

Appendix 4

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Judgment of the Court (Grand Chamber) of 7 September 2004.

Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij.

Reference for a preliminary ruling: Raad van State - Netherlands.

Directive 92/43/EEC - Conservation of natural habitats and of wild flora and fauna - Concept of "plan" or "project" - Assessment of the implications of certain plans or projects for the protected site.

Case C-127/02.

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Parties

In Case C-127/02,

REFERENCE for a preliminary ruling under Article 234 EC from the Raad van State (Netherlands), made by decision of 27 March 2002

, registered at the Court on

8 April 2002

, in the proceedings brought by

Landelijke Vereniging tot Behoud van de Waddenzee,

Nederlandse Vereniging tot Bescherming van Vogels

against

Staatssecretaris van Landbouw, Natuurbeheer en Visserij ,

intervener:

Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij UA,

THE COURT (Grand Chamber),

composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann (Rapporteur), J.-P. Puissochet and J.N. Cunha Rodrigues, Presidents of Chambers, R. Schintgen, S. von Bahr and R. Silva de Lapuerta, Judges,

Advocate General: J. Kokott,

Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 18 November 2003,

after considering the observations submitted on behalf of:

- Landelijke Vereniging tot Behoud van de Waddenzee, by C.A.M. Rombouts, advocaat,

- Nederlandse Vereniging tot Bescherming van Vogels, by A.J. Durville, advocaat,

- Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij UA, by

G. van der Wal, advocaat,
- the Netherlands Government, by H.G. Sevenster and N.A.J. Bel, acting as
Agents,
- the Commission of the European Communities, by G. Valero Jordana, acting as
Agent, and J. Stuyck, avocat,
after hearing the Opinion of the Advocate General at the sitting on
29 January 2004,
gives the following
Judgment

Grounds of the judgment

1. The reference for a preliminary ruling concerns the interpretation of Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7, the Habitats Directive).
2. The reference was made in proceedings between the Landelijke Vereniging tot Behoud van de Waddenzee (National association for conservation of the Waddenzee, the Waddenvereniging) and the Nederlandse Vereniging tot Bescherming van Vogels (Netherlands association for the protection of birds, the Vogelbeschermingsvereniging) on the one hand and the Staatssecretaris van Landbouw, Natuurbeheer en Visserij (Secretary of State for agriculture, nature conservation and fisheries, the Secretary of State) on the other in respect of licences which the latter issued to the Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij UA (Cooperative producers association of Netherlands cockle fisheries, the PO Kokkelvisserij) for the mechanical fishing of cockles in the special protection area (SPA) of the Waddenzee, classified within the meaning of Article 4 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) (the Birds Directive).

Legal framework

The Birds Directive

3. Article 4(1) and (2) of the Birds Directive requires Member States to classify as SPAs the territories satisfying the ornithological criteria established by those provisions.

4. Article 4(4) of the Birds Directive provides:

In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.

The Habitats Directive

5. Article 6 of the Habitats Directive states :

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

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

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate

assessment of its implications for the site in view of the sites conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

6. Article 7 of the Habitats Directive states that obligations arising under Article 6 (2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of [the Birds Directive] in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under [the Birds Directive], where the latter date is later.

National legislation

7. Under Article 12(1) of the Natuurbeschermingswet (Nature Conservation Law), it is prohibited to carry out, to have carried out or to allow actions which are harmful to the natural integrity or the scientific importance of a protected natural site or disfigure it, without authorisation by the Minister van Landbouw, Natuurbeheer en Visserij (Minister for Agriculture, nature conservation and fisheries, the Minister) or in breach of the conditions accompanying that authorisation. Under Article 12(2), activities harmful to the essential characteristics of a protected natural site, as set out in the designation decision, are always to be considered harmful to the natural integrity of such a site or its interest in natural science terms.

