code IE0002162); and a proposed National Heritage Area (NHA).

AG14 On 11 July 2014 An Bord Pleanála made a decision approving the proposed road construction project known as the Kilkenny Northern Ring Road Extension and the compulsory purchase order. The applicants ask the Irish High Court to review that decision and to annul it on the ground that it infringes EU law.

AG15 In those proceedings, the High Court, on 4 May 2017, decided to submit to the Court of Justice a request for a preliminary ruling, which was received at the Court on 28 July 2017 with the following questions:

- (1) whether [the [Habitats Directive](#)] has the effect that a Natura impact statement must identify the entire extent of the habitats and species for which the site is listed;
- (2) whether [the [Habitats Directive](#)] has the effect that the potential impact on all species (as opposed to only protected species) which contribute to and are part of a protected habitat must be identified and discussed in a Natura impact statement;
- (3) whether [the [Habitats Directive](#)] has the effect that a Natura impact statement must expressly address the impact of the proposed development on protected species and habitats both located on the SAC as well as species and habitats located outside its boundaries;
- (4) whether [the [EIA Directive](#)] has the effect that an environmental impact statement must expressly address whether the proposed development will significantly impact on the species identified in the statement;
- (5) whether an option that the developer considered and discussed in the environmental impact assessment, and/or that was argued for by some of the stakeholders, and/or that was considered by the competent authority, amounts to a “main alternative” within the meaning of [art.5\(3\)\(d\) of \[the EIA Directive\]](#), even if it was rejected by the developer at an early stage;

(6) whether [the [EIA Directive](#)] has the effect that an environmental impact assessment should contain sufficient information as to the environmental impact of each alternative as to enable a comparison to be made between the environmental desirability of the different alternatives; and/or that it must be made explicit in the environmental impact statement as to how the environmental effects of the alternatives were taken into account;

(7) whether the requirement in [art.5\(3\)\(d\) of \[the EIA Directive\]](#) that the reasons for the developer's choice must be made by "taking into account the environmental effects", applies only to the chosen option or also to the main alternatives studied, so as to require the analysis of those options to address their environmental effects;

(8) whether it is compatible with the attainment of the objectives of [the [Habitats Directive](#)] that details of the construction phase (such as the compound location and haul routes) can be left to post-consent decision, and if so whether it is open to a competent authority to permit such matters to be *365 determined by unilateral decision by the developer, within the context of any development consent granted, to be notified to the competent authority rather than approved by it;

(9) whether [the [Habitats Directive](#)] has the effect that a competent authority is obliged to record, with sufficient detail and clarity to dispel any doubt as to the meaning and effect of such opinion, the extent to which scientific opinion presented to it argues in favour of obtaining further information prior to the grant of development consent;

(10) whether [the [Habitats Directive](#)] has the effect that the competent authority is required to give reasons or detailed reasons for rejecting a conclusion by its inspector that further information or scientific study is required prior to the grant of development consent; and

(11) whether [the [Habitats Directive](#)] has the effect that a competent authority, when conducting an appropriate assessment, must provide detailed and express reasons for each element of its decision.

AG16 Written observations were submitted by Mr Holohan and the other applicants in the main proceedings, An Bord Pleanála, Ireland, the Czech Republic, the United Kingdom of Great Britain and Northern Ireland and the European Commission. The Czech Republic did not, however, attend the hearing on 16 May 2018.

IV. Legal assessment

AG17 Below, I shall begin by answering the questions concerning the [Habitats Directive](#) and then reply to the questions concerning the [EIA Directive](#) .

A. *The Habitats Directive*

AG18 The questions concerning the [Habitats Directive](#) have to do, first, with the extent of the assessment provided for in [art.6\(3\) of the Habitats Directive](#) (see, in this regard, section 1), next, with the decision-making powers which may be delegated to the developer following the approval of a project under that provision (see, in this regard, section 2) and, finally, with the requirements applicable to consent for a project with respect to the stating of reasons (see, in this regard, section 3).

The first three questions — extent of the assessment provided for in Article 6(3) of the Habitats Directive

AG19 The first three questions referred by the High Court have to do with the extent of the assessment provided for in [art.6\(3\) of the Habitats Directive](#) . The High Court asks, in particular,

whether certain information must be set out in a Natura impact statement.

AG20 The [Habitats Directive](#) does not, however, prescribe any particular method for carrying out such an assessment⁵ and certainly does not lay down any specific requirements in respect of the Natura impact statement provided for in Irish law. Moreover, An Bord Pleanála submits that, in addition to the aforementioned document, other submissions and observations are presented, all of which must be taken into account as part of the assessment under [art.6\(3\)](#) of the directive. ***366**

AG21 In answering those questions, the Court can nonetheless make clear what requirements are to be applied to an assessment under [art.6\(3\) of the Habitats Directive](#) .

First question — identification of all protected habitat types and species

AG22 By the first question, the High Court wishes to ascertain whether the assessment provided for in [art.6\(3\) of the Habitats Directive](#) must identify all the habitats and species on account of which the area was included on the list of areas of Community importance. The background to this question is that various species and habitat types in the interests of whose protection the area at issue was designated as being of Community importance are not mentioned in the documents submitted for the purposes of the assessment.

AG23 I shall now show that, while the assessment must unequivocally rule out any significant adverse effects on any of the protected habitat types and species in the area in question, that can also be implied.

AG24 [Article 6 of the Habitats Directive](#) contains a whole series of specific obligations and procedures designed, as is clear from [art.2\(2\)](#) of that directive, to maintain at, or as the case may be restore to, a favourable conservation status natural habitats and species of wild fauna and flora of interest for the European Union.⁶

AG25 For that purpose, [art.6\(3\) of the Habitats Directive](#) establishes an assessment procedure intended to ensure, by means of a prior examination, that a plan or project not directly connected with or necessary to the management of the site concerned, but likely to have a significant effect on it, is authorised only to the extent that it will not (in fact) adversely affect the integrity of that site.⁷

AG26 In accordance with the first sentence of [art.6\(3\) of the Habitats Directive](#) , such plans or projects are to be subject to an appropriate assessment of their implications for that site in view of the site's conservation objectives, if it cannot be excluded, on the basis of objective information, that they will have a significant effect on that site, either individually or in combination with other plans or projects.⁸ In that connection, all aspects of the plan or project which can affect the conservation objectives of the site must be identified in the light of the best scientific knowledge in the field.⁹ In particular, that assessment must be made in the light of the specific characteristics and environmental conditions of the site concerned by such a plan or project.¹⁰

AG27 Where a plan or project is likely to undermine the protected site's conservation objectives, it must be considered to be likely to have a significant effect on that site.¹¹ In order for the integrity of a site as a natural habitat not to be adversely affected for the purposes of the second sentence of [art.6\(3\) of the Habitats Directive](#) , ***367** the site needs to be maintained at a favourable conservation status. This entails the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site in the list of sites of Community interest, in accordance with the directive.¹² The same must apply, *mutatis mutandis* , to protected species.

AG28 As the Czech Republic rightly submits, the effects on certain habitat types and species referred to in [Annexes I and II to the Habitats Directive](#) , and on migratory birds and birds referred to in [Annex I to the Birds Directive](#) , which are present on the protected site but are not covered by its conservation objectives do not, on the other hand, in principle, have to be assessed. However, this only applies if these occurrences are so insignificant that they do not for the sake of completeness have to be included in the conservation objectives of the area.

AG29 Finally, the assessment provided for in the first sentence of [art.6\(3\) of the Habitats Directive](#) must be free of lacunae. It must contain complete, precise and definitive findings

capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned.¹³ Moreover, an assessment of the implications of a plan or project for the protected site's conservation objectives is not "appropriate", within the meaning of the first sentence of [art.6\(3\) of the Habitats Directive](#) , where updated data concerning the protected habitats and species is lacking.¹⁴

AG30 The assessment must therefore unequivocally demonstrate why the protected habitat types and species are not adversely affected. In this regard, it may in certain cases be sufficient to find that *only* certain protected habitat types and species are present at the locations concerned, which is to say that other protected habitat types and species on the site are not present at those locations. It must also be apparent from the assessment, however, that the works at the locations concerned are not capable of adversely affecting those other habitat types and species, in so far as they are present at other locations on the site.

AG31 Mere silence in respect of certain habitat types or species, on the other hand, will not generally amount to complete, precise and definitive findings capable of removing all reasonable scientific doubt as to the effects of the works under assessment.

AG32 The answer to the first question must therefore be that, although the assessment provided for in [art.6\(3\) of the Habitats Directive](#) need not expressly identify all the habitat types and species on account of which the site was included on the list of sites of Community interest or is protected as a special protection area under the [Birds Directive](#) , it must at least implicitly contain complete, precise and definitive findings capable of removing all reasonable scientific doubt as to the effects of the works under assessment on the protected habitat types and species. ***368**

The second question — account to be taken of other habitat types and species

AG33 By the second question, the High Court wishes to clarify whether the [Habitats Directive](#) requires that the potential impact on all species (as opposed to only protected species) which contribute to and are part of a protected habitat must be identified and discussed in an assessment under [art.6\(3\) of the Habitats Directive](#) .

