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Case No.	Date	Parties	Decision	Summary
C-295/10	22/09 /2011	*Valčiukienė and Others v. Pakruojo rajono savivaldybė and Others* (reference for a preliminary ruling under Article 267 TFEU from the Vyriausiasis administracinis teismas (Lithuania), made by decision of 13 May 2010, received at the Court on 15 June 2010)	On those grounds, the Court (Fourth Chamber) hereby rules: 1. Article 3(5) of Directive 2001/42/EC […] on the assessment of the effects of certain plans and programmes on the environment, in conjunction with Article 3(3) thereof, must be interpreted as precluding national legislation, such as that in question in the main proceedings, which provides, in fairly general terms and without assessment of each case, that assessment under that directive is not to be carried out where mention is made, in the land planning documents applied to small areas of land at local level, of only one subject of economic activity. 2. Article 11(1) and (2) of Directive 2001/42 must be interpreted as meaning that an environmental assessment carried out under Council	The reference was made in proceedings concerning, *i.a.*, two decisions of the *Pakruojo rajono savivaldybė* confirming two detailed plans governing the construction of an intensive pig-rearing complex with capacity for 4 000 pigs and the proper use of plots of land where the complexes would be based. The applicants disputed the legality of the two decisions, claiming that the competent authorities should have carried out a strategic assessment of the effects on the environment. The applicants appealed to the Administrative Court, which requested a preliminary ruling concerning the interpretation of Arts 3(2)(a), (3), (5), 11(1) and (2) of Dir. 2001/42/EC. In particular, the ruling addressed questions with regard to the assessment of the effects of certain plans at local level on the environment and member states discretion with regard to the implementation of Dir 2001/42/EC (1.). It also addressed the relationship of Dir. 85/337 and Dir. 2001/42, *i.e.*, whether an EIA under Dir. 85/337 would permit to exempt from the obligation to carry out such an assessment under Dir. 2001/42 (2nd para of the operative part of the judgment) Regarding the first question the Court *i.a.* held: 44. Pursuant to Article 3(5) of Article 2001/42, the Member States are to determine, **either through case-by-case examination or by specifying types of plans and programmes**, **whether plans**, such as those at issue in the main proceedings, **are likely to have significant environmental effects** thereby requiring an assessment to be carried out in accordance with that directive. […] 46. The **margin of discretion** enjoyed by Member States pursuant to Article 3(5) of Directive 2001/42 to specify certain types of plans which are likely to have significant environmental effects is **limited by the requirement under Article 3(3)** of that directive, in conjunction with Article 3(2), **to subject the plans likely to have significant effects on the environment to environmental assessment**, in particular on account of their

Case No.	Date	Parties	Decision	Summary
			Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, does not dispense with the obligation to carry out such an assessment under Directive 2001/42. However, it is for the referring court to assess whether an assessment which has been carried out pursuant to Directive 85/337, as amended, may be considered to be the result of a coordinated or joint procedure and whether it already complies with all the requirements of Directive 2001/42. If that were to be the case, there would then no longer be an obligation to carry out a new assessment pursuant to Directive 2001/42. 3. Article 11(2) of Directive 2001/42 must be interpreted as not placing Member States under an obligation to provide, in national law, for joint or coordinated procedures in accordance with the requirements of Directive 2001/42 and Directive 85/337, as amended.	characteristics, their effects and the areas likely to be affected. 47. Consequently, a Member State which establishes a criterion which leads, in practice, to an entire class of **plans being exempted in advance from the requirement of environmental assessment would exceed the limits of its discretion** under Article 3(5) of Directive 2001/42, in conjunction with Article 3(2) and (3), unless all plans exempted could, on the basis of relevant criteria such as, inter alia, their objective, the extent of the territory covered or the sensitivity of the landscape concerned, be regarded as not being likely to have significant effects on the environment (see, to that effect, in respect of the margin of discretion accorded to Member States pursuant to Article 4(2) of Directive 85/337, Case C-427/07 *Commission* v *Ireland* [2009] ECR I-6277, paragraph 42 and the case-law cited). 48. That requirement is not met by the criterion that the land planning document in question mentions only one subject of economic activity. Such a criterion, besides being contrary to Article 3(2)(a) of Directive 2001/42, is not one which can determine whether or not a plan has ‘significant effects’ on the environment.

Case No.	Date	Parties	Decision	Summary
C-2/10	21/07/2011	*Azienda Agro-Zootecnica Franchini and Eolica di Altamura v. Regione Puglia* (reference for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per la Puglia (Italy), made by decision of 23 September 2009, received at the Court on 4 January 2010)	On those grounds, the Court (First Chamber) hereby rules: Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, Directive 2001/77/EC […]on the promotion of electricity produced from renewable energy sources in the internal electricity market and Directive 2009/28/EC […] on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC **must be interpreted as not precluding legislation which prohibits the location of wind turbines not intended for self-consumption on sites forming part of the Natura 2000 European Ecological Network**, without any requirement for a prior assessment of the environmental impact of the project on the site specifically concerned, on condition that the principles of non-discrimination and proportionality are respected.	The reference was made in proceedings concerning the refusal to authorize the location of wind turbines not intended for self-consumption on land situated within the confines of the Alta Murgia national park, a protected area classified as a site of Community importance ('SCI') and special protection area ('SPA') forming part of the Natura 2000 network, even though no prior assessment had been carried out as to the environmental impact of the project on the particular site concerned. The Court *i.a.* held: 40. It should be noted, first, that […] the system of protection afforded by the Habitats and Birds Directives to sites forming part of the Natura 2000 network does not prohibit all human activity within those sites but simply makes authorisation of such activity conditional upon a prior assessment of the environmental impact of the project concerned. […] 42. It is […] clear that the European Union legislature intended to create a protection mechanism which is triggered only if a plan or project represents a risk for a site forming part of the Natura 2000 network. 43. It is in the light of those considerations that it is necessary to determine whether the Habitats and Birds Directives preclude national and regional legislation such as that at issue in the main proceedings. 44.-46. It is apparent […] that that legislation prohibits the construction of new wind turbines not intended for self-consumption in SCIs and SPAs forming part of the Natura 2000 Network. […] The effect of that legislation is that any plan or project for a new wind power plant on one of those sites is automatically refused […]. It is therefore clear that **such legislation establishes a system** for protecting sites forming part of the Natura 2000 network which is **more stringent** than that established by the Habitats and Birds Directives. 47. Consequently, as the Advocate General observed at point 33 of his Opinion, **it is necessary**, in order to answer the referring court's question, **to determine whether**, and if so under what conditions, **European Union law permits Member States to introduce stricter national protective measures than those laid down by those directives**. 48. It should be noted in this regard that **European Union rules do not seek to effect complete harmonisation in the area of the environment** (see, inter alia, Case C-318/98 *Fornasar and Others* [2000] ECR I-4785, paragraph 46, and Case C-6/03

Case No.	Date	Parties	Decision	Summary
				Deponiezweckverband Eiterköpfe [2005] ECR I-2753, paragraph 27). 49. Article 14 of the Birds Directive provides that Member States may introduce stricter protective measures than those provided for under that directive. 50. There is no provision in the Habitats Directive that is equivalent to Article 14 of the Birds Directive. Nevertheless, since that directive was adopted on the basis of Article 192 TFEU, it should be noted that Article 193 TFEU provides that Member States may adopt more stringent protective measures. Under that provision, such measures are simply required to be compatible with the FEU Treaty and notified to the Commission. The Court has thus held that 'in connection with the Community's environmental policy, to the extent that a measure of domestic law pursues the same objectives as a directive, Article 176 EC makes provision for and authorises the minimum requirements laid down by that directive to be exceeded, in the conditions set by that article' (see *Deponiezweckverband Eiterköpfe*, paragraph 58). 52. It follows that legislation such as that at issue in the main proceedings which, with a view to protecting wild bird populations inhabiting protected areas forming part of the Natura 2000 network, imposes an absolute prohibition on the construction of new wind turbines in those areas, pursues the same objectives as the Habitats Directive. To the extent that it provides for a stricter system of protection than that established by Article 6 of that directive, it therefore constitutes a more stringent protective measure within the meaning of Article 193 TFEU. 53. It is, admittedly, not apparent from the documents submitted to the Court that the Italian Government communicated those measures to the Commission in accordance with Article 193 TFEU. Nevertheless, it should be noted that, while that provision requires Member States to communicate to the Commission the more stringent protective measures which they intend to maintain or introduce in environmental matters, it does not make implementation of the planned measures conditional upon agreement by the Commission or its failure to object. In that context, as the Advocate General noted at point 38 of his Opinion, neither the wording nor the purpose of the provision under examination therefore provides any support for the view that failure by the Member States to comply with their notification obligation under Article 193 TFEU in itself renders unlawful the more stringent protective measures thus adopted (see, by analogy, Case 380/87 *Enichem Base and Others* [1989] ECR 2491, paragraphs 20 to 23; Case C-209/98 *Sydhavnens Sten & Grus* [2000]