8. It is clear from the order of 17 November 1993 designating the Waddenzee as a national natural site and from the explanatory memorandum for that order, which is an integral part of it, that the policy of authorisations and revocations under the Natuurbeschermingswet is linked to that followed under the Planologische Kernbeslissing Waddenzee (Key planning decision for the Waddenzee, hereinafter the PKB Waddenzee). According to that explanatory memorandum, applying the procedures of the Natuurbeschermingswet creates an adequate framework for controlling activities which might harm the main objective of the PKB Waddenzee, namely, sustainable protection and development of that sea as a natural site and, in particular, of feeding, nesting and resting areas for birds frequenting that site. Human activities for economic purposes are allowed subject to an adequate assessment in the light of the main objective. Activities envisaged in the Waddenzee must therefore be examined in the light of the abovementioned objective and policy guidelines and assessed in terms thereof.

9. The section in the PKB Waddenzee devoted to coastal fisheries management is implemented in the Government decision of 21 January 1993, namely, the Structuurnota Zee- en kustvisserij Vissen naar evenwicht (Structure Document on Marine and Inshore Fisheries Fishing for equilibrium). This establishes the policy for shellfish fishing, inter alia in the Waddenzee, for the years 1993 to 2003 and includes a number of restrictions as regards cockle fishing. Certain areas in the

national natural site are permanently closed to cockle fishing and in years in which food is scarce, 60% of the average food requirement of birds in the form of cockles and mussels is reserved for them. While 100% of their average food requirement is not thus reserved, that is because they can also turn to alternative food sources (Baltic clams, surf clams and shore crabs).

10. Under the PKB Waddenzee, it follows from the precautionary principle that where the most reliable information available leaves obvious doubt as to the absence of possible significant adverse effects on the ecosystem, the benefit of the doubt will favour conservation of the Waddenzee. The order for reference makes clear that most of the available scientific studies consulted do not unequivocally indicate the existence of significant adverse effects on the ecosystem of the Waddenzee linked to mechanical cockle fishing.

The main action and the questions referred

11. By decisions of 1 July 1999 and 7 July 2000 (the decisions at issue in the main action), the Secretary of State issued licences to PO Kokkelvisserij, subject to certain conditions, to engage in mechanical cockle fishing in the Waddenzee SPA during the periods from 16 August to 25 November 1999 and 14 August to 30 November 2000 respectively.

12. The Waddenvereniging and the Vogelbeschermingsvereniging challenged those decisions before the Secretary of State, who, by decisions of 23 December 1999 and 19 February 2001, held that the complaints made against the decisions at issue in the main action were not founded and rejected the applications against them.

13. Those nature protection associations brought an action against those rejections before the Raad van State (Council of State). They claimed in essence that cockle fishing, as authorised by the decisions at issue in the main action, causes permanent damage to the geomorphology, flora and fauna of the Waddenzees seabed. They also submitted that such fishing reduces the food stocks of birds which feed on shellfish, causing a decline in their populations, in particular for oystercatchers and eider ducks. The Waddenvereniging and the Vogelbeschermingsvereniging also claimed that those decisions were contrary to the Habitats and Birds Directives.

14. As regards the correct transposition of Article 6(2) to 6(4) of the Habitats Directive into Netherlands law, the Raad van State states that Article 12 of the Natuurbeschermingswet, although not expressly intended to implement the obligations laid down in Article 6(2) of the Habitats Directive, may be interpreted in a manner consistent with that provision. Similarly, the Natuurbeschermingswet does not contain rules which implement Article 6(3) and (4) of that directive. Nor are there generally binding rules intended to implement the provisions of those two paragraphs which are otherwise applicable to the Waddenzee.

15. The national court also states that according to the Waddenvereniging and the Vogelbeschermingsvereniging, in view of the expansion of cockle fishing in the Waddenzee SPA, there is a plan or project which should be subject to appropriate assessment in accordance with Article 6(3) of the Habitats Directive whereas the Secretary of State contends that the activity in question, inasmuch as it has been carried on for many years without any intensification, falls within Article 6(2) of that directive.