AG34 As I have already said,¹⁵ the requirements applicable to such an assessment will depend on the site's conservation objectives, that is to say, first and foremost, the protected species and habitat types. It may nonetheless be necessary for the assessment to include adverse effects on other species and habitats.

AG35 Other species are relevant to the assessment in any event, to the extent that they form part of protected habitats. As Mr Holohan and the other applicants in the main proceedings have remarked, this is laid down in the definition of a natural habitat's conservation status in [art.1\(e\) of the Habitats Directive](#) . The conservation status expressly includes the typical species of the habitat concerned. Any adverse effects on those species at the locations occupied by that habitat type would also attach to the habitat type concerned.

AG36 The [Habitats Directive](#) provides only a rudimentary definition of the species that are typical of certain habitat types, since these are to some extent apparent from the descriptions of the habitat types in question, which often refer to particular plant species. Thus, the priority habitat type "Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)" (Natura 2000 Code 91E0*), which is present in the future SAC concerned, contains in its very own name the common alder (*Alnus glutinosa*) and common ash (*Fraxinus excelsior*), as well as bird cherry (*Prunus padus*), grey alder (*Alnus incanae*) and white willow (*Salix alba*).

AG37 Scientific research and discussion of the different habitat types should make it possible to identify further typical species. The Commission's Interpretation Manual of Habitats, referred to in [Annex I to the Habitats Directive](#) ,¹⁶ contains valuable guidance in this regard, although it is obviously not legally binding.

AG38 Under the aforementioned habitat type 91E0*, the Interpretation Manual refers not only to the tree species immediately apparent from the habitat type designation but also to the black poplar (*Populus nigra*), the brittle willow (*Salix fragilis*), the white birch (*Betula pubescens*), the wych elm (*Ulmus glabra*) and almost 20 herbaceous layer species.

AG39 It should be noted here that the species typical of protected habitat types are not confined

to plant species. Thus, in connection with the habitat type “Estuaries” (Natura 2000 Code 1130), which is also part of the future SAC but is presumably not affected by the project at issue, the Commission’s Interpretation Manual mentions invertebrate benthic communities (such as mussels and snails and many other small species of fauna), as well as the fact that this habitat type includes important feeding areas for many birds.¹⁷

AG40 In addition, habitat types and species which are not expressly protected may also play an essential role in the conservation of protected habitat types and species. *369 The Czech Republic rightly refers in this regard to the importance of habitat types and species which are not expressly protected to the nutrition of protected species, although the former may also perform other functions in the life cycle of protected species.

AG41 The fact that certain habitats may be of major importance to the reproduction of species is probably well known. Thus, it is essential that rivers and streams are passable if migratory fish such as salmon (*Salmo salar*) are to be able to reach their spawning grounds.

AG42 What is more, the life cycle of certain protected species is to some extent also dependent on very specific other species. Thus, the larvae of the freshwater pearl mussel (*Margaritifera margaritifera*) and the endemic River Nore freshwater pearl mussel (*Margaritifera durrovensis*), both of which are present in the future SAC concerned, live for a time as parasites in the gills of river trout (*Salmo trutta fario*) or salmon.¹⁸

AG43 This does not, of course, mean that adverse effects on the typical species of protected habitat types and on other relevant species and habitats are necessarily to be regarded as adversely affecting the conservation objectives of the protected site in such a way as to preclude the plan or project. Adverse effects of such kinds preclude the project only to the extent that they create reasonable scientific doubt concerning the proposition that they will not adversely alter the conservation status of the protected habitat types and species on the site in question.

AG44 Consequently, the assessment provided for [art.6\(3\) of the Habitats Directive](#) appropriately covers effects on a site’s conservation objectives only if it includes the adverse effects both on the typical species of the protected habitat types and on other species and habitat types to the extent that these are necessary to the conservation of the protected habitat types and species.

The third question — account to be taken of habitats and species outside the protected areas concerned

AG45 By the third question, the High Court wishes to ascertain whether an assessment under [art.6\(3\) of the Habitats Directive](#) must expressly address the effects of the proposed project both on protected species and habitats located in the protected area and on species and habitats located outside its boundaries.

AG46 Mr Holohan and the other applicants in the main proceedings point in this regard to [art.2\(3\) of the Habitats Directive](#). According to that provision, measures taken pursuant to that directive are to take into account, inter alia, regional and local characteristics. For the purposes of the assessment of potential adverse effects on the site, this means that the latter cannot be assessed in isolation from the area surrounding the site and the characteristics of that area.

AG47 The Court of Justice also has already recognised that activities carried on outside protected areas which give rise to adverse effects within those areas must also be assessed under [art.6\(3\) of the Habitats Directive](#).¹⁹ In this regard, the judgment concerning the Moorburg power plant, in particular, is of interest in the present proceedings. This concerned the possible killing, as a result of the facility for cooling the power plant in question, of fish for the reproduction of which protected *370 areas had been established upstream. Since, because of the power plant, there was a risk that fewer fish would reach those areas, the power plant project in question adversely affected the integrity of the protected areas.

AG48 Equally important from the point of view of assessment under [art.6\(3\) of the Habitats Directive](#) are the adverse effects on species outside the future SAC or SPA, where these are either protected species themselves or are species typical of protected habitats, or where they are in some other way necessary to the conservation of protected habitats and species.

AG49 Furthermore, adverse effects on habitats outside protected areas may also be important. This is the case in particular where a protected area, although protecting specific species, does

not include all the habitats used by those species. In that event, any degradation of such habitats arising outside the protected areas could adversely affect the protected presence of species within those protected areas.

AG50 Nor would I wish to rule out the possibility that, from a scientific point of view, certain interactions may be identified as a result of which adverse effects on habitats outside protected areas are detrimental not only to species but also to habitats within protected areas.

AG51 Whether the habitats outside the protected areas are habitat types listed in [Annex I to the Habitats Directive](#), on the other hand, seems irrelevant at first sight, since habitats listed in [Annex I](#) are, as such, protected in principle only within the protected areas.

AG52 The assessment provided for in [art.6\(3\) of the Habitats Directive](#) must therefore also include adverse effects on species or habitats outside the protected areas, where such adverse effects may be detrimental to the conservation objectives of the protected areas.

The eighth question — Decision-making powers of the developer

AG53 The eighth question seeks to ascertain whether it is compatible with the [Habitats Directive](#) for details of the construction phase (such as the compound location and haul routes) to be left for post-consent decision, and, if so, whether it is open to a competent authority to permit such matters to be determined by unilateral decision of the developer, in this instance Kilkenny County Council, within the context of any development consent granted, to be notified to the competent authority, that is to say An Bord Pleanála, rather than approved by it.

AG54 In accordance with [art.6\(3\) of the Habitats Directive](#), the competent national authorities must agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned.

AG55 The assessment provided for in the first sentence of [art.6\(3\) of the Habitats Directive](#) must therefore be free of lacunae. It must contain complete, precise and definitive findings capable of removing all reasonable scientific doubt as to the effects of the works on the protected site concerned.²⁰

AG56 Consequently, a developer may only be left to make decisions in respect of which there is no reasonable scientific doubt that their effects will be non-detrimental to the site concerned.
***371**

AG57 Such doubt may in particular be ruled out by sufficiently specific conditions of consent which lay down for those decisions a framework of such a kind as to ensure that they are not capable of adversely affecting the integrity of the site concerned.

AG58 Whether those requirements are satisfied in the case in the main proceedings is a question which the national court must examine in the light of the specific circumstances of the development at issue.

AG59 If a comprehensive assessment of the conditions relating to details of the construction phase is not yet possible at the time of the approval in principle of the plan or project, a multi-stage assessment and consent procedure must be conducted, as the Czech Republic notes. This is the approach taken in the context of environmental impact assessments.²¹

AG60 The answer to the eighth question must therefore be that, in the context of a development consent granted under [art.6\(3\) of the Habitats Directive](#), details of the construction phase may be left to unilateral decision of the developer only where every reasonable scientific doubt that the effects of such a decision will not be detrimental to the integrity of the site concerned has been dispelled.

The ninth, tenth and eleventh questions — reasons for the decisions of the authority competent to grant consent

AG61 By the ninth, tenth and eleventh questions, the High Court seeks to ascertain what requirements govern the reasons to be stated for a decision under the second sentence of [art.6\(3\) of the Habitats Directive](#), in particular whether the decision-making authority must expressly dispel specific doubts about whether the information available is sufficient.