Case No.	Date	Parties	Decision	Summary
				ECR I-3743, paragraph 100; and Case C-159/00 *Sapod Audic* [2002] ECR I-5031, paragraphs 60 to 63). 54. The fact none the less remains that the more stringent protective measures put in place by the national and regional legislation at issue in the main proceedings must also comply with the other provisions of the FEU Treaty. 55. The applicants in the main proceedings have submitted in this regard that the objective of developing new and renewable forms of energy, as established for European Union policy by Article 194(1)(c) TFEU, should take precedence over the environmental-protection objectives pursued by the Habitats and Birds Directives. 56. Suffice it to observe in that connection that Article 194(1) TFEU states that European Union policy on energy must have regard for the need to preserve and improve the environment. 57. Moreover, a measure such as that at issue in the main proceedings, which prohibits only the location of new wind turbines not intended for self-consumption on sites forming part of the Natura 2000 network, with the possibility of exemption for wind turbines intended for self-consumption with a capacity not exceeding 20 kW, is not, in view of its limited scope, liable to jeopardise the European Union objective of developing new and renewable forms of energy. *Interpretation of Directives 2001/77 and 2009/28* 59. It is necessary to examine whether Directives 2001/77 and 2009/28 must be interpreted as precluding legislation such as that at issue in the main proceedings. 60. As regards, first, Directive 2001/77, Article 1 thereof states that the purpose of the directive is to promote an increase in the contribution of renewable energy sources to electricity production in the internal market for electricity and to create a basis for a future Community framework thereof. 61. To that end, Article 6(1) of Directive 2001/77 requires Member States to evaluate the legislative and regulatory framework with regard to administrative procedures, in particular authorization procedures, which are applicable to production plants for electricity produced from renewable energy sources. The objectives of that evaluation procedure are to streamline and reduce administrative barriers and to ensure that the rules applicable to that

Case No.	Date	Parties	Decision	Summary
				type of production plant are objective, transparent and non-discriminatory. 63. […] It should be pointed out, first, that a total ban on the construction of new wind turbines in areas forming part of the Natura 2000 network, deriving from a legislative provision, is not contrary to the objectives of streamlining and reducing administrative barriers and, in principle, constitutes a sufficiently transparent and objective procedure. 64. Next, as to whether the measure is discriminatory, it should be recalled that the prohibition of discrimination laid down in Article 6(1) of Directive 2001/77 is simply a specific expression of the principle of equality, which is one of the fundamental principles of European Union law and requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, inter alia, Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 67; Case C-303/05 *Advocaten voor de Wereld* [2007] ECR I-3633, paragraph 56; and Case C-127/07 *Arcelor Atlantique et Lorraine and Others* [2008] ECR I-9895, paragraph 23). 65. In the present case, it is for the referring court to determine whether the difference in treatment between the projects for the construction of wind turbines and projects relating to other industrial activities proposed for sites forming part of the Natura 2000 network may be justified on the basis of objective differences between those two kinds of project. 66. In that context, the referring court must have regard to the particular features of wind turbines, taking account in particular of the dangers which they may represent for birds, such as the risk of collision, disturbances and displacement, barrier effects forcing birds to change direction and habitat loss or degradation. 67. As regards, second, Directive 2009/28, Article 13(1) thereof provides that 'Member States shall ensure that any national rules concerning the authorisation, certification and licensing procedures that are applied to plants and associated transmission and distribution network infrastructures for the production of electricity, heating or cooling from renewable energy sources … are proportionate and necessary'. In particular, Member States are required to take appropriate steps to ensure that those rules are 'objective, transparent, proportionate, do not discriminate between applicants and take fully into account the particularities of individual renewable energy technologies'. 68. It is true, as pointed out by the Commission in its observations, that the period for

Case No.	Date	Parties	Decision	Summary
				transposition of Directive 2009/28, which ended on 5 December 2010, had not yet expired at the date on which the order for reference was made, that is to say, 23 September 2009. 69. However, as the Court has already held and in so far as Directive 2009/28 had already entered into force at the time of the facts in the main proceedings, the interpretation of that directive sought by the referring court must be regarded as being useful to that court (see, to that effect, Joined Cases C-261/07 and C-299/07 *VTB-VAB and Galatea* [2009] ECR I-2949, paragraphs 29 to 41). 70. First, it follows from the case-law that not only the national provisions specifically intended to transpose a directive but also, from the date of that directive's entry into force, the pre-existing national provisions capable of ensuring that the national law is consistent with it must be considered to fall within the scope of that directive (see, to that effect, Case C-81/05 *Cordero Alonso* [2006] ECR I-7569, paragraph 29). 71. Second, in any event, it follows from established case-law that, during the period prescribed for transposition of a directive, the Member States to which it is addressed must refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by that directive (Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 45; Case C-14/02 *ATRAL* [2003] ECR I-4431, paragraph 58; and Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 67). 72. For those reasons, contrary to the Commission's submission, it is necessary to reply to the part of the referring court's question concerning the interpretation of Directive 2009/28, in particular in the light of the principle of proportionality which Article 13 of that directive introduces with regard to administrative procedures for the authorisation of plants producing renewable energy. 73. In this regard, the principle of proportionality referred to in Article 13 of Directive 2009/28, which is one of the general principles of European Union law, requires that measures adopted by Member States in this field do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, inter alia, Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 13, and Joined Cases C-133/93, C-300/93 and C-362/93

Case No.	Date	Parties	Decision	Summary
				Crispoltoni and Others [1994] ECR I-4863, paragraph 41). 74. It is for the referring court to determine whether the national measure at issue is proportionate. That court must take account in particular of the fact that the legislation at issue in the main proceedings is confined to wind power plants and does not extend to other forms of renewable energy production, such as photovoltaic plants. Moreover, the prohibition applies solely to new wind turbines for commercial purposes, as wind power plants intended for self-consumption and having a capacity not exceeding 20 kW are excluded from the scope of that prohibition.

C-538/09	26/05/2011	*European Commission v Belgium* (Action for failure to fulfil obligations under Article 258 TFEU, brought on 21 December 2009)	On those grounds, the Court (First Chamber) hereby: 1. Declares that, by not requiring an appropriate environmental impact assessment to be undertaken for certain activities, subject to a declaratory scheme, where those activities are likely to have an effect on a Natura 2000 site, the Kingdom of Belgium has failed to fulfil its obligations under 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; 2. Orders the Kingdom of Belgium to pay the costs.	In 2006, the Commission received a complaint alleging the unauthorized operation of an industrial-scale cattle shed located within the territory of the commune of Philippeville in the Walloon Region (Belgium), which borders on a Natura 2000 site designated as a special area of conservation. The European Commission requested the Court to declare that, by not requiring an appropriate environmental impact assessment to be undertaken for certain activities, where those activities are likely to have an effect on a Natura 2000 site, and by making certain activities subject to a declaratory scheme, the Kingdom of Belgium failed to fulfil its obligations under Article 6(3) of the Habitats Directive. The Court *i.a.* held: 39. […] Article 6(3) of the Habitats Directive makes the requirement for an appropriate assessment of the implications of a plan or project conditional on there being a probability or a risk that the plan or project in question will have a significant effect on the site concerned. **In the light, in particular, of the precautionary principle, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned** (see Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging* [2004] ECR I-7405, paragraphs 43 and 44; Case C-6/04 *Commission* v *United Kingdom* [2005] ECR I-9017, paragraph 54; and Case C-418/04 *Commission* v *Ireland* [2007] ECR I-10947, paragraph 226). 40. That risk must be assessed in the light, inter alia, of the characteristics and specific environmental conditions of the site concerned by that plan or project (see *Waddenvereniging and Vogelbeschermingsvereniging*, paragraph 49, and Case C-179/06 *Commission* v *Italy* [2007] ECR I-8131, paragraph 35). 41. Moreover, the condition governing the need to undertake an assessment of the implications of a plan or a project on a particular site, in accordance with which such an assessment must be carried out where there are doubts as to the existence of significant effects, does not permit that assessment to be avoided, in respect of certain categories of projects, on the basis of criteria which do not adequately ensure that those projects are not likely to have a significant effect on the protected sites (see, to that effect, Case C-98/03 *Commission* v *Germany* [2006] ECR I-53, paragraph 41). 43. […] Article 6(3) of the Habitats Directive does not authorise a Member State to enact national legislation which allows the environmental impact assessment obligation for development plans to benefit from a general waiver because of the low costs entailed or the

				particular type of work planned (see, to that effect, Case C-256/98 *Commission* v *France* [2000] ECR I-2487, paragraph 39). 44. Similarly, by systematically exempting works and development programmes and projects which are subject to a declaratory scheme from the procedure for assessing their implications for the site, a Member State fails to fulfil its obligations under Article 6(3) of the Habitats Directive (see, to that effect, Case C-241/08 *Commission* v *France*, paragraph 62). 45. It is therefore clear […], in principle, pursuant to Article 6(3) of the Habitats Directive, a Member State may not, on the basis of the sphere of activity concerned or by introducing a declaratory scheme, systematically and generally exempt certain categories of plans or projects from the obligation requiring an assessment to be undertaken of their implications for Natura 2000 sites. 55. It should be borne in mind […] that **even a small-scale project** can have significant effects on the environment if it is in a location where the environmental factors, such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the slightest alteration (see, to that effect, with regard to Directive 85/337, Case C-392/96 *Commission* v *Ireland* [1999] ECR I-5901, paragraph 66).