16. As regards the relationship between Article 6(2) and 6(3) of the Habitats Directive, the Waddenvereniging and the Vogelbeschermingsvereniging submit that although the activity for which licences were granted must be described as a plan or project within the meaning of Article 6(3), it must nevertheless be examined in the light of Article 6(2). It is therefore appropriate to consider whether Article 6(3) must be regarded as a specific application of the rules in Article 6(2), so that those two paragraphs must be applied cumulatively, or as a provision with a separate, independent purpose, so that Article 6(2) relates to

existing use while Article 6(3) applies to new plans or projects.

17. The Raad van State asks under what conditions an appropriate assessment of the effect of the plan or project on the site concerned must be carried out. In addition, it asks what the criteria are on the basis of which it must be determined whether appropriate steps or an appropriate assessment are concerned, also in the light of the requirement laid down in Article 6(3) of the Habitats Directive for the competent authorities to agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned.

18. Finally, the national court considers it relevant to know whether Article 6(2) and (3) of the Habitats Directive has direct effect.

19. In those circumstances, the Raad van State decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

1. (a) Are the words plan or project in 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 to be interpreted as also covering an activity which has already been carried on for many years but for which an authorisation is in principle granted each year for a limited period, with a fresh assessment being carried out on each occasion as to whether, and if so in which sections of the area, the activity may be carried on?

(b) If the answer to Question 1(a) is in the negative, must the relevant activity be regarded as a plan or project if the intensity of this activity has increased over the years or an increase in it is made possible by the authorisations?

2. (a) If it follows from the answer to Question 1 that there is a plan or project within the meaning of Article 6(3) of the Habitats Directive, is Article 6(3) of the Habitats Directive to be regarded as a special application of the rules in Article 6(2) or as a provision with a separate, independent purpose in the sense that, for example:

(i) Article 6(2) relates to existing use and Article 6(3) to new plans or projects, or

(ii) Article 6(2) relates to management measures and Article 6(3) to other decisions, or

(iii) Article 6(3) relates to plans or projects and Article 6(2) to other activities?

(b) If Article 6(3) of the Habitats Directive is to be regarded as a special application of the rules in Article 6(2), can the two subparagraphs be applicable cumulatively?

3. (a) Is Article 6(3) of the Habitats Directive to be interpreted as meaning that there is a plan or project once a particular activity is likely to have an effect on the site concerned (and an appropriate assessment must then be carried out to ascertain whether or not the effect is significant) or does this provision mean that an appropriate assessment has to be carried out only where there is a (sufficient) likelihood that a plan or project will have a significant effect?

(b) On the basis of which criteria must it be determined whether or not a plan or project within the meaning of Article 6(3) of the Habitats Directive not directly connected with or necessary to the management of the site is likely to have a significant effect thereon, either individually or in combination with other plans or projects?

4. (a) When Article 6(3) of the Habitats Directive is applied, on the basis of which criteria must it be determined whether or not there are appropriate steps within the meaning of Article 6(2) or an appropriate assessment, within the meaning of Article 6(3), in connection with the certainty required before agreeing to a plan or project?

(b) Do the terms appropriate steps or appropriate assessment have independent meaning or, in assessing these terms, is account also to be taken of Article 174(2) EC and in particular the precautionary principle referred to therein?

(c) If account must be taken of the precautionary principle referred to in Article 174(2) EC, does that mean that a particular activity, such as the cockle fishing in

question, can be authorised where there is no obvious doubt as to the absence of a possible significant effect or is that permissible only where there is no doubt as to the absence of such an effect or where the absence can be ascertained?

5. Do Article 6(2) or Article 6(3) of the Habitats Directive have direct effect in the sense that individuals may rely on them in national courts and those courts must provide the protection afforded to individuals by the direct effect of Community law, as was held *inter alia* in Case C-312/93 *Peterbroeck* [1995] ECR I-4599?

20. By order of 28 April 2004, the application by PO *Kokkelvisserij* to be allowed to submit written observations in response to the Advocate General's Opinion or otherwise to be given an opportunity to respond to that Opinion was rejected.

The questions referred

First question

Question 1(a)

21. By Question 1(a), the national court in essence asks whether mechanical cockle fishing which has been carried on for many years but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may take place, falls within the concept of plan or project within the meaning of Article 6(3) of the Habitats Directive.