AG62 From the point of view of EU law, these questions leave room for misunderstanding, inasmuch as the statement of reasons required by the [second paragraph of art.296 TFEU](#) must disclose in a clear and unequivocal fashion only the reasoning followed by the institution which adopted the measure in such a way as to enable the persons concerned to ascertain the reasons for it and to enable the competent court to exercise its power of review.²² That is not what is at issue here, however.

AG63 The dispute in the national proceedings is, rather, whether the reasons given are sufficient to justify the decision of An Bord Pleanála. After all, as the parties to the proceedings unanimously point out, a plan or project may be approved under [art.6\(3\) of the Habitats Directive](#) only where the assessment of the development contains complete, precise and definitive findings capable of removing any reasonable scientific doubt as to the effects of the works proposed on the protected site concerned.²³ Considered as a whole, therefore, that assessment must show with sufficient detail and clarity that every reasonable scientific doubt has been dispelled.

AG64 In this connection, Ireland rightly draws a comparison with the case-law on the [EIA Directive](#) to the effect that, under that directive, although decisions do not *372 themselves have to contain any reasons, if an interested party so requests, the competent administrative authority is obliged to communicate to him the reasons for the relevant decision or the relevant information and documents in response to the request made.²⁴

AG65 This also applies to decisions on the basis of [art.6\(3\) of the Habitats Directive](#), in so far as this provision, too, does not prescribe any particular form for the approval of a development, but confines itself to requiring an appropriate assessment. It is therefore possible, instead of giving express reasons for a decision, to refer to the evidence presented in the assessment of the proposed development's implications for the conservation objectives of the site concerned. It must be pointed out, however, that this approach must not have the effect of jeopardising the effective judicial protection of the interested parties.²⁵

AG66 Against that background, the individual questions can be answered relatively straightforwardly.

The ninth question — clarification of an expert opinion

AG67 The ninth question seeks to clarify whether a competent authority is obliged to record, with sufficient detail and clarity to dispel any doubt as to the meaning and effect of such opinion, the extent to which scientific expert opinion presented to it argues in favour of obtaining further information prior to the grant of development consent.

AG68 Whether such an obligation exists depends in essence on the clarity of the content of the opinion in question. If that opinion, in and of itself, dispels all reasonable scientific doubt with sufficient clarity, the authority does not have to provide any further clarification.

AG69 If, on the other hand, the opinion does not in itself dispel such doubts with the necessary clarity, the authority may approve the development only after providing additional details to remove the remaining doubts.

The tenth question — reasons for rejecting an inspector's findings

AG70 The tenth question concerns the situation where the competent authority does not endorse the findings of one of its inspectors.

AG71 Here, too, the test for the need for additional details is the removal of reasonable scientific doubt. Where the inspector's findings prompt such doubt, the development may be approved only if the authority provides further data to dispel that doubt.

AG72 Contrary to what has been argued by An Bord Pleanála and Ireland, the relationship between the inspector and the authority is of no relevance in this regard. The decisive factor is, rather, whether the inspector's findings give rise to reasonable scientific doubt as to the findings on which the authority relies.

The eleventh question — statement of reasons for all elements of a decision

AG73 Finally, the eleventh question seeks to generalise the previous conclusions with respect to

the obligation to state reasons. It seeks to clarify whether the authority must provide detailed and express reasons for all elements of its decision. *373

AG74 Here, too, it is the case that the competent authority must, certainly for those elements of its decision which are capable of giving rise to reasonable scientific doubt, state detailed and express reasons that are such as to dispel that doubt.

AG75 In so far as An Bord Pleanála submits in particular that its decision is based not only on the Natura impact statement but also on various other information sources, it should be noted that the statement of reasons for that decision must make it clear on which of those information sources it is founded. Furthermore, in so far as those information sources are contradictory, the statement of reasons must remove any such contradictions to the extent necessary to dispel all reasonable scientific doubt as to the decision.

Answer to the ninth, tenth and eleventh questions

AG76 The answer to the ninth, tenth and eleventh questions must therefore be that the competent authority must provide, for those elements of a decision to approve a development under [art.6\(3\) of the Habitats Directive](#) which are liable to give rise to reasonable scientific doubt about whether the effects of that development are non-detrimental to the integrity of the site concerned, detailed and express reasons that are such as to dispel that doubt. This is true in particular of doubt prompted by the findings of an inspector. Although the authority may refer by way of reasons to a scientific expert opinion, that also must be capable of excluding all reasonable scientific doubt.

B. The EIA Directive

AG77 So far as concerns the questions concerning the [EIA Directive](#), it is necessary, first of all, to determine which version of that directive is applicable *ratione temporis*. Although the request for a preliminary ruling refers on a number of occasions to the directive as amended, the most recent amendments, introduced by [Directive 2014/52/EU](#),²⁶ apply, pursuant to [art.3](#) thereof, only to projects in respect of which certain procedural steps were initiated after 16 May 2017. The case in the main proceedings, however, concerns a consent granted on 11 July 2014 to which — as, indeed, the national court and the parties to the proceedings recognise — the provisions of the previous version of the [EIA Directive](#) are still applicable.

AG78 Against that background, I shall begin by answering the question concerning information on the effects on certain species, before addressing the questions concerning the assessment of alternatives.

The fourth question — examination of effects on species in the EIA

AG79 The fourth question concerns the consideration of environmental effects in the environmental impact assessment. It seeks to clarify whether an environmental impact statement must expressly address what significant effects the proposed project will have on the species identified in that statement.

AG80 An Bord Pleanála expresses doubts as to the relevance of this question to the national proceedings, claiming that it is not an admissible cause of action in those proceedings. The counter-argument, however, is that, in accordance with settled *374 case-law,²⁷ questions referred for a preliminary ruling by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may decline to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. On those criteria, the fourth question is admissible.

AG81 The environmental impact statement referred to in this question is a concept of Irish law, the interpretation of which does not fall to the Court of Justice. According to the information provided by An Bord Pleanála in relation to s.50(2) of the Roads Act, however, that statement incorporates, in essence, the information which a developer must provide in connection with his

application for consent under [art.5\(3\) of the EIA Directive](#) .

AG82 I therefore construe that question as asking whether the information referred to in it must be provided by the developer in accordance with [art.5\(3\) of the EIA Directive](#) . Pursuant to subparagraph (c) of that provision, the information to be provided by the developer includes, inter alia, at least the data required to identify and assess the main effects which the project is likely to have on the environment.

AG83 [Article 5\(1\)](#) of, and [Annex IV\(3\) to, the EIA Directive](#) make it clear which environmental media must be examined. According to those provisions, the developer must provide a description of the aspects of the environment likely to be significantly affected by the project, including, in particular, fauna and flora. This is consistent with the objective assigned to the environmental impact assessment in [art.3\(a\)](#) of identifying, describing and assessing the direct and indirect effects of the project on fauna and flora.

AG84 Since the fauna and flora are made up of the various species present [on the site concerned], the developer must provide information on the effects on certain species. However, that obligation does not cover all effects on all species present, but only the *main effects* . That restriction to the main effects is confirmed, moreover, by the fact that, under [art.5\(1\) of the EIA Directive](#) , the developer is required to provide only information which is relevant and which he can reasonably be required to compile.

AG85 The concept of main effects should be interpreted in the light of [Articles 1\(1\) and 2\(1\) of the EIA Directive](#) , according to which projects that are likely to have significant effects on the environment must be subject to an assessment of their effects. Effects which are not likely to be significant, on the other hand, are not main effects within the meaning of [art.5\(3\) of the EIA Directive](#) .

AG86 As to which effects are to be considered significant, a number of factors may be relevant. The key points of reference, however, are to be drawn from the legal protection of the elements of the environment concerned.

AG87 Thus, potential effects on species which are protected by the [Habitats Directive](#) (or by national law), for example, are, as a rule, to be regarded as significant²⁸ and must therefore also be included in the information provided by the developer, even if only individual specimens are affected in the case in question. ***375**

AG88 Effects sustained only by individual specimens of far more widely distributed specimens that are not subject to any special protection, on the other hand, are not normally main effects about which the developer must provide information.

AG89 The particular circumstances of the individual case may support different conclusions with respect to what may be the main effects. Thus, the degradation of an individual specimen of a widely distributed species might be significant, if it is an exceptional specimen, such as a particularly old tree, for example.

AG90 For the purposes of a judicial challenge to a development consent on the basis of an infringement of [art.5\(3\) of the EIA Directive](#) , this means that an applicant must show which potential significant effects of the project concerned the developer has not adequately assessed and discussed. The fact that certain species are mentioned but are not subject to further assessment is not in itself sufficient to discharge that onus. Depending on the species involved, however, it may be relatively easy to demonstrate why the potential effects may be significant.

AG91 In short, the answer to the fourth question must be that, in accordance with [art.5\(3\)\(c\) of the EIA Directive](#) , the developer must provide the information necessary to identify and assess potential significant effects which the project may have on flora and fauna. The information required includes in particular the effects on protected species as well as on species whose presence is affected and is particularly important for other reasons.