C-404/09	24/11 /2011	*European Commission v Spain* (action under Article 226 EC for failure to fulfill obligations, brought on 20 October 2009)	On those grounds, the Court (Fourth Chamber) hereby: 1. Declares that, by authorising the 'Nueva Julia' and 'Ladrones' open-cast mines but failing to subject that authorisation to an assessment in order to identify, describe and assess in an appropriate manner the direct, indirect and cumulative effects of the existing open-cast mining projects, save, in relation to the 'Ladrones' mine, as regards the brown bear (Ursus arctos), the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3 and 5(1) and (3) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997; 2. Declares that, from 2000, the date of designation of the 'Alto Sil' area as a special protection area under Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended by Commission Directive 97/49/EC of 29 July 1997,	The European Commission brought an action against Spain regarding the 'Alto Sil' site. In 1998, the Kingdom of Spain proposed that site as an SCI under Article 4(1) of the Habitats Directive, later also as a SPA under the Birds Directive. In 2004, the Commission, by Decision 2004/813/EC, included 'Alto Sil' as a site of Community importance for the Atlantic biogeographical region. The vulnerability of the site was essentially due to several open-cast mining projects in the region. The Commission was of the opinion that the Spanish authorities failed to fulfill their obligations under Directive 85/337, as amended, and under the Habitats Directive, and that in particular, that the EIAs did not give sufficient consideration to the possible disturbances caused to the brown bear and that the cumulative effects of the mining were not sufficiently taken into account. The Court *i.a.* held: 76. It needs to be examined […] whether, in this case the environmental impact assessments carried out in accordance with Directive 85/337 as amended of the 'Nueva Julia' and 'Ladrones' mining projects are inadequate […] because they do not include an analysis of the **cumulative environmental effects** capable of being produced by those projects and other operations, such as open-cast coal mines in operation or the commencement in operation of which is authorised or in the course of authorisation. 77. In that regard […] it cannot be inferred from the use of the conditional, in the note concerning point 4 of Annex IV to Directive 85/337 as amended, to the effect that '[t]his description should cover ... any ... cumulative ... effects of the project', that the assessment of the environmental impacts does not necessarily have to cover the cumulative effects of the various projects on the environment, but that such an analysis is merely desirable. 78. The scope of that obligation to assess impacts on the environment follows from the provision contained in Article 3 of Directive 85/337 as amended, according to which the environmental impact assessment is to identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11 of that directive, the direct and indirect effects of a project on human beings, fauna and flora, soil, water, air, climate and the landscape, material assets and the cultural heritage, and the interaction between those factors. 79. Given the extended scope and very broad objective of Directive 85/337 as amended, which are apparent from Articles 1(2), 2(1) and 3 of the latter (see, to that effect, Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraphs 30 and 31), the mere fact that there may have been uncertainty as to the exact meaning of the use of the conditional in the

			– by authorising the 'Nueva Julia' and 'Ladrones' open-cast mining operations, without making the grant of the authorisations relating thereto subject to the carrying out of an appropriate assessment of the possible impacts of those projects, and, in any event, without complying with the conditions in which a project might be realised despite the risk posed by that project for the capercaillie, (Tetrao urogallus), which constitutes one of the natural assets which motivated the classification of the 'Alto Sil' site as a special protection area, namely the absence of alternative solutions, the existence of imperative reasons of major public interest and communication to the European Commission of the necessary compensatory measures to ensure the overall coherence of the Natura 2000 network, and – by failing to adopt the necessary measures to prevent the deterioration of habitats including the habitats of species, and to prevent significant disturbance of the capercaillie, the presence of which on the 'Alto Sil' site was the reason for	expression '[t]his description should cover' used in a note to point 4 of Annex IV to Directive 85/337 as amended, even if that also appears in other language versions of that directive, cannot prevent a broad interpretation from being given to Article 3 of the latter. 80. Therefore, that provision should be taken as meaning that, where the assessment of the environmental impacts must, in particular, identify, describe and assess in an appropriate manner the indirect effects of a project, that assessment must also include an analysis of the cumulative effects on the environment which that project may produce if considered jointly with other projects, in so far as such an analysis is necessary in order to ensure that the assessment covers examination of all the notable impacts on the environment of the project in question. 99. Under Article 6(3) of the Habitats Directive, an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives 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 the case where no reasonable scientific doubt remains as to the absence of such effects** (see, in particular, [C-418/04] *Commission* v *Ireland*, at paragraph 243). 100. An assessment made under Article 6(3) of the Habitats Directive cannot be regarded as appropriate if it contains gaps and lacks complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the SPA concerned (see, to that effect, Case C-304/05 *Commission* v *Italy* [2007] ECR I-7495, paragraph 69). 109. The Kingdom of Spain, which has invoked the importance of mining activities for the **local economy**, needs to be reminded that, whilst that consideration is **capable of constituting an imperative reason of overriding public interest** within the meaning of Article 6(4) of the Habitats Directive, that provision **can apply only after the implications of a plan or project have been studied** in accordance with Article 6(3) of that directive. Knowledge of those implications in the light of the conservation objectives relating to the site in question is a necessary prerequisite for application of Article 6(4) since, in the

			the designation of that area as a special protection area, caused by the 'Feixolín', 'Salguero-Prégame-Valdesegadas', 'Fonfría', 'Ampliación de Feixolín' and 'Nueva Julia' mines, the Kingdom of Spain has failed to fulfil its obligations in relation to the 'Alto Sil' special protection area under Article 6(2) to (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, in conjunction with Article 7 thereof; 3. Declares that, from December 2004, by failing to adopt the necessary measures to prevent the deterioration of habitats, including the habitats of species, and the disturbances caused to species by the 'Feixolín', 'Fonfría' and 'Ampliación de Feixolín' operations, the Kingdom of Spain has failed, in relation to the 'Alto Sil' site of Community importance, to fulfil its obligations under Article 6(2) of Directive 92/43; 4. Dismisses the action as to the remainder;	absence thereof, no condition for application of that derogating provision can be assessed. The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives **require a weighing up against the damage** caused to the site by the plan or project under consideration. In addition, in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified (*Commission* v *Italy*, paragraph 83). 121. […] [I]t has been held in the context of the first part of the second complaint that authorisation for that project was granted without complying with Article 6(3) of the Habitats Directive, the case-law shows that a **breach of Article 6(2) may be found where deterioration of a habitat or disturbance of the species for which the area in question was designated has been established** (*Commission* v *Italy*, paragraph 94). 122. […] [I]t should be recalled that the fact that a plan or project has been authorised according to the procedure laid down in Article 6(3) of the Habitats Directive renders superfluous, as regards the action to be taken on the protected site under the plan or project, a concomitant application of the rule of general protection laid down in Article 6(2) (*Commission* v *Ireland*, paragraph 250). 127. Moreover, by virtue of Article 6(2) of the Habitats Directive, the protective legal status of SPAs must guarantee the avoidance therein of the deterioration of natural habitats and the habitats of species as well as significant disturbance of the species for which those areas have been classified (see, in particular, Case C-535/07 *Commission* v *Austria* [2010] ECR I-0000, paragraph 58 and case-law cited). 133.-134. […] [E]ven if that area were not usable as a breeding ground, it could conceivably be used by that species as a habitat for other purposes, such as a living or hibernating area. […] [I]f that operation had not taken place in that area, the possibility cannot be excluded that […] area could have become usable as a breeding ground. 135. In that respect, it should be recalled that the protection of SPAs is **not to be limited to measures intended to avoid external anthropogenic impairment and disturbance** but **must also, according to the situation that presents itself, include positive measures to preserve or improve the state of the site** (*Commission* v *Austria*, paragraph 59 and case-law cited).

			5. Orders the Kingdom of Spain to pay, in addition to its own costs, two thirds of the Commission's costs. The Commission is ordered to pay one third of its own costs.	142. Moreover, in order to establish a failure to fulfil obligations within the meaning of Article 6(2) of the Habitats Directive, the **Commission does not have to prove a cause and effect relationship between a mining operation and significant disturbance** to the capercaillie. Since Article 6(2) and (3) of the Habitats Directive are designed to ensure the same level of protection, it is **sufficient** for the Commission **to establish the existence of a probability or risk that that operation might cause significant disturbances for that species** (see, to that effect, *Commission* v *France*, paragraph 32, and Case C-2/10 *Azienda Agro-Zootecnica Franchini and Eolica di Altamura* [2011] ECR I-0000, paragraph 41). 163. Under the Habitats Directive, Member States must take appropriate protective measures to preserve the characteristics of sites which host priority natural habitat types and/or priority species and which have been identified by Member States with a view to their inclusion on the Community list. **Member States cannot therefore authorise intervention where there is a risk that the ecological characteristics of those sites will be seriously compromised as a result. That is particularly so where there is a risk that intervention of a particular kind will bring about the extinction of priority species present on the sites concerned** (Case C-308/08 *Commission* v *Spain* [2010] ECR I-0000, paragraph 21 and case-law cited). 194. […] [I]t is apparent from the second subparagraph of Article 6(4) of the Habitats Directive that, 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.