22. The 10th recital in the preamble to the Habitats Directive states that an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future. That recital finds expression in Article 6(3) of the Directive, which provides *inter alia* that a plan or project likely to have a significant effect on the site concerned cannot be authorised without a prior assessment of its effects.

23. The Habitats Directive does not define the terms plan and project.

24. By contrast, Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), the sixth recital in the preamble to which states that development consent for projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out, defines project as follows in Article 1(2):

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources.

25. 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.

26. Such a definition of project is relevant to defining the concept of plan or project as provided for in the Habitats Directive, which, as is clear from the foregoing, seeks, as does Directive 85/337, to prevent activities which are likely to damage the environment from being authorised without prior assessment of their impact on the environment.

27. Therefore, an activity such as mechanical cockle fishing is covered by the concept of plan or project set out in Article 6(3) of the Habitats Directive.

28. The fact that the activity has been carried on periodically for several years on the site concerned and that a licence has to be obtained for it every year, each new issuance of which requires an assessment both of the possibility of carrying on that activity and of the site where it may be carried on, does not in itself constitute an obstacle to considering it, at the time of each application, as a distinct plan or project within the meaning of the Habitats Directive.

29. The answer to Question 1(a) must therefore be that mechanical cockle fishing which has been carried on for many years but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of

the possibility of carrying on that activity and of the site where it may be carried on, falls within the concept of plan or project within the meaning of Article 6(3) of the Habitats Directive.

Question 1(b)

30. In the light of the reply to Question 1(a), there is no need to reply to Question 1(b).

Second question

31. By its second question, the national court in essence asks what the relationship is between Article 6(2) and Article 6(3) of the Habitats Directive.

32. It should be recalled that Article 6(2) of the Habitats Directive, in conjunction with Article 7 thereof, requires Member States to take appropriate steps to avoid, in SPAs, the deterioration of habitats and significant disturbance of the species for which the areas have been designated.

33. Article 6(3) of the Habitats Directive provides that the competent national authorities are to authorise a plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon only after having ascertained, by means of an appropriate assessment of the implications of that plan or project for the site, that it will not adversely affect the integrity of the site.

34. That provision thus establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site.

35. 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).

36. Authorisation of a plan or project granted in accordance with Article 6(3) of the Habitats Directive necessarily assumes that it is considered not likely adversely to affect the integrity of the site concerned and, consequently, not likely to give rise to deterioration or significant disturbances within the meaning of Article 6(2).

37. Nevertheless, it cannot be precluded that such a plan or project subsequently proves likely to give rise to such deterioration or disturbance, even where the competent national authorities cannot be held responsible for any error. Under those conditions, application of Article 6(2) of the Habitats Directive makes it possible to satisfy the essential objective of the preservation and protection of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, as stated in the first recital in the preamble to that directive.

38. The answer to the second question must therefore be that Article 6(3) of the Habitats Directive establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site, while Article 6(2) of the Habitats Directive establishes an obligation of general protection consisting in avoiding deterioration and disturbances which could have significant effects in the light of the Directives objectives, and cannot be applicable concomitantly with Article 6(3).

Third question

Question 3(a)

39. According to the first sentence of 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, either individually or in combination with other plans or projects, is to be subject to appropriate

assessment of its implications for the site in view of the sites conservation objectives.

40. The requirement for an appropriate assessment of the implications of a plan or project is thus conditional on its being likely to have a significant effect on the site.

41. Therefore, the triggering of the environmental protection mechanism provided for in Article 6(3) of the Habitats Directive does not presume - as is, moreover, clear from the guidelines for interpreting that article drawn up by the Commission, entitled *Managing Natura 2000 Sites: The provisions of Article 6 of the Habitats Directive (92/43/EEC)* - that the plan or project considered definitely has significant effects on the site concerned but follows from the mere probability that such an effect attaches to that plan or project.