The fifth, sixth and seventh questions — alternatives in the environmental impact assessment

AG92 The fifth, sixth and seventh questions concern information provided by the developer on

alternatives to the project under assessment. In the case in the main proceedings, consideration was given at an early stage to whether the bypass road could “span” the floodplain by means of a bridge. This alternative development was rejected on cost grounds, however. The High Court’s questions seek to ascertain whether the developer must nonetheless provide information on the environmental effects of executing the road development project in that way.

The fifth question — the main alternatives

AG93 The fifth question seeks to ascertain whether an alternative is to be regarded as one of the “main alternatives” within the meaning of [art.5\(3\)\(d\) of the EIA Directive](#) even in a case where the developer rejected it at an early stage.

AG94 For the purposes of assessing which alternatives are to be regarded as main alternatives, the relevance of those alternatives to the environmental effects of the project or to their avoidance should be decisive. The purpose of the [EIA Directive](#), after all, according to [art.3](#) thereof, is to identify, describe and assess the environmental effects of projects. Alternatives therefore are of interest first and foremost if they are capable of influencing the environmental effects of the project concerned.

AG95 Although the stage at which another solution was rejected is irrelevant from that point of view, it may indirectly have a bearing on the extent of the reasons to be given. The extent of those reasons forms the subject matter of the sixth and seventh questions.

AG96 For the purposes of [art.5\(3\) of the EIA Directive](#), therefore, alternatives are main alternatives if they are capable of having a significant impact on the environmental effects of the project concerned. ***376**

Reliance on the assessment by the developer

AG97 Although the request for a preliminary ruling does not refer a question in this regard, it is important, before answering the sixth and seventh questions, to address the fact that [art.5\(3\)\(d\) of the EIA Directive](#) requires only information on the other alternatives studied by the developer. Indeed, the national court proceeds on the assumption that the developer “studied” the aforementioned bypass road development option. That notwithstanding, the fundamental decision on the part of the EU legislature to place reliance on the assessment by the developer also has a bearing on the information which a developer provides on the alternatives he has studied.

AG98 In the light of the EU’s environmental policy objective of ensuring a high level of environmental protection, laid down in [art.191\(2\) TFEU](#) and art.37 of the Charter of the European Union, as well as the precautionary principle and the principle of preventive action, also enshrined in [art.191\(2\) TFEU](#), it seems desirable that the alternatives to a project should be examined as comprehensively as possible. Such an approach would make it possible to select the project option which restricts the adverse environmental effects of that project to a minimum.

AG99 It is in line with this thinking that the strategic environmental assessment report preparation of which is required by [art.5\(1\)](#) of the Directive on the assessment of the effects of certain plans and programmes on the environment ²⁹ includes reasonable alternatives.

AG100 In [art.5\(3\)\(d\) of the EIA Directive](#), however, the EU legislature chose a different approach. Under that provision, the information to be provided by the developer is to include at least an outline of the main alternatives *studied by him* and an indication of the main reasons for his choice, taking into account the environmental effects. [Annex IV\(2\)](#) to the directive repeats this.

– Legislative history

AG101 As the national court requesting a preliminary ruling, An Bord Pleanála and Ireland submit, the aforementioned legislative choice is also readily apparent from the drafting history of [Directive 97/11/EC](#). ³⁰ Both the Commission ³¹ and the Parliament ³² proposed an obligation requiring the developer to provide a description of the main alternatives that might be envisaged. Their proposals did not prevail, however.

AG102 Furthermore, as early as 1980, the Commission had proposed that a description be provided of the alternatives that seemed to be reasonably feasible³³ and, even then, the Council restricted that obligation to the text that also appears in the [EIA Directive](#) that is now applicable.³⁴

AG103 And the most recent, not yet applicable, amendments introduced by [Directive 2014/52](#) have, notwithstanding more extensive proposals from the Commission ***377**³⁵ and the Parliament,³⁶ adhered to the requirement in [art.5\(1\)\(d\)](#) that only the reasonable alternatives studied by the developer be described.

AG104 The drafting history relating to [art.5\(3\)\(d\) of the EIA Directive](#) thus confirms the conclusion to be drawn from its wording that the developer must provide information only on the alternatives which he has studied, but not on alternatives which might be feasible but which he did not consider.

– Espoo Convention

AG105 More extensive obligations in respect of the examination of alternatives, which are independent of the substantive requirements applicable to the project in question, are laid down in the Espoo Convention, referred to in the request for a preliminary ruling.³⁷ In accordance with art.4(1) of, and Annex II(b), (c) and (d) to, that Convention, a description of reasonable alternatives and their effects on the environment must be provided.

AG106 That Convention does not, however, pursuant to [art.2\(2\)](#) thereof, provide for an environmental impact assessment for all projects which are subject to the [EIA Directive](#), but only for certain projects that are likely to cause significant adverse transboundary impact.

AG107 It is true that, for the purposes of a uniform interpretation, it would be desirable to interpret the [EIA Directive](#) in accordance with that Convention,³⁸ since much of the Directive is intended to implement the Convention.³⁹ Furthermore, the EU's powers must be exercised with due regard for international law; consequently, EU secondary law must in principle be interpreted in accordance with the EU's obligations under international law.⁴⁰

AG108 However, in the light of its wording and legislative history, it is not possible to interpret [art.5\(3\)\(d\) of the EIA Directive](#) as meaning that a project may obtain development consent only if the reasonable alternatives to it are also described and their effects on the environment are also assessed.

AG109 The question as to whether the rules on the assessment of alternatives which are applicable to certain projects under the Espoo Convention are *by extension* directly applicable to the [EIA Directive](#), because, regard being had to its wording and to the purpose and nature of that Convention, the latter contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure,⁴¹ has not been raised. Nor, presumably, would it be ultimately relevant to the judgment to be given in the main proceedings, since the project at issue does not, *prima facie*, fall within the scope of that Convention. There is therefore no need for the Court to give a ruling. ***378**

– Classification within the scheme and objectives of the EIA Directive

AG110 At first sight, it seems unsatisfactory that the examination of alternatives in the environmental impact assessment should be crucially dependent on the developer. However, that rule is — to some extent at least — sufficient for the purposes of the primarily procedural nature of the [EIA Directive](#).

AG111 Thus, whether and to what extent the *decision* on a project must make reference to the reasons for the choice made in such a way as to take into account the environmental effects is not clarified in the [EIA Directive](#). That directive does not lay down any substantive requirements in respect of granting development consent to a project.⁴²

AG112 Even the fundamental or essential obligation laid down in [art.3 of the EIA Directive](#) not only to identify and describe the direct and indirect effects of a project on certain factors but also to assess them in an appropriate manner in the light of each individual case,⁴³ as relied on by Mr Holohan and the other applicants in the main proceedings, does not in itself impose any substantive requirements in respect of the project concerned.

AG113 The developer may accordingly have an obligation under other provisions not only to take account of alternatives, but then also to document them.

AG114 Thus, an approval under [art.6\(4\) of the Habitats Directive](#) would presuppose the absence of any alternatives. Such approval might conceivably be the case in the main proceedings were it to prove impossible to dispel all reasonable scientific doubt about whether the project is non-detrimental to the integrity of the protected areas concerned.

AG115 Moreover, the protection of species might also make an assessment of alternatives necessary in the present case. It follows from the order for reference that — presumably because of the presence of bats — there is some debate as to the need for exceptions to the system of strict protection laid down in [art.12 of the Habitats Directive](#) .⁴⁴ Such exceptions are permissible under [art.16](#) only where there is no satisfactory alternative.

AG116 It may also occur that the authority competent to grant consent requires the developer to provide it with alternatives, as provided for in recital 13 of the [EIA Directive](#) . This is likely to be necessary in particular where the authority has to make a discretionary decision on the approval of the project.

AG117 Finally, the United Kingdom rightly submits that the assessment of alternatives in the context of the strategic environmental assessment of plans and programmes goes at least some way towards offsetting the lack of a compulsory examination of alternatives as part of the environmental impact assessment.

Sixth and seventh questions — environmental effects of the alternatives

AG118 The sixth and seventh questions seek to clarify what information the developer must provide on the environmental effects of the alternatives. Whether such information must be included at all is the subject matter of the seventh question, while the sixth question is plainly concerned with the extent to which it should be included, if it has to be. ***379**

AG119 In accordance with [art.5\(3\)\(d\) of the EIA Directive](#) , the information to be provided by the developer must include at least an indication of the essential reasons for his choice, taking into account the environmental effects.

AG120 This provision gives further expression to the fact that the scheme of [art.5\(3\)\(d\) of the EIA Directive](#) is that the assessment of alternatives should be carried out by the developer. The latter is not obliged, at least by that directive, to make his choice according to the environmental effects of the various alternatives, or to take the environmental effects into account at all in his decision. Rather, he is obliged only to make known the reasons for *his* choice in so far as these relate to the environmental effects.