C-275/09	17/03 /2011	*Brussels Hoofdstedelijk Gewest and Others v. Vlaams Gewest* Intervening party: *The Brussels Airport Company NV* (reference for a preliminary ruling under Article 234 EC from the Raad van State (Belgium), made by decision of 14 July 2009, received at the Court on 21 July 2009)	On those grounds, the Court (First Chamber) hereby rules: The second indent of Article 1(2) of, and point 7 of Annex 1 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, as amended by Council Directive 97/11/EC of 3 March 1997, are to be interpreted as meaning that: – the renewal of an existing permit to operate an airport cannot, in the absence of any works or interventions involving alterations to the physical aspect of the site, be classified as a 'project' or 'construction', respectively, within the meaning of those provisions; – however, it is for the national court to determine, on the basis of the national legislation applicable and taking account, where appropriate, of the cumulative effect of a number of works or interventions carried out since the entry into force of the directive, whether that permit forms part of a consent procedure carried out in several stages, the ultimate purpose of	The reference was made in proceedings concerning a decision relating to the operation of Brussels National Airport, which is situated in the Flemish Region. It has existed for decades but its operation has been subject to the grant of an environmental permit only since 1999. The first environmental permit was granted in 2000 for a period of five years. In 2004, The Brussels Airport Company NV submitted another environmental permit application. The Permanent Delegation of the Provincial Council of Vlaams-Brabant granted the permit sought as regards the continued operation of the airport but rejected the application to extend it. The Permanent Delegation considered that an environmental impact assessment was unnecessary. The Brussels Hoofdstedelijk Gewest and several other applicants brought an action against this finding. The Court *i.a.* held: 19. […] [I]t is necessary to ascertain whether the operation of an airport may constitute a 'project' within the meaning of Article 1(2) of Directive 85/337 […]. 20.-21. As the Court observed at paragraph 23 of its judgment in Case C-2/07 *Abraham and Others* [2008] ECR I-1197, it is apparent from the very wording of Article 1(2) of Directive 85/337 that the term 'project' refers to works or physical interventions. […] [T]he measure at issue in the main proceedings is limited to the renewal of the existing consent to operate Bruxelles-National Airport and does not entail works or interventions which alter the physical aspect of the site. 22. However, some of the applicants in the main proceedings have argued that the concept of physical intervention must be broadly construed as encompassing any intervention in the natural surroundings. They rely on paragraphs 24 and 25 of the judgment in Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging* [2004] ECR I-7405, in which the Court held that an activity such as mechanical cockle fishing is within the concept of 'project' as defined in the second indent of Article 1(2) of Directive 85/337. 23. That argument cannot be accepted. As the Advocate General points out at point 22 of his Opinion, the activity at issue in the case which gave rise to that judgment was comparable with the extraction of mineral resources, an activity which is specifically referred to in the second indent of Article 1(2) of Directive 85/337 and entails genuine physical changes to the sea bed. 24. It follows that the **renewal of an existing permit to operate an airport cannot, in the absence of any works or interventions involving alterations to the physical aspect of the site, be classified as a 'project'** within the meaning of the second indent of Article 1(2)

			which is to enable activities which constitute a project within the meaning of the first indent of point 13 of Annex II, read in conjunction with point 7 of Annex I, to the directive to be carried out. If no assessment of the environmental effects of such works or interventions was carried out at the earlier stage in the consent procedure, it would be for the national court to ensure that the directive was effective by satisfying itself that such an assessment was carried out at the very least at the stage at which the operating permit was to be granted.	of Directive 85/337. 26. […] [T]he term 'construction' used at point 7(a) of Annex I to Directive 85/337 is not in any way ambiguous and is to be understood as having its normal meaning, namely as referring to the carrying out of works not previously existing or of physical alterations to existing installations. 27. It is true that, in its case-law, the Court has given a broad interpretation of the concept of 'construction', accepting that works for the refurbishment of an existing road may be equivalent, due to their size and the manner in which they are carried out, to the construction of a new road (Case C-142/07 *Ecologistas en Acción-CODA* [2008] ECR I-6097, paragraph 36). Similarly, the Court has interpreted point 13 of Annex II, read in conjunction with point 7 of Annex I, to Directive 85/337 as also encompassing works to alter the infrastructure of an existing airport, without extension of the runway, where they may be regarded, in particular because of their nature, extent and characteristics, as an alteration of the airport itself (*Abraham and Others*, paragraph 40). 28. However, it is clear from reading those judgments that each of the cases which gave rise to them involved physical works, which is not the case in the main proceedings according to the information provided by the Raad van State. 32. […] [I]n a case involving a permit […] which does not formally concern an activity subject to an environmental impact assessment for the purposes of Annexes I and II to Directive 85/337, it may nevertheless be necessary for such an assessment to be carried out where that measure constitutes a stage in a procedure the ultimate purpose of which is to grant the right to proceed with an activity which constitutes a project within the meaning of Article 2(1) of the directive (see, to that effect, *Abraham and Others*, paragraph 25). 33. According to that same line of authority, where national law provides that the consent procedure is to be carried out in several stages, the environmental impact assessment in respect of a project must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment (see Case C-201/02 *Wells* [2004] ECR I-723, paragraph 53, and *Abraham and Others*, paragraph 26). It has also been held that a national measure which provides that an environmental impact assessment may be carried out only at the initial stage of the consent procedure, and not at a later stage

				in the procedure, would be incompatible with Directive 85/337 (see, to that effect, Case C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, paragraphs 105 and 106). 36. The Court has also stated that the objective of the European Union legislation cannot be circumvented by the splitting of projects and that failure to take account of their cumulative effect must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of Directive 85/377 (*Abraham and Others*, paragraph 27).

C-128/09 (joined cases C-128/09, C-131/09, C-134/09, C-135/09)	18/10/2011	*Boxus and Roua et al v. Région wallonne* Intervening parties: *Société régionale wallonne du transport (SRWT), Infrabel SA, Société wallonne des aéroports (SOWEAR)* (references for a preliminary ruling under Article 234 EC from the Conseil d'Etat (Belgium), made by decisions of 27 and 31 March 2009, received at the Court on 6, 9 and 10 April 2009)	On those grounds, the Court (Grand Chamber) hereby rules: 1. Article 1(5) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC […], must be interpreted as meaning that only projects the details of which have been adopted by a specific legislative act, in such a way that the objectives of that directive have been achieved by the legislative process, are excluded from the directive's scope. It is for the national court to verify that those two conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates. In that regard, a legislative act which does no more than simply 'ratify' a pre-existing administrative act, by merely referring to overriding reasons in the general interest without a substantive legislative process enabling those conditions to be	The reference was made in proceedings concerning persons living near Liege-Bierset and Brussels South Charleroi airports and the Brussels to Charleroi railway line against the Region wallonne (Walloon Region) concerning consents for works granted in respect of those installations. The Court *i.a.* held: 35. By its first question the referring court asks, in essence, whether Article 1(5) of Directive 85/337 must be interpreted as meaning that an act, such as the Decree of the Walloon Parliament of 17 July 2008, which 'ratifies', by giving them legislative status, planning, environmental or works consents previously granted by the administrative authorities, in respect of which it is declared that 'overriding reasons in the general interest have been established', is excluded from the scope of the directive. 36. It follows from that provision that, where the objectives of Directive 85/337, including that of supplying information, are achieved through a legislative process, the directive does not apply to the project in question (see Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 51). 37. The provision lays down two conditions for the exclusion of a project from the scope of Directive 85/337. The first requires the details of the project to be adopted by a specific legislative act. Under the second, the objectives of the directive, including that of supplying information, must be achieved through the legislative process (see Case C-435/97 *WWF and Others* [1999] ECR I-5613, paragraph 57). 38. The first condition entails, first of all, adoption of the project by a specific legislative act. It should be pointed out in this regard that the terms 'project' and 'consent' are defined in Article 1(2) of Directive 85/337. Thus, a legislative act adopting a project must, if it is to come within the scope of Article 1(5) of the directive, be specific and display the same characteristics as a consent of that kind. It must in particular grant the developer the right to carry out the project (see *WWF and Others*, paragraph 58). 39. The project must also be adopted in detail, that is to say, in a sufficiently precise and definitive manner, so that the legislative act adopting the project must include, like a development consent, following their consideration by the legislature, all the elements of the project relevant to the environmental impact assessment (see *WWF and Others*, paragraph 59). The legislative act must therefore demonstrate that the objectives of Directive 85/337 have been achieved as regards the project in question (see *Linster*, paragraph 56).