42. As regards Article 2(1) of Directive 85/337, the text of which, essentially similar to Article 6(3) of the Habitats Directive, provides that Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment are made subject to an assessment with regard to their effects, the Court has held that these are projects which are likely to have significant effects on the environment (see to that effect Case C-117/02 *Commission v Portugal* [2004] ECR I-0000, paragraph 85).

43. It follows that the first sentence of Article 6(3) of the Habitats Directive subordinates the requirement for an appropriate assessment of the implications of a plan or project to the condition that there be a probability or a risk that the latter will have significant effects on the site concerned.

44. In the light, in particular, of the precautionary principle, which is one of the foundations of the high level of protection pursued by Community policy on the environment, in accordance with the first subparagraph of Article 174(2) EC, and by reference to which the Habitats Directive must be interpreted, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned (see, by analogy, *inter alia* Case C-180/96 *United Kingdom v Commission* [1998] ECR I-2265, paragraphs 50, 105 and 107). Such an interpretation of the condition to which the assessment of the implications of a plan or project for a specific site is subject, which implies that in case of doubt as to the absence of significant effects such an assessment must be carried out, makes it possible to ensure effectively that plans or projects which adversely affect the integrity of the site concerned are not authorised, and thereby contributes to achieving, in accordance with the third recital in the preamble to the Habitats Directive and Article 2(1) thereof, its main aim, namely, ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora.

45. In the light of the foregoing, the answer to Question 3(a) must be that the first sentence of Article 6(3) of the Habitats Directive must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the sites conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.

Question 3(b)

46. As is clear from the first sentence of Article 6(3) of the Habitats Directive in conjunction with the 10th recital in its preamble, the significant nature of the effect on a site of a plan or project not directly connected with or necessary to the management of the site is linked to the sites conservation objectives.

47. So, where such a plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on the site concerned.

48. Conversely, where such a plan or project is likely to undermine the conservation objectives of the site concerned, it must necessarily be considered likely to have a significant effect on the site. As the Commission in essence maintains, in assessing the potential effects of a plan or project, their significance must be established in the light, *inter alia*, of the characteristics and specific environmental conditions of the site concerned by that plan or project.

49. The answer to Question 3(b) must therefore be that, pursuant to the first sentence of Article 6(3) of the Habitats Directive, where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the sites conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light *inter alia* of the characteristics and specific environmental conditions of the site concerned by such a plan or project.

Fourth question

50. By Questions 4(a) to 4(c), the national court in essence asks the Court to clarify the concepts of appropriate steps within the meaning of Article 6(2) of the Habitats Directive and appropriate assessment within the meaning of Article 6(3) thereof and the conditions under which an activity such as mechanical cockle fishing may be authorised.

51. In the light of the context of the main action, as well as the foregoing observations, and in particular the answers to the first two questions, there is no need, as stated in point 116 of the Advocate General's Opinion, to answer the fourth question as regards Article 6(2) of the Habitats Directive.

52. As regards the concept of appropriate assessment within the meaning of Article 6(3) of the Habitats Directive, it must be pointed out that the provision does not define any particular method for carrying out such an assessment.

53. None the less, according to the wording of that provision, an appropriate assessment of the implications for the site concerned of the plan or project must precede its approval and take into account the cumulative effects which result from the combination of that plan or project with other plans or projects in view of the sites conservation objectives.

54. Such an assessment therefore implies that all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect those objectives must be identified in the light of the best scientific knowledge in the field. Those objectives may, as is clear from Articles 3 and 4 of the Habitats Directive, in particular Article 4(4), be established on the basis, *inter alia*, of the importance of the sites for the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I to that directive or a species in Annex II thereto and for the coherence of Natura 2000, and of the threats of degradation or destruction to which they are exposed.

55. As regards the conditions under which an activity such as mechanical cockle fishing may be authorised, given Article 6(3) of the Habitats Directive and the answer to the first question, it lies with the competent national authorities, in the light of the conclusions of the assessment of the implications of a plan or project for the site concerned, to approve the plan or project only after having made sure that it will not adversely affect the integrity of that site.

56. It is therefore apparent that the plan or project in question may be granted authorisation only on the condition that the competent national authorities are convinced that