AG121 If, however, as is apparently the case in the main proceedings, the choice made was determined not by the environmental effects but by purely financial considerations, it follows that there are no reasons for the choice that have to be made known.

AG122 In particular, [art.5\(3\)\(d\) of the EIA Directive](#) imposes no obligation to identify, describe and assess the environmental effects of the alternatives.

AG123 The position would be different, however, if substantive rules laid down in other provisions required the developer to take account of alternatives.⁴⁵ In that event, the developer would generally have to record these also in accordance with [art.5\(3\)\(d\) of the EIA Directive](#) and indicate the reasons justifying his choice of the alternative selected, in so far as those reasons relate to the environmental effects, in the context of those other provisions.

AG124 In accordance with [art.5\(3\)\(d\) of the EIA Directive](#) , the developer must therefore indicate the reasons which determined the choice he made from various options available to him, in so far as those reasons relate to the environmental effects of the project and of the alternatives.

V. Conclusion

AG125 I therefore propose that the Court's answer to the request for a preliminary ruling should be as follows:

(1) Although the assessment provided for in [art.6\(3\) of Directive 92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora need not expressly identify the entire extent of the habitat types and species on account of which the site was included on the list of sites of Community interest or is protected as a special protection area under [Directive 2009/147/EC](#) on the conservation of wild birds, it must at least implicitly contain complete, precise and definitive findings capable of excluding all reasonable scientific doubt as to the effects of the works under consideration on the protected habitat types and species (Question 1).

(2) The assessment provided for in [art.6\(3\) of Directive 92/43](#) covers effects on a site's conservation objectives appropriately only if it includes the adverse effects on the typical species of the protected habitat types and on other species and habitat types to the extent that these are necessary to the conservation of the protected habitat types and species (Question 2).

(3) The assessment provided for in [art.6\(3\) of Directive 92/43](#) must also include adverse effects on species or habitats outside the protected areas, where ***380** such adverse effects may be detrimental to the conservation objectives of the protected areas (Question 3).

(4) In the context of a development consent granted under [art.6\(3\) of Directive 92/43](#) , details of the construction phase may be left to unilateral decision of the developer only where every reasonable scientific doubt that the effects of such a decision will not be detrimental to the integrity of the site concerned has been dispelled (Question 8).

(5) The competent authority must provide, for those elements of a decision to approve a development under [art.6\(3\) of Directive 92/43](#) which are liable to give rise to reasonable scientific doubt as to whether the effects of that development are non-detrimental to the integrity of the site concerned, detailed and express reasons that are such as to dispel those doubts. This is true in particular of doubt prompted by the findings of an inspector. Although the authority may refer by way of reasons to a scientific expert opinion, that must also be capable of dispelling all reasonable scientific doubt (Questions 9, 10 and 11).

(6) In accordance with [art.5\(3\)\(c\) of Directive 2011/92/EU](#) on the assessment of the effects of certain public and private projects on the environment, the developer must provide the information necessary to identify and assess any potential significant effects which the project may have on flora and fauna (Question 4).

(7) For the purposes of [art.5\(3\) of Directive 2011/92](#) , alternatives are main alternatives if they are capable of significantly influencing the environmental effects of the project concerned (Question 5).

(8) In accordance with [art.5\(3\)\(d\) of Directive 2011/92](#) , the developer must indicate the reasons which determined the choice he made from various options available to him, in so far as those reasons relate to the environmental effects of the project and of the alternatives (Questions 6 and 7).

Judgment

1 This request for a preliminary ruling concerns the interpretation of [Council Directive 92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ([1992] OJ L 206/7; "the Habitats Directive") and of [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private

projects on the environment ([2012] OJ L 26/1; “the EIA Directive”).

2 The request has been made in proceedings where the opposing parties are Mr Brian Holohan, Mr Richard Guilfoyle, Mr Noric Guilfoyle and Mr Liam Donegan, on the one hand, and An Bord Pleanála (Ireland) (the Planning Board; “the Board”), on the other, concerning the granting of development consent for a project to extend the northern ring-road of the city of Kilkenny (Ireland) (“the development project”). *381

Legal context

European Union law

The Habitats Directive

3 The first and third recitals of the [Habitats Directive](#) state:

“... the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community, as stated in [Article 191 TFEU](#) ;

...

... the main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, this Directive makes a contribution to the general objective of sustainable development; ... the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities.”

4 [Article 1](#) of that directive provides:

“For the purposes of this directive:

...

(e) *conservation status of a natural habitat* means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2. The [conservation] status of a natural habitat will be taken as “favourable” when:

- its natural range and areas it covers within that range are stable or increasing, and
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and

...

(k) *site of Community importance* means a site which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000 referred to in Article 3, and/or contributes significantly to the maintenance of biological diversity within the biogeographic region or regions concerned.

...

(l) *special area of conservation* means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are *382 applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated;

...”

5 [Article 2 of the Habitats 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.”

6 [Article 3\(1\) of the Habitats Directive](#) is worded as follows:

“A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species” habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

...”

7 [Article 6](#) of that directive provides:

“1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public. ***383**

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest."

8 In accordance with [Article 7 of the Habitats Directive](#), obligations arising under [art.6\(2\) to \(4\)](#) of that directive are to apply to special protection areas ("SPAs") within the meaning of [Directive 2009/147/EC](#) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ([2010] OJ L 20/7; "the Birds Directive").

The Birds Directive

9 The fourth subparagraph of [art.4\(1\) of the Birds Directive](#) provides:

"Member States shall classify in particular the most suitable territories in number and size as [SPAs] for the conservation of these species in the geographical sea and land area where this Directive applies."

The EIA Directive

10 [Article 1 of the EIA Directive](#) provides:

"1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

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

(a) 'project' means:

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

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

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

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

(d) 'public' means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups; ***384**

(e) 'public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

(f) 'competent authority or authorities' means that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive.

..."

11 [Article 2\(1\)](#) of that directive provides:

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

12 [Article 3](#) of that directive is worded as follows:

"The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with [Articles 4 to 12](#), the direct and indirect effects of a project on the following factors:

(a) human beings, fauna and flora;

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

(c) material assets and the cultural heritage;

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

13 [Article 4\(1\) of the EIA Directive](#) provides:

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

14 [Article 5](#) of that directive provides:

“1. In the case of projects which, pursuant to Article 4, are to be made subject to an environmental impact assessment in accordance with this Article and Articles 6 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental factors likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard, inter alia, to current knowledge and methods of assessment.

... *385

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

...

(c) the data required to identify and assess the main effects which the project is likely to have on the environment;

(d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects;

...”

15 Point 3 of [Annex IV](#) to that directive, that annex being headed “Information referred to in [Article 5\(1\)](#)” is worded as follows:

“A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the interrelationship between the above factors.”

16 [Article 3\(2\) of Directive 2014/52/EU](#) of the European Parliament and of the Council of 16 April 2014 amending [Directive 2011/92](#) ([2014] OJ L 124/1) provides:

“Projects shall be subject to the obligations referred to in [Article 3](#) and [Articles 5 to 11 of \[the EIA Directive\]](#) prior to its amendment by this Directive where, before 16 May 2017:

(a) the procedure regarding the opinion referred to in [Article 5\(2\) of the \[EIA Directive\]](#) was initiated; or

(b) the information referred to in [Article 5\(1\) of the \[EIA Directive\]](#) was provided.”

Irish law

17 Section 177V(1) in Part XAB of the Planning and Development Act 2000 states:

“An appropriate assessment carried out under this Part shall include a determination by the competent authority under [Article 6\(3\) of the Habitats Directive](#) as to whether or not a draft land use plan or proposed development would adversely affect the integrity of a European site and an appropriate assessment shall be carried out by the competent authority, in each case where it has made a determination under Section 177U(4) that an appropriate assessment is required, before ... consent is given for the proposed development.”

18 Section 177V(2) of that act provides:

“In carrying out an appropriate assessment under subsection (1) the competent authority shall take into account each of the following matters: (a) the Natura impact report or Natura impact statement, as appropriate; (b) any supplemental information furnished in relation to any such report or statement; (c) if appropriate, any additional information sought by the authority and furnished by the applicant in relation to a Natura impact statement; (d) any additional *386 information furnished to the competent authority at its request in relation to a Natura impact report; (e) any information or advice obtained by the competent authority; (f) if appropriate, any written submissions or observations made to the competent authority in relation to the application for consent for proposed development; (g) any other relevant information.”

19 Section 217B of the Planning and Development Act 2000 allows the Board to request further information from the roads authorities, and to invite the roads authorities to make specified alterations to the terms of a proposed road development.

20 Section 50 of the Roads Act 1993 states:

“(2) An environmental impact statement shall contain the following specified information:

...