			fulfilled having first been commenced, cannot be regarded as a specific legislative act for the purposes of that provision and is therefore not sufficient to exclude a project from the scope of Directive 85/337, as amended by Directive 2003/35. 2. Article 9(2) of the Convention on access to information, public participation in decision making and access to justice in environmental matters, concluded on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, and Article 10a of Directive 85/337, as amended by Directive 2003/35, must be interpreted as meaning that: – when a project falling within the scope of those provisions is adopted by a legislative act, the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive must be capable of being submitted, under the national procedural rules, to a court of law or an independent and impartial body established by law;	40. It follows that the details of a project cannot be considered to be adopted by a legislative act, for the purposes of Article 1(5) of Directive 85/337, if that act does not include the elements necessary to assess the environmental impact of the project or if the adoption of other measures is needed in order for the developer to be entitled to proceed with the project (see *WWF and Others*, paragraph 62, and *Linster*, paragraph 57). 41. As regards the second condition, it is clear from Article 2(1) of Directive 85/337 that the fundamental objective of the directive is to ensure that projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to an assessment with regard to their environmental effects before consent is given (see *Linster*, paragraph 52). 42. In addition, the sixth recital in the preamble to Directive 85/337 states that the assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question (see *WWF and Others*, paragraph 61, and *Linster*, paragraph 53). 43. Consequently, the legislature must have sufficient information at its disposal at the time when the project is adopted. It is apparent from Article 5(3) of Directive 85/337 and Annex IV thereto that the minimum information to be supplied by the developer is to include a description of the project comprising information on the site, design and size of the project, a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects, and the data required to identify and assess the main effects which the project is likely to have on the environment (see *Linster*, paragraph 55). 44. Having regard to the characteristics of procedures for the approval of a plan in more than one phase, Directive 85/337 does not preclude a single project from being approved by two acts of national law which are considered, as a whole, to be a development consent within the meaning of Article 1(2) thereof (see, to that effect, Case C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, paragraph 102). Consequently, the legislature can, when adopting the final act authorising a project, take advantage of the information gathered during a prior administrative procedure. 45. However, the existence of such an administrative procedure cannot have the effect of enabling a project to be regarded as a project the details of which are adopted by a specific legislative act in accordance with Article 1(5) of Directive 85/337 if that legislative act does not fulfil the two conditions set out in paragraph 37 of the present judgment. Thus, a

			– if no review procedure of the nature and scope set out above were available in respect of such an act, any national court before which an action falling within its jurisdiction is brought would have the task of carrying out the review described in the previous indent and, as the case may be, drawing the necessary conclusions by not applying that legislative act.	legislative act which does no more than simply 'ratify' a pre-existing administrative act, by merely referring to overriding reasons in the general interest without a substantive legislative process which enabling those conditions to be fulfilled having first been commenced, cannot be regarded as a specific legislative act for the purposes of that provision and is therefore not sufficient to exclude a project from the scope of Directive 85/337. 46. In particular, a legislative act adopted without the members of the legislative body having had available to them the information mentioned in paragraph 43 of the present judgment cannot fall within the scope of Article 1(5) of Directive 85/337. 47. It is for the national court to determine whether those conditions have been satisfied. For that purpose, it must take account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates. 49. By its second, third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 9 of the Aarhus Convention and Article 10a of Directive 85/337 must be interpreted as precluding the right to implement a project which falls within their scope from being granted by a legislative act against which, under national law, no review procedure is available before a court of law or another independent and impartial body established by law that enables that act to be challenged as to the substance and the procedure. 50. It follows from Article 2(2) of the Aarhus Convention, read together with Articles 6 and 9 thereof, and from Article 1(5) of Directive 85/337 that neither the Convention nor the directive applies to projects adopted by a legislative act satisfying the conditions set out in paragraph 37 of the present judgment. 51. For other projects, that is to say, those adopted either by an act which is not legislative in nature or by a legislative act which does not fulfil those conditions, it follows from the very terms of Article 9(2) of the Aarhus Convention and Article 10a of Directive 85/337 that the Member States must provide for a review procedure before a court of law or another independent and impartial body established by law for challenging the substantive or procedural legality of decisions, acts or omissions subject, respectively, to Article 6 of the Aarhus Convention or Directive 85/337.

				52. By virtue of their procedural autonomy, the Member States have a discretion in implementing Article 9(2) of the Aarhus Convention and Article 10a of Directive 85/337, subject to compliance with the principles of equivalence and effectiveness. It is for them, in particular, to determine, in so far as the abovementioned provisions are complied with, which court of law or which independent and impartial body established by law is to have jurisdiction in respect of the review procedure referred to in those provisions and what procedural rules are applicable. 53. However, Article 9 of the Aarhus Convention and Article 10a of Directive 85/337 would lose all effectiveness if the mere fact that a project is adopted by a legislative act which does not fulfil the conditions set out in paragraph 37 of the present judgment were to make it immune to any review procedure for challenging its substantive or procedural legality within the meaning of those provisions. 54. The requirements flowing from Article 9 of the Aarhus Convention and Article 10a of Directive 85/337 presuppose in this regard that, when a project falling within the scope of Article 6 of the Aarhus Convention or of Directive 85/337 is adopted by a legislative act, the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive and set out in paragraph 37 of the present judgment must be amenable to review, under the national procedural rules, by a court of law or an independent and impartial body established by law. 55. If no review procedure of the nature and scope set out above were available in respect of such an act, any national court before which an action falling within its jurisdiction is brought would have the task of carrying out the review described in the previous paragraph and, as the case may be, drawing the necessary conclusions by not applying that legislative act. 56. In the present instance, if the referring court finds that the Decree of the Walloon Parliament of 17 July 2008 does not satisfy the conditions laid down in Article 1(5) of Directive 85/337 and recalled in paragraph 37 of the present judgment, and if it turns out that, under the applicable national rules, no court of law or independent and impartial body established by law has jurisdiction to review the substantive or procedural validity of that decree, the decree must then be regarded as incompatible with the requirements flowing from Article 9 of the Aarhus Convention and Article 10a of Directive 85/337. The referring court must then disregard and not apply it.

C-115/09	12/05 /2011	*Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v. Bezirksregierung Arnsberg* Intervening party : *Trianel Kohlekraftwerk Lünen GmbH & Co. KG* (reference for a preliminary ruling under Article 234 EC, from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany), made by decision of 5 March 2009, received at the Court on 27 March 2009	On those grounds, the Court (Fourth Chamber) hereby rules: 1. **Article 10a** of Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC […], **precludes legislation which does not permit non-governmental organisations promoting environmental protection**, as referred to in Article 1(2) of that directive, to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of a rule flowing from the environment law of the European Union and intended to protect the environment, on the ground that that rule protects only the interests of the general public and not the interests of individuals. 2. Such a non-governmental organisation can derive, from the last sentence of the third paragraph of Article 10a of Directive 85/337, as amended by	The reference was made in proceedings concerning the authorisation granted by the Bezirksregierung Arnsberg to Trianel Kohlekraftwerk GmbH & Co. KG ('Trianel') for the construction and operation of a coal-fired power station in Lünen. Within eight km of the project site, there are five areas designated as special areas of conservation within the meaning of the Habitats Directive. The Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV (the Nordrhein-Westfalen branch of Friends of the Earth, Germany; 'Friends of the Earth') initiated proceedings for an annulment of the authorization process. In particular they relied on an infringement of the provisions transposing into German law the Habitats Directive. The referring court finds that, on the basis of domestic law, an environmental protection organization is not entitled to rely on infringement of the law for the protection of water and nature or on the precautionary principle laid down in point (2) of the first sentence of Paragraph 5(1) of the BImSchG, as those provisions do not confer rights on individuals for the purposes of the UmwRG (national law). The Court *i.a.* held: 37. […] [T]he first paragraph of Article 10a of Directive 85/337 provides that the decisions, acts or omissions referred to in that article must be actionable before a court of law through a review procedure 'to challenge [their] substantive or procedural legality', without in any way limiting the pleas that could be put forward in support of such an action. 38. With regard to the conditions for the admissibility of such actions, Article 10a of Directive 85/337 provides for two possibilities: the admissibility of an action may be conditional on 'a sufficient interest in bringing the action' or on the applicant alleging 'the impairment of a right', depending on which of those conditions is adopted in the national legislation. 39. The first sentence of the third paragraph of Article 10a of Directive 85/337 further states that what constitutes a sufficient interest and impairment of a right is to be determined by the Member States **consistently with the objective of giving the public concerned 'wide access to justice'**. 40. With regard to actions brought by environmental protection organisations, the second and third sentences of the third paragraph of Article 10a of Directive 85/337 add that, to that end, such organisations must be regarded as having either a sufficient interest or rights which may be impaired, depending on which of those conditions for admissibility is adopted in the national legislation.