(d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects ...”

21 According to s.50(5) of that act, a scoping opinion, that is, a written opinion on the information to be contained in such an environmental impact statement, must be provided if requested by the developer.

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

ruling

22 The applicants in the main proceedings seek to obtain an order of *certiorari* annulling the Board's decision of 11 July 2014 concerning the development project consent granted to Kilkenny County Council (Ireland). That development project includes the provision of approximately 1.5 kilometres of single carriageway road, the construction of one roundabout and the adaptation of a second, the provision of a footpath and a cycle track along the city side and various other works.

23 The proposed road crosses two Natura 2000 sites: the River Nore SPA, designated by Ireland under the [Birds Directive](#), and the River Barrow and River Nore site of Community importance (the "SIC"), listed as an SIC under the [Habitats Directive](#) since 2004.

24 The applicants in the main proceedings claim, in essence, that (i) the Board erred in failing to consider the environmental effects of the main alternatives studied; (ii) the appropriate assessment purportedly carried out was deficient; and (iii) the Board erred in approving the proposed development and the Natura Impact Statement ("NIS") submitted by Kilkenny County Council, as that council had failed to carry out pre-consent ecological surveys.

25 The referring court states that the developer, namely Kilkenny County Council, drew up the NIS for the development project in May 2013. According to that court, the NIS, which was based on a document drafted by the National Parks and Wildlife Service (Ireland) on 19 July 2011 on conservation objectives, setting out objectives to be achieved for the purposes of classification as a special area of conservation, does not fully examine the effects on species other than those for which the River Barrow and River Nore site was listed and does not address the effects on protected species or habitats to be found outside the boundaries of the sites concerned. ***387**

26 In December 2013 the developer also drew up an Environmental Impact Statement ("the EIS") and on 16 December 2013 made an application to the Board for consent for the development project.

27 Following opposition and a hearing in April 2014, a report by the Board's inspector in relation to that application was published in June 2014. In her report, the inspector concluded that the information in that application, the EIS and the NIS was not adequate and that significant further information was required. The inspector sought greater information on, inter alia, the construction phase, a scientific baseline study, and scaled drawings indicating the location or possible location of protected species or habitats, as well as additional information on the option of "spanning", consisting of the construction of a bridge across the floodplain. Notwithstanding that inspection report, the competent authority took the decision, in July 2014, to grant consent for the development project.

28 According to the referring court, the EIS does not deal in detail with the option of "spanning", on the ground that that option was discounted by Kilkenny County Council "at an early stage" in favour of a "more cost effective solution". The referring court adds that the EIS also fails explicitly to analyse the effects of the project in question on all the species identified in the EIS.

29 In those circumstances, the High Court (Ireland) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

"(1) whether [the [Habitats Directive](#)] has the effect that a Natura impact statement must identify the entire extent of the habitats and species for which the site is listed;

(2) whether [the [Habitats Directive](#)] has the effect that the potential impact on all species (as opposed to only protected species) which contribute to and are part of a protected habitat must be identified and discussed in a Natura impact statement;

(3) whether [the [Habitats Directive](#)] has the effect that a Natura impact statement must expressly address the impact of the proposed development on protected species and habitats both located on the [special conservation area] as well as species and habitats located outside its boundaries;

(4) whether [the [EIA Directive](#)], as amended, has the effect that an environmental impact

statement must expressly address whether the proposed development will significantly impact on the species identified in the statement;

(5) whether an option that the developer considered and discussed in the environmental impact assessment, and/or that was argued for by some of the stakeholders, and/or that was considered by the competent authority, amounts to a “main alternative” within the meaning of [Article 5\(3\)\(d\) of \[the EIA Directive\]](#) , as amended, even if it was rejected by the developer at an early stage;

(6) whether [the [EIA Directive](#)], as amended, has the effect that an environmental impact assessment should contain sufficient information as to the environmental impact of each alternative as to enable a comparison to be made between the environmental desirability of the different alternatives; and/or that it must be made explicit in the environmental impact statement as to how the environmental effects of the alternatives were taken into account;

(7) whether the requirement in [Article 5\(3\)\(d\) of \[the EIA Directive\]](#) , as amended, that the reasons for the developer’s choice must be made by “taking *388 into account the environmental effects”, applies only to the chosen option or also to the main alternatives studied, so as to require the analysis of those options to address their environmental effects;

(8) whether it is compatible with the attainment of the objectives of [the [Habitats Directive](#)] that details of the construction phase (such as the compound location and haul routes) can be left to post-consent decision, and if so whether it is open to a competent authority to permit such matters to be determined by unilateral decision by the developer, within the context of any development consent granted, to be notified to the competent authority rather than approved by it;

(9) whether [the [Habitats Directive](#)] has the effect that a competent authority is obliged to record, with sufficient detail and clarity to dispel any doubt as to the meaning and effect of such opinion, the extent to which scientific opinion presented to it argues in favour of obtaining further information prior to the grant of development consent;

(10) whether [the [Habitats Directive](#)] has the effect that the competent authority is required to give reasons or detailed reasons for rejecting a conclusion by its inspector that further information or scientific study is required prior to the grant of development consent; and

(11) whether [the [Habitats Directive](#)] has the effect that a competent authority, when conducting an appropriate assessment, must provide detailed and express reasons for each element of its decision.”

Consideration of the questions referred

The Habitats Directive

30 First, it must be recalled that [art.6 of the Habitats Directive](#) imposes upon the Member States a series of specific obligations and procedures designed, as is clear from [art.2\(2\)](#) of that directive, to maintain, or as the case may be, restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of interest for the European Union, in order to attain that directive’s more general objective, which is to ensure a high level of environmental protection as regards the sites protected pursuant to it (judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255 , at [106] and the case-law cited).

31 More specifically, [art.6\(3\) of the Habitats Directive](#) establishes an assessment procedure intended to ensure, by means of an *ex ante* examination, that a plan or project not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site. That provision thus prescribes two stages. The first stage, envisaged in that provision’s first sentence, requires the Member States to carry out an appropriate assessment of the implications for a protected site of a plan or project when there is a likelihood that the plan or

project will have a significant effect on that site. The second stage, which is envisaged in the second sentence of [art.6\(3\) of the Habitats Directive](#) and which occurs following the aforesaid appropriate assessment, allows such a plan or project to be authorised on condition that it will not adversely affect the integrity of the site concerned (see, to that effect, judgment of 21 July 2016, *Orleans and *389 Others*, C-387/15 and C-388/15, EU:C:2016:583, at [43]–[46] and the case-law cited).

The first three questions

32 By its first three questions, which can be examined together, the referring court seeks, in essence, to ascertain whether [art.6\(3\) of the Habitats Directive](#) must be interpreted as meaning that an “appropriate assessment” must, on the one hand, catalogue all the habitat types and species for which a site is protected, and, on the other, identify and examine both the effects of the proposed project on the species present on the site, but for which that site has not been listed, and the effects on habitat types and species to be found outside the boundaries of that site.

33 Under [art.6\(3\) of the Habitats Directive](#), an appropriate assessment of the implications of a plan or project for the site concerned implies that, before the plan or project is approved, all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is so when there is no reasonable scientific doubt as to the absence of such effects (judgment of 8 November 2016, *Lesoochransarske zoskupenie VLK*, C-243/15, EU:C:2016:838, at [a]nd the case-law cited).

34 The assessment carried out under that provision may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned (judgment of 25 July 2018, *Grace and Sweetman*, C-164/17, EU:C:2018:593, at [39] and the case-law cited).

35 In order for the integrity of a site as a natural habitat not to be adversely affected for the purposes of the second sentence of [art.6\(3\) of the Habitats Directive](#), the site needs to be preserved at a favourable conservation status; this entails the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site in the list of sites of Community importance, in accordance with that directive (judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, at [116] and the case-law cited).

36 Taking account of those conservation objectives, the Court must determine the extent of the obligation to carry out an appropriate assessment of the implications of a plan or project for a site in question.

37 Since, as stated in paragraphs 33 and 34 of the present judgment, all aspects which might affect those objectives must be identified and since the assessment carried out must contain complete, precise and definitive findings in that regard, it must be held that all the habitats and species for which the site is protected must be catalogued. A failure, in that assessment, to identify the entirety of the habitats and species for which the site has been listed would be to disregard the abovementioned requirements and, therefore, as observed, in essence, by the Advocate General in point 31 of her Opinion, would not be sufficient to dispel all reasonable scientific doubt as to the absence of adverse effects on the integrity of **390* the protected site (see, to that effect, judgment of 26 April 2017, *Commission v Germany*, C-142/16, EU:C:2017:301, at [33]).

38 It must also be added that, since the assessment must clearly demonstrate why the protected habitat types and species are not affected, it may be sufficient to establish, as observed by the Advocate General in point 30 of her Opinion, that only certain protected habitat types and species are present in the part of the protected area that is affected by the project and that the other protected habitat types and species present on the site are not liable to be affected.

39 As regards other habitat types or species, which are present on the site, but for which that site

has not been listed, and with respect to habitat types and species located outside that site, it must be recalled that the [Habitats Directive](#), as follows from the wording of [art.6\(3\)](#) of that directive, subjects “[a]ny plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon” to the environmental protection mechanism of that provision. In that regard, as stated by the Advocate General in points 43 and 48 of her Opinion, the conservation objective pursued by the [Habitats Directive](#), recalled in paragraph 35 of the present judgment, entails that typical habitats or species must be included in the appropriate assessment, if they are necessary to the conservation of the habitat types and species listed for the protected area.

40 In the light of the foregoing, the answer to the first three questions is that [art.6\(3\) of the Habitats Directive](#) must be interpreted as meaning that an “appropriate assessment” must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.

The eighth question

41 By its eighth question, which the Court can deal with in the second place, the referring court seeks, in essence, to ascertain whether [art.6\(3\) of the Habitats Directive](#) must be interpreted as meaning that it enables the competent authority to grant to a plan or project development consent which leaves for later decision the determination of certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, and, if so, whether those parameters may, at that later stage, be determined unilaterally by the developer and merely notified to that authority.

42 It must be recalled that it is clear from [art.6\(3\) of the Habitats Directive](#) that competent national authorities are not to agree to a plan or project that is not directly connected with or necessary to the management of the site but is likely to have a significant effect thereon, unless they have first ascertained by means of an appropriate assessment that it will not adversely affect the integrity of the site concerned.

43 In accordance with the case-law cited in [33] and [34] of the present judgment, an appropriate assessment of the implications of a plan or project for a protected site entails, first, that, before that plan or project is approved, all aspects of that plan or project that might affect the conservation objectives of that site are identified. Second, such an assessment cannot be considered to be appropriate if it contains ***391** lacunae and does not contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the plan or project on that site. Third, all aspects of the plan or project in question which may, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field.

44 Those obligations, in accordance with the wording of [art.6\(3\) of the Habitats Directive](#), are borne not by the developer, even if the developer is, as in this case, a public authority, but by the competent authority, namely the authority that the Member States designate as responsible for performing the duties arising from that directive.

45 It follows that that provision requires the competent authority to catalogue and assess all aspects of a plan or project that might affect the conservation objectives of the protected site before granting the development consent at issue.

46 As also observed by the Advocate General in points [AG56] and [AG57] of her Opinion, only those parameters as to the effects of which there is no scientific doubt that they might affect the site can be entirely left to be decided later by the developer.

47 In the light of the foregoing, the answer to the eighth question is that [art.6\(3\) of the Habitats Directive](#) must be interpreted as meaning that the competent authority is permitted to grant to a plan or project development consent which leaves the developer free to determine later certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes

conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site.

The 9th, 10th and 11th questions

48 By its 9th, 10th and 11th questions, which can be dealt with together, the referring court seeks, in essence, to ascertain whether [art.6\(3\) of the Habitats Directive](#) must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the “appropriate assessment” must include an explicit and detailed statement of reasons capable of ensuring certainty that, notwithstanding such an opinion, there is no reasonable scientific doubt as to the environmental impact of the work envisaged on the site that is the subject of those findings.

49 It follows, in particular from the Court’s case-law in relation to [art.6\(3\) of the Habitats Directive](#) , as summarised in at [43] of the present judgment, that the assessment carried out under [art.6\(3\)](#) of that Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned.

50 If there are no such conclusions capable of dispelling all reasonable doubt as to the adequacy of the information available, the assessment cannot be considered to be “appropriate”, within the meaning of [art.6\(3\) of the Habitats Directive](#) .

51 In circumstances such as those in the main proceedings, that requirement entails that the competent authority should be in a position to state to the requisite legal standard the reasons why it was able, prior to the granting of development consent, ^{*392} to achieve certainty, notwithstanding the opinion of its inspector asking that it obtain additional information, that there is no reasonable scientific doubt with respect to the environmental impact of the work envisaged on the site concerned.

52 In the light of the foregoing, the answer to the 9th, 10th and 11th questions is that [art.6\(3\) of the Habitats Directive](#) must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the “appropriate assessment” must include an explicit and detailed statement of reasons, capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.

The EIA Directive

53 While the request for a preliminary ruling refers to the amendments made by [Directive 2014/52](#) , it must be noted that, in accordance with [art.3\(2\)](#) of that directive, those amendments are applicable only if certain procedural stages have been completed after 16 May 2017.

54 In the main proceedings, the contested decision was adopted on 11 July 2014.

55 It follows that examination of the questions relating to the [EIA Directive](#) must have regard to the original version of that directive.

The fourth question

56 By its fourth question, the referring court seeks, in essence, to ascertain whether [art.5\(1\) and \(3\)](#) of, and [Annex IV to, the EIA Directive](#) must be interpreted as meaning that they require the developer to supply information that expressly addresses the potentially significant impact on all the species identified in the statement that is supplied pursuant to those provisions.

57 Under [art.5\(1\) of the EIA Directive](#) , the developer is to supply the information specified in [Annex IV](#) to that directive. Point 3 of that annex specifically prescribes in that regard that, included in the information to which [art.5\(1\) of the EIA Directive](#) applies, there should be “a description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, ... fauna, flora, ... and the interrelationship between the above factors”.[art.5\(3\)\(c\)](#) of that directive further requires the developer to include “the data required to identify and assess the main effects which the project is likely to have on the environment.”

58 As observed by the Advocate General in points 84 and 85 of her Opinion, it follows from those

provisions that the obligation imposed does not extend to all effects on all species present, but is restricted to the significant effects, a concept to be interpreted in the light of [art.1\(1\)](#) and [art.2\(1\) of the EIA Directive](#) , according to which projects that are likely to have significant effects on the environment must be subject to an assessment of their effects.

59 In the light of the foregoing, the answer to the fourth question is that [art.5\(1\)](#) and [\(3\)](#) of, and [Annex IV to, the EIA Directive](#) must be interpreted as meaning that the developer is obliged to supply information that expressly addresses the significant effects of its project on all species identified in the statement that is supplied pursuant to those provisions. ***393**

The fifth, sixth and seventh questions

60 By its fifth, sixth and seventh questions, which can be examined together, the referring court seeks, in essence, to ascertain whether [art.5\(3\)\(d\) of the EIA Directive](#) must be interpreted as meaning that the developer must supply information in relation to the environmental effects both of the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account their environmental effects, even if such an alternative was rejected at an early stage.

61 In accordance with [art.3 of the EIA Directive](#) , one of its objectives is to ensure that the effects of projects on the environment are identified, described and assessed.

62 In that regard, [art.5 of the EIA Directive](#) lists the information, specified in [Annex IV](#) , that the developer is to supply in an appropriate form to the competent authorities, in order to enable the latter to carry out an environmental impact assessment with respect to the proposed project.

63 In particular, [art.5\(3\)\(d\) of the EIA Directive](#) states that the developer must provide at least “an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects.”

64 It is stated explicitly in the wording of that provision that the developer is obliged to supply to the competent authorities an outline of the main alternatives studied by him and an indication of the main reasons for his choice, taking into account the environmental effects.

65 In that regard, first, it must be observed that the [EIA Directive](#) contains no definition of the concept of “main alternatives”, as referred to in [art.5\(3\)\(d\) of the EIA Directive](#) . The Court must, however, hold, as did the Advocate General in points [AG94] and [AG95] of her Opinion, that the decisive factor, in order to identify those alternatives that should be regarded as “main” alternatives, is whether or not those alternatives influence the environmental effects of the project. In that regard, the time when an alternative is rejected by the developer is of no relevance.

66 Further, since, according to [art.5\(3\)\(d\) of the EIA Directive](#) , only an outline of those alternatives must be supplied, it must be held that that provision does not require the main alternatives studied to be subject to an impact assessment equivalent to that of the approved project. That said, that provision requires the developer to indicate the reasons for his choice, taking into account at least the environmental effects. One of the aims of imposing on the developer the obligation to outline the main alternatives is that reasons for his choice should be stated.

67 That obligation on the developer ensures that, thereafter, the competent authority is able to carry out a comprehensive environmental impact assessment that catalogues, describes and assesses, in an appropriate manner, the effects of the approved project on the environment, in accordance with [art.3 of the EIA Directive](#) .

68 Last, it must be observed that the outline referred to in that provision must be supplied with respect to all the main alternatives that were studied by the developer, whether those were initially envisaged by him or by the competent authority or whether they were recommended by some stakeholders.

69 In the light of the foregoing, the answer to the fifth, sixth and seventh questions is that [art.5\(3\)\(d\) of the EIA Directive](#) must be interpreted as meaning that the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together ***394** with the reasons for his choice, taking into

account at least the environmental effects, even if such an alternative was rejected at an early stage.