			Directive 2003/35, the right to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, as amended, on the infringement of the rules of national law flowing from Article 6 of Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 2006/105/EC of 20 November 2006, even where, on the ground that the rules relied on protect only the interests of the general public and not the interests of individuals, national procedural law does not permit this.	41. Those various provisions must be interpreted in the light of, and having regard to, the objectives of the Aarhus Convention, with which – as is stated in recital 5 to Directive 2003/35 – EU law should be 'properly aligned'. 42. It follows that, whichever option a Member State chooses for the admissibility of an action, environmental protection organisations are entitled, pursuant to Article 10a of Directive 85/337, to have access to a review procedure before a court of law or another independent and impartial body established by law, to challenge the substantive or procedural legality of decisions, acts or omissions covered by that article. 43. Lastly, […] where, in the absence of EU rules governing the matter, it is for the legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, **those detailed rules must not be less favourable than those governing similar domestic actions (principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness)**. 44. Thus, although it is for the Member States to determine, when their legal system so requires and within the limits laid down in Article 10a of Directive 85/337, what rights can give rise, when infringed, to an action concerning the environment, they cannot, when making that determination, deprive environmental protection organisations which fulfil the conditions laid down in Article 1(2) of that directive of the opportunity of playing the role granted to them both by Directive 85/337 and by the Aarhus Convention. 45. With regard to legislation such as that at issue in the main proceedings, although the national legislature is entitled to confine to individual public-law rights the rights whose infringement may be relied on by an individual in legal proceedings contesting one of the decisions, acts or omissions referred to in Article 10a of Directive 85/337, such a limitation cannot be applied as such to environmental protection organisations without disregarding the objectives of the last sentence of the third paragraph of Article 10a of Directive 85/337. 46. If, as is clear from that provision, those organisations must be able to rely on the same rights as individuals, **it would be contrary to the objective of giving the public concerned wide access to justice and at odds with the principle of effectiveness if such organisations were not also allowed to rely on the impairment of rules of EU environment law solely on the ground that those rules protect the public interest**. As the dispute in the main proceedings shows, that very largely deprives those organisations of

				the possibility of verifying compliance with the rules of that branch of law, which, for the most part, address the public interest and not merely the protection of the interests of individuals as such. **47. It follows first that the concept of 'impairment of a right' cannot depend on conditions which only other physical or legal persons can fulfil, such as the condition of being a more or less close neighbour of an installation or of suffering in one way or another the effects of the installation's operation.** 48. It follows more generally that the last sentence of the third paragraph of Article 10a of Directive 85/337 must be read as meaning that the 'rights capable of being impaired' which the environmental protection organisations are supposed to enjoy must necessarily include the rules of national law implementing EU environment law and the rules of EU environment law having direct effect. 49. In that regard, in order to give the referring court the most useful answer possible, it should be pointed out that a plea raised against a contested decision which alleges infringement of the rules of national law flowing from Article 6 of the Habitats Directive must be capable of being relied on by an environmental protection organisation. 51. By its third question, the referring court asks the Court, […] whether an environmental protection association can derive, from the last sentence of the third paragraph of Article 10a of Directive 85/337, the right to rely before the courts, in an action contesting a decision authorizing projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of the rules of national law flowing from Article 6 of the Habitats Directive, even where, on the ground that the rules relied on protect only the interests of the general public and not the interests of individuals, national procedural law does not permit this. 52. That question arises in the event that it would not be possible for the referring court to interpret national procedural law in a manner consistent with the requirements of EU law. 53. In that regard, it should first of all be borne in mind that the Member States' obligation under a directive to achieve the result envisaged by that directive and their duty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation are binding on all the authorities of the Member States, including, for matters within their jurisdiction, the courts (see, to that effect, Case C-555/07 *Kücükdeveci* [2010]

				ECR I-0000, paragraph 47 and the case-law cited). 54. The Court has held that whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied on before the national courts by individuals against the State, where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (see, inter alia, Case C-138/07 *Cobelfret* [2009] ECR I-731, paragraph 58). 55. […] Article 10a of Directive 85/337 leaves the Member States a significant discretion both to determine what constitutes impairment of a right and, in particular, to determine the conditions for the admissibility of actions and the bodies before which such actions may be brought. 56. The same is not true, however, of the provisions laid down in the last two sentences of the third paragraph of Article 10a of Directive 85/337. 57. By providing that the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) of Directive 85/337 are to be deemed sufficient and that such organisations are also to be deemed to have rights capable of being impaired, those provisions lay down rules which are precise and not subject to other conditions. 58. In addition, as was stated above, the rights which environmental protection organisations may rely on in judicial proceedings pursuant to Article 10a of Directive 85/337 include the rules of EU environment law and, in particular, the rules of national law flowing from Article 6 of the Habitats Directive.

C-105/09 (joined cases C-105/09, C-110/09)	17/06/2010	*Terre wallonne ASBL, Inter-Environnement Wallonie ASBL v Région wallonne* (references for a preliminary ruling under Article 234 EC from the Conseil d'Etat (Belgium), made by decisions of 11 March 2009, received at the Court on 20 and 23 March 2009)	On those grounds, the Court (Fourth Chamber) hereby rules: An action programme adopted pursuant to Article 5(1) of Council Directive 91/676/EEC […] concerning the protection of waters against pollution caused by nitrates from agricultural sources is in principle a plan or programme covered by Article 3(2)(a) of Directive 2001/42/EC […] on the assessment of the effects of certain plans and programmes on the environment since it constitutes a 'plan' or 'programme' within the meaning of Article 2(a) of the latter directive and contains measures compliance with which is a requirement for issue of the consent that may be granted for carrying out projects listed in Annexes I and II to Council Directive 85/337/EEC […] on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997.	The reference was made in proceedings concerning proceedings brought by (i) Terre wallonne ASBL and (ii) Inter-Environnement Wallonie ASBL against Region wallonne (the Region of Wallonia) for annulment of the order of the Walloon Government of 15 February 2007 amending Book II of the Environment Code, which forms the Water Code, as regards the sustainable management of nitrogen in agriculture (*Moniteur belge* of 7 March 2007, p. 11118) ('the contested order'), which Belgium had adopted in response to Case C-221/03 *Commission* v *Belgium* [2005] ECR I-8307. There the ECJ had held that, by failing to adopt within the relevant time-limit the measures needed for the full and correct implementation of Directive 91/676, Belgium had failed to fulfil its obligations under that directive. The applicants in particular claim that the programme which it contains was not subjected to an environmental assessment in accordance with Directive 2001/42. The Court *i.a.* held: Application of Article 2 of Directive 2001/42 35. The Court finds first of all that action programmes are (i) subject to preparation by an authority at national, regional or local level or prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and (ii) required by legislative, regulatory or administrative provisions. 36. It is also to be noted that Directive 91/676 requires such action programmes to be established for all 'vulnerable zones' designated by Member States in pursuance of its provisions and that those programmes must include measures and actions of the type listed in Article 5, which are designed to combat nitrate pollution and which Member States are required to implement and monitor. […] 37. Moreover […] such a finding is supported by recital 2 in the preamble to Directive 2003/35, and by Article 2(5) of that directive and Annex I thereto. 38. In that regard, Directive 2003/35 requires **public participation** in the drawing up of certain plans and programmes relating to the environment in order to align European Union legislation with the Aarhus Convention. 39. It is apparent from recital 10 in the preamble to Directive 2003/35 that some Community legislation already contained provisions relating to public participation in the preparation of plans and programmes in line with the Aarhus Convention. Therefore Article 2(5) of that directive excludes from the scope of Article 2 'plans and programmes' referred to in Annex I to the directive in respect of which such provisions were introduced under

				Directive 2001/42. Among those plans and programmes are action programmes referred to in Article 5(1) of Directive 91/676. 40. It is true that Article 2(5) of Directive 2003/35 was adopted in the context of provisions concerning public participation in the preparation of certain plans and programmes relating to the environment. It would be inconsistent, however, to accept that action programmes fall within the scope of Article 2 of Directive 2001/42 in relation to provisions concerning public participation in respect of the adoption of the plan or programme, but that the same action programmes no longer fall within the scope of that provision where they touch upon environmental impact assessment. 4.1 Lastly, whilst not every legislative measure concerning the protection of water from nitrate pollution from agricultural sources constitutes a plan or a programme within the meaning of Directive 2001/42, the mere fact that such a measure is adopted by legislative means does not exclude it from the scope of that directive if it has the characteristics mentioned in paragraph 36 above. 42. It is clear from all the foregoing that, as a result both of the characteristics they display and of the actual intention of the European Union legislature, action programmes are 'plans and programmes' within the meaning of Directive 2001/42. Application of Article 3(2)(a) of Directive 2001/42 43. Article 3(2)(a) of Directive 2001/42 provides that a **systematic environmental assessment** is to be carried out for all plans and programmes which (i) are prepared for certain sectors and (ii) set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337. 44. With regard to the first condition […], suffice it to say that it is apparent from the very title of Directive 91/676 that action programmes are prepared for the agricultural sector. 45. With regard to the second condition […], it is necessary to examine the content and purpose of those programmes, taking into account the scope of the environmental assessment of projects as provided for by that directive. 46. Thus, so far as the purpose of action programmes is concerned, it is apparent from Directive 91/676, in particular the 9th to 11th recitals in the preamble, Articles 1 and 3 to 5 and the annexes, that those programmes involve a global examination, at the level of vulnerable zones, of the environmental issues linked to nitrate pollution from agricultural

				sources, and that they put in place an organised system designed to provide a general level of protection against such pollution. 47. The specific nature of those programmes lies in the fact that they embody a comprehensive and coherent approach, providing practical and coordinated arrangements covering vulnerable zones and, where appropriate, the entire territory, for the reduction and prevention of pollution caused by nitrates from agricultural sources. 48. As regards the content of action programmes, it is apparent from Article 5 of Directive 91/676, in conjunction with Annex III thereto, that those programmes are to contain specific, mandatory measures that cover, in particular, periods during which the spreading of certain types of fertiliser is prohibited, the capacity of storage vessels for livestock manure, spreading methods and the maximum quantity of livestock manure containing nitrogen which can be spread (see, to that effect, Case C-416/02 *Commission* v *Spain* [2005] ECR I-7487, paragraph 34). Those measures are to ensure in particular, as point 2 of Annex III to Directive 91/676 provides, that for each farm or livestock unit the amount of livestock manure applied to the land each year, including by the animals themselves, does not exceed a specified amount per hectare, which is the amount of manure containing 170 kilograms of nitrogen. 49. So far as the scope of environmental assessment provided for by Directive 85/337 is concerned, it should be noted first of all that the measures set out in action programmes concern intensive rearing installations listed in point 17 of Annex I and point 1(e) of Annex II to Directive 85/337. 50. In the context of environmental assessment provided for by Directive 85/337, the national authorities must take into account not only the direct effects of the planned works, but also the environmental impact liable to result from the use and exploitation of the end product of those works (Case C-2/07 *Abraham and Others* [2008] ECR I-1197, paragraph 43, and Case C-142/07 *Ecologistas en Acción-CODA* [2008] ECR I-6097, paragraph 39). 51. In particular, in the case of installations for intensive rearing, such an environmental assessment must envisage the impact of the installations on water quality (see, to that effect, Case C-121/03 *Commission* v *Spain* [2005] ECR I-7569, paragraph 88). 52. As the Advocate General has rightly stated in point 80 of her Opinion, Article 8 of Directive 85/337 requires the environmental aspects which action programmes are intended to regulate to be taken into account when consent is given for projects to operate such

				installations. 53. Also, it is clear from Article 5(4) of Directive 91/676 that action programmes adopted under Article 5(1) must provide for a set of measures compliance with which can be a requirement for issue of the consent that may be granted for projects listed in Annexes I and II to Directive 85/337, and in respect of the definition of which Directive 91/676 gives Member States a certain discretion. That is so in particular in the case of measures concerning the storage of livestock manure provided for in Annex III to Directive 91/676 as regards the intensive rearing installation projects listed in Annexes I and II to Directive 85/337. 54. In such a situation, the existence and scope of which it is nevertheless for the national court to assess in the light of the action programme concerned, it must be held that the action programme is to be regarded, in respect of those measures, as setting the framework for future development consent of projects listed in Annexes I and II to Directive 85/337 within the meaning of Article 3(2)(a) of Directive 2001/42.

C-50/09	03/03/2011	*European Commission v Ireland* (action under Article 226 EC for failure to fulfil obligations, brought on 4 February 2009)	On those grounds, the Court (First Chamber) hereby: 1. Declares that: – by failing to transpose Article 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003; – by failing to ensure that, where Irish planning authorities and the Environmental Protection Agency both have decision-making powers concerning a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of Directive 85/337, as amended by Directive 2003/35; and – by excluding demolition works from the scope of its legislation transposing Directive 85/337, as amended by Directive 2003/35, Ireland has failed to fulfil its obligations under that directive; 2. Orders Ireland to pay the	The European Commission brought an action against Ireland regarding Ireland's transposition of Directive 85/337, in particular Articles 2 to 4 thereof. The Court *i.a.* held: 35. […] [W]hilst Article 3 of Directive 85/337 provides that the environmental impact assessment is to take place 'in accordance with Articles 4 to 11' thereof, the obligations referred to by those articles differ from that under Article 3 itself. 36. Article 3 of Directive 85/337 makes the competent environmental authority responsible for carrying out an environmental impact assessment which must include a description of a project's direct and indirect effects on the factors set out in the first three indents of that article and the interaction between those factors (judgment of 16 March 2006 in Case C-332/04 *Commission* v *Spain*, paragraph 33). As stated in Article 2(1) of the directive, that assessment is to be carried out before the consent applied for to proceed with a project is given. 37. In order to satisfy the obligation imposed on it by Article 3, the competent environmental authority may not confine itself to identifying and describing a project's direct and indirect effects on certain factors, but must also assess them in an appropriate manner, in the light of each individual case. 38. That assessment obligation is distinct from the obligations laid down in Articles 4 to 7, 10 and 11 of Directive 85/337, which are, essentially, obligations to collect and exchange information, consult, publicise and guarantee the possibility of challenge before the courts. They are procedural provisions which do not concern the implementation of the substantial obligation laid down in Article 3 of that directive. 40. However, that obligation to take into consideration [Article 8], at the conclusion of the decision-making process, information gathered by the competent environmental authority must not be confused with the assessment obligation laid down in Article 3 of Directive 85/337. Indeed, that assessment, which must be carried out before the decision-making process (Case C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, paragraph 103), involves an examination of the substance of the information gathered as well as a consideration of the expediency of supplementing it, if appropriate, with additional data. That competent environmental authority must thus undertake both an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effects of the project concerned on the factors set out in

			costs.	the first three indents of Article 3 and the interaction between those factors. 46. […] the transposition of a directive into domestic law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific, express provision of national law and a general legal context may be sufficient if it actually ensures the full application of the directive in a sufficiently clear and precise manner (see, in particular, Case C-427/07 *Commission* v *Ireland* [2009] ECR I-6277, paragraph 54 and the case-law cited), the fact remains that, according to equally settled case-law, the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity required in order to satisfy the need for legal certainty, which requires that, in the case of a directive intended to confer rights on individuals, the persons concerned must be enabled to ascertain the full extent of their rights (see, in particular, *Commission* v *Ireland*, paragraph 55 and the case-law cited). 47. In that regard, the judgment of the Supreme Court in *O'Connell* v *Environmental Protection Agency* gives, admittedly, in the passage upon which Ireland relies, an interpretation of the provisions of domestic law consistent with Directive 85/337. However, according to the Court's settled case-law, such a consistent interpretation of the provisions of domestic law cannot in itself achieve the clarity and precision needed to meet the requirement of legal certainty (see, in particular, Case C-508/04 *Commission* v *Austria* [2007] ECR I-3787, paragraph 79 and the case-law cited). The passage in the judgment of the same court in *Martin* v *An Bord Pleanála*, to which Ireland also refers, concerns the question of whether all the factors referred to in Article 3 of Directive 85/337 are mentioned in the consent procedures put in place by the Irish legislation. By contrast, it has no bearing on the question, which is decisive for the purposes of determining the first complaint, of what the examination of those factors by the competent national authorities should comprise. 48. As regards the concepts of 'proper planning' and 'sustainable development' to which Ireland also refers, it must be held that, even if those concepts encompass the criteria referred to in Article 3 of Directive 85/337, it is not established that they require that those criteria be taken into account in all cases for which an environmental impact assessment is required.

				71. Article 1(2) of Directive 85/337 defines the term ‘development consent’ as ‘the decision of the competent authority or authorities which entitles the developer to proceed with the project’. Article 1(3) states that the competent authorities are to be that or those which the Member States designate as responsible for performing the duties arising from that directive. 72- For the purposes of the freedom thus left to them to determine the competent authorities for giving development consent, for the purposes of that directive, the Member States may decide to entrust that task to several entities, as the Commission has moreover expressly accepted. 73. Article 2(2) […] adds that the environmental impact statement may be integrated into the existing procedures for consent to projects or failing that, into other procedures or into procedures to be established to comply with the aims of that directive. 74. That provision means that the liberty left to the Member States extends to the determination of the rules of procedure and requirements for the grant of the development consent in question. 75. However, that freedom may be exercised only within the limits imposed by that directive and provided that the choices made by the Member States ensure full compliance with its aims. 76. Article 2(1) […] thus states that the environmental impact assessment must take place ‘before the giving of consent’. That entails that the examination of a project’s direct and indirect effects on the factors referred to in Article 3 of that directive and on the interaction between those factors be fully carried out before consent is given. 97. […] [I]t is appropriate to note, at the outset, that the definition of the word ‘project’ in Article 1(2) of that directive cannot lead to the conclusion that demolition works could not satisfy the criteria of that definition. Such works can, indeed, be described as ‘other interventions in the natural surroundings and landscape’. 98. […] [I]f demolition works were excluded from the scope of that directive, the references to ‘the cultural heritage’ in Article 3 thereof, to ‘landscapes of historical, cultural or archaeological significance’ in point 2(h) of Annex III to that directive and to ‘the architectural and archaeological heritage’ in point 3 of Annex IV thereto would have no

				purpose. 99. It is true that, under Article 4 of Directive 85/337, for a project to require an environmental impact assessment, it must come within one of the categories in Annexes I and II to that directive. However, as Ireland contends, they make no express reference to demolition works except, irrelevantly for the purposes of the present action, the dismantling of nuclear power stations and other nuclear reactors, referred to in point 2 of Annex I. 100. However, it must be borne in mind that those annexes refer rather to sectoral categories of projects, without describing the precise nature of the works provided for. As an illustration it may be noted, as did the Commission, that 'urban development projects' referred to in point 10(b) of Annex II often involve the demolition of existing structures.