Costs

70 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.

Order

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

1. [Article 6\(3\) of Council Directive 92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that an “appropriate assessment” must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.
2. [Article 6\(3\) of Directive 92/43](#) must be interpreted as meaning that the competent authority is permitted to grant to a plan or project consent which leaves the developer free to determine subsequently certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site.
3. [Article 6\(3\) of Directive 92/43](#) must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the “appropriate assessment” must include an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.
4. [Article 5\(1\) and \(3\)](#) of, and [Annex IV 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, must be interpreted as meaning that the developer is obliged to supply information that expressly addresses the significant effects of its project on all species identified in the statement that is supplied pursuant to those provisions.
5. [Article 5\(3\)\(d\) of Directive 2011/92](#) must be interpreted as meaning that the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage. ***395**

1. Original language: German.

2. [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 ([2012] OJ L 26/1).

3. [Council Directive 92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ([1992] OJ L 206/7), as amended by [Council Directive 2013/17/EU](#) of 13 May 2013 ([2013] OJ L 158/193).
4. [Directive 2009/147/EC](#) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds ([2010] OJ L 20/7), as last amended by [Council Directive 2013/17/EU](#) of 13 May 2013 adapting certain directives in the field of environment, by reason of the accession of the Republic of Croatia ([2013] OJ L 158/193).
5. Judgment of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482 , at [52]).
6. Judgments of 21 July 2016, *Orleans and Others* (C-387/15 and C-388/15, EU:C:2016:583 , at [31]), and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255 , at [106]).
7. Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482 , at [34]), and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255 , at [108]).
8. Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482 , at [45]), of 13 December 2007, *Commission v Ireland* (C-418/04, EU:C:2007:780 , at [238]), of 26 May 2011, *Commission v Belgium* (C-538/09, EU:C:2011:349 , at [53]), and of 12 April 2018, *People Over Wind and Sweetman* (C-323/17, EU:C:2018:244 , at [34]).
9. Judgments of 21 July 2016, *Orleans and Others* (C-387/15 and C-388/15, EU:C:2016:583 , at [51]), of 26 April 2017, *Commission v Germany (Moorburg)* (C-142/16, EU:C:2017:301 , at [57]), and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255 , at [113]).
10. Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482 , at [49]), and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255 , at [112]).
11. Judgments of 11 April 2013, *Sweetman and Others* (C-258/11, EU:C:2013:220 , at [30]), and of 15 May 2014, *Briels and Others* (C-521/12, EU:C:2014:330 , at [20]).
12. Judgments of 11 April 2013, *Sweetman and Others* (C-258/11, EU:C:2013:220 , at [39]), and of 15 May 2014, *Briels and Others* (C-521/12, EU:C:2014:330 , at [21]), of 21 July 2016, *Orleans and Others* (C-387/15 and C-388/15, EU:C:2016:583 , at [47]), and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255 , at [116]).
13. Judgments of 11 April 2013, *Sweetman and Others* (C-258/11, EU:C:2013:220 , at [44]), of 21 July 2016, *Orleans and Others* (C-387/15 and C-388/15, EU:C:2016:583 , at [50]), and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255 , at [114]).
14. Judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255 , at [137]).
15. See point [AG27] above.
16. European Commission, Directorate-General for Environment, Nature and Biodiversity Unit (ENV B.3), Interpretation Manual of European Union Habitats — EUR 28, April 2013, http://ec.europa.eu/environment/nature/legislation/habitatsdirective/docs/Int_Manual_EU28.pdf, see in particular p.7.
17. *Ibid.*, p.11.
18. Araujo and Ramos, *Action plan for Margaritifera margaritifera in Europe* , p. 13 (Council of Europe document T-PVS(2000)10revE , <https://rm.coe.int/168074690e>).
19. Judgments of 10 January 2006, *Commission v Germany* (C-98/03, EU:C:2006:3 , at [45]), and of 26 April 2017, *Commission v Germany (Moorburg)* (C-142/16, EU:C:2017:301 , at [29]–[31]).
20. Judgments of 11 April 2013, *Sweetman and Others* (C-258/11, EU:C:2013:220 , at [44]), of 21 July 2016, *Orleans and Others* (C-387/15 and C-388/15, EU:C:2016:583 , at [50]), and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255 , at [114]).
21. Judgments of 7 January 2004, *Wells* (C-201/02, EU:C:2004:12 , at [52] and [53]), of 28 February 2008, *Abraham and Others* (C-2/07, EU:C:2008:133 , at [26]), and of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others* (C-275/09, EU:C:2011:154 , at [33]).
22. See, for example, judgments of 22 December 2008, *Régie Networks* (C-333/07, EU:C:2008:764 , at [63]), and of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português* (C-667/13, EU:C:2015:151 , at [44]).

23. Judgments of 11 April 2013, *Sweetman and Others* (C-258/11, EU:C:2013:220 , at [44]), of 21 July 2016, *Orleans and Others* (C-387/15 and C-388/15, EU:C:2016:583 , at [50]), and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255 , at [114]).
24. Judgments of 30 April 2009, *Mellor* (C-75/08, EU:C:2009:279 , at [61]), and of 16 February 2012, *Solvay and Others* (C-182/10, EU:C:2012:82 , at [64]).
25. Judgments of 30 April 2009, *Mellor* (C-75/08, EU:C:2009:279 , at [59]), and of 16 February 2012, *Solvay and Others* (C-182/10, EU:C:2012:82 , at [59]).
26. Directive of the European Parliament and the Council of 16 April 2014 amending [Directive 2011/92/EU](#) on the assessment of the effects of certain public and private projects on the environment ([2014] OJ L 124/1).
27. Judgment of 13 June 2018, *Deutscher Naturschutzring* (C-683/16, EU:C:2018:433 , at [29]).
28. See to this effect judgment of 24 November 2011, *Commission v Spain (Alto Sil/Spanish brown bear)*, (C-404/09, EU:C:2011:768 , at [86]).
29. [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 ([2001] OJ L 197/30).
30. Council Directive of 3 March 1997 amending [Directive 85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment ([1997] OJ L 73/5).
31. Proposed amendment to [Directive 85/337, Annex](#) , point 11 ([1994] OJ C 130/8, COM(93) 575 final, p.25).
32. Position of 11 October 1995, Amendment No 57 ([1995] OJ C 287/83 [100]).
33. [Article 6\(1\)](#) , first indent, of the Proposal for a Council Directive concerning the assessment of the environmental effects of certain public and private projects ([1980] OJ C 169/14).
34. [Annex III\(2\) 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 ([1985] OJ L 175/40).
35. [Article 5\(2\)\(d\)](#) of the proposal (COM(2012) 628).
36. Report (European Parliament) (A7-0277/2013, Amendment 57).
37. [1992] OJ C 104/7. According to recital 15 of the [EIA Directive](#) , the European Union ratified that Convention on 24 June 1997 in an unpublished Council decision (see the proposal for the first Council decision in [1992] OJ C 104/5).
38. See judgments of 8 March 2011, *Lesoochránárske zoskupenie* (C-240/09, EU:C:2011:125 , at [42]) and of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy* (C-470/16, EU:C:2018:185 , at [50]).
39. See the draft of the declaration of the European Economic Community on its sphere of competence under art.17(5) of the Espoo Convention (Finland) on the environmental impact assessment in a transboundary context (see the Proposal for a Council Directive of 25 March 1992) ([1992] OJ C 104/ 6) and recital 15 of the [EIA Directive](#) .
40. Judgments of 24 November 1992, *Poulsen and Diva Navigation* (C-286/90, EU:C:1992:453 , at [9]), of 3 September 2008, *Kadi and Al Barakaat International Foundation v Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461 , at [291]), and of 21 December 2011, *Air Transport Association of America and Others* (C-366/10, EU:C:2011:864 , at [123]).
41. Judgments of 15 July 2004, *Pêcheurs de l'étang de Berre* (C-213/03, EU:C:2004:464 , at [39]), and of 8 March 2011, *Lesoochránárske zoskupenie* (C-240/09, EU:C:2011:125 , at [44]) and the case-law cited).
42. Judgments of 13 December 2007, *Commission v Ireland* (C-418/04, EU:C:2007:780 , at [231]), and of 14 March 2013, *Leth* (C-420/11, EU:C:2013:166 , at [46]).
43. Judgment of 3 March 2011, *Commission v Ireland* (C-50/09, EU:C:2011:109 , at [37], [38] and [41])

[44.](#) This rule is the subject of the judgments of 16 March 2006, *Commission v Greece* (C-518/04, not published, EU:C:2006:183 , at [16]), and of 11 January 2007, *Commission v Ireland* (C-183/05, EU:C:2007:14 , at [30]), referred to in the request for a preliminary ruling in connection with the protection of sites.

[45.](#) See points [AG113]–[AG116] above.

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