C-241/08	04/03 /2010	*European Commission v. France* (action under Article 226 EC for failure to fulfil obligations, brought on 2 June 2008)	On those grounds, the Court (Second Chamber) hereby: 1. Declares that, – first, by providing generally that fishing, aquaculture, hunting and other hunting-related activities practised under the conditions and in the areas authorised by the laws and regulations in force do not constitute activities causing disturbance or having such an effect, and – second, by systematically exempting works and developments provided for in Natura 2000 contracts from the procedure of assessment of their implications for the site, and – by systematically exempting works and development programmes and projects which are subject to a declaratory system from that procedure, the French Republic has failed to fulfil its obligations under Article 6(2) and Article 6(3) respectively of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;	The European Commission brought an action against France, claiming that it failed to adopt all the laws and regulations necessary to transpose correctly Article 6(2) and (3) of the Habitats Directive. The Court *i.a.* held: 30. […] Article 6(2) and (3) of the Habitats Directive seek to ensure the same level of protection (see, to that effect, Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging* [2004] ECR I-7405, paragraph 36, and Case C-418/04 *Commission* v *Ireland* [2007] ECR I-10947, paragraph 263). 31. […] [A]s regards Article 6(3) of the Habitats Directive, the Court has already held that the option of exempting generally certain activities, in accordance with the rules in force, from the need for an assessment of the implications for the site concerned does not comply with that provision. Such an exemption is not such as to guarantee that those activities do not adversely affect the integrity of the protected site (see, to that effect, Case C-98/03 *Commission* v *Germany* [2006] ECR I-53, paragraphs 43 and 44). 32. Accordingly, taking into account the similar levels of protection required by Article 6(2) and 6(3) of the Habitats Directive, the fourth sentence of the third subparagraph of Article L. 414-1(V) of the Code de l'environnement by providing generally that certain activities such as fishing or hunting do not cause disturbance, can be regarded as consistent with Article 6(2) of that directive only if it is ensured that those activities cause no disturbance likely significantly to affect the objectives of the directive. 33. The French Republic submits in that regard that a statement of objectives is drawn up for each site and serves as the basis for the adoption of targeted measures taking account of the ecological requirements specific to the site concerned. It adds that where the activities in question are carried out in accordance with the general rules applicable to those activities, that allows account to be taken of areas which are delimited and demarcated according to ecological criteria and allows for quotas to be set. 34. It is therefore necessary to examine whether such measures or rules guarantee, in fact, that the activities in question do not cause any disturbance likely to have a significant effect. 35. As regards the statement of objectives, the French Republic indicates that it does not contain directly applicable regulatory measures and that it is a diagnostic tool which allows, on the basis of available scientific knowledge, measures to be proposed to the competent

			2. Dismisses the action as to the remainder; 3. Orders the French Republic to pay two thirds of the costs and the European Commission to pay the other third.	authorities which will enable the conservation objectives set by the Habitats Directive to be met. It adds that, currently, only half the sites concerned have a statement of objectives. 36. It follows that the statement of objectives cannot systematically guarantee in all cases that the activities in question will not cause disturbances likely significantly to affect those conservation objectives. 37. Such a conclusion applies all the more as regards targeted measures which take account of the ecological requirements specific to a particular site, since the adoption of those measures is based on the statement of objectives. 38. In relation to the general rules applicable to the activities in question, it must be held that, while those rules can admittedly reduce the risk of significant disturbance, they can however remove that risk altogether only it they provide for mandatory compliance with Article 6(2) of the Habitats Directive. The French Republic does not claim that that is the situation in this case. 39. It follows from the foregoing that by providing generally that fishing, aquaculture, hunting and other hunting-related activities practised under the conditions and in the areas authorised by the laws and regulations in force do not constitute activities causing disturbance or having such an effect, the French Republic has failed to fulfil its obligations under Article 6(2) of the Habitats Directive. 44. It should be borne in mind that, under Article 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 must be subject to appropriate assessment of its implications for the site in view of that site's conservation objectives. 45. In that regard, it is not in dispute that works or developments provided for in Natura 2000 contracts can be categorised as plans or projects within the meaning of Article 6(3) of the Habitats Directive. 46. It is therefore necessary to examine whether the works or developments provided for in Natura 2000 contracts are directly connected with or necessary for the management of the site, so that their authorisation is not subject to the obligation to carry out the assessment of implications referred to in Article 6(3) of the Habitats Directive. 47. In accordance with Article L. 414-3(I) of the Code de l'environnement a Natura 2000

				contract is concluded ‘to implement the statement of objectives’, and comprises ‘a series of commitments consistent with the policies and measures established in the statement of objectives concerning the conservation and, if necessary, the restoration of the natural habitats and species which justified the creation of the Natura 2000 site’. 48. Under the first subparagraph of Article L. 414-2(I) of that code, the statement of objectives establishes, inter alia, the management policies and the conservation or restoration measures. 49. According to the French Republic, the systematic exemption of works and developments provided for in Natura 2000 contracts from the obligation, laid down in Article 6(3) of the Habitats Directive, to carry out an assessment of their implications for the site is justified by the notion that, in so far as those contracts are intended to achieve fixed conservation and restoration objectives for the site, they are directly connected with or necessary for the management of the site. 50. Such an approach presupposes therefore that the measures provided for in Natura 2000 contracts which seek to attain conservation and restoration objectives are also, under all circumstances, measures directly connected with or necessary for the management of the site. 51. However, it cannot be ruled out that, while they may have as their objective the conservation or restoration of a site, the works or developments provided for in those contracts may, nevertheless, not be directly connected with or necessary for the management of that site. 52. In that regard, the French Republic accepts, moreover, in the context of the complaint alleging a uniform application of the ‘significant effect’ criterion, that conservation measures for habitats may prove favourable for some habitats concerned but involve a deterioration in other types of habitats. It cites salt production as an example: the creation of basins called ‘oeillets’ for the purposes of industrialised salt production leads to the deterioration of the habitat formed by lagoons, even if, otherwise, that activity may have beneficial effects for regenerating that environment owing to the retention of certain types of marsh. 53. It follows that determining the conservation and restoration objectives in the context of Natura 2000 may require, as the Advocate General pointed out in point 71 of her Opinion, the reconciliation of various conflicting objectives.

				54. In order to ensure fully the attainment of the conservation objectives referred to in the Habitats Directive, it is therefore necessary, in accordance with Article 6(3) of the Habitats Directive, that each plan or project, not directly connected with or necessary for the management of the site, which is likely significantly to affect the site be subject to an individual assessment of its implications for the site concerned in view of the site's conservation objectives. 55. It follows that the mere fact that the Natura 2000 contracts comply with the conservation objectives of sites cannot be regarded as sufficient, in the light of Article 6(3) of the Habitats Directive, to allow the works and developments provided for in those contracts to be systematically exempt from the assessment of their implications for the sites. 56. Accordingly, by systematically exempting works and developments provided for in Natura 2000 contracts from the procedure of assessment of their implications for the site, the French Republic has failed to fulfil its obligations under Article 6(3) of the Habitats Directive. The existence of activities not subject to authorization 59. It is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation obtaining in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes (see judgment of 25 July 2008 in Case C-504/06 *Commission* v *Italy*, paragraph 24 and the case-law cited). 60. In the present case, the French Republic does not dispute that on 15 February 2007, at the end of the period laid down in the reasoned opinion, namely before Law No 2008-757 was adopted, the national provision at issue did not constitute a correct transposition of Article 6(3) of the Habitats Directive. 61. In those circumstances, without it being necessary to examine whether Law No 2008-757 complies with the Habitats Directive, it is sufficient to note that that law was adopted after the period laid down in the reasoned opinion had expired. 62. Accordingly, by systematically exempting works and development programmes and projects which are subject to a declaratory system from the procedure of assessment of their implications for the site, the French Republic has failed to fulfil its obligations under Article

				6(3) of the Habitats Directive.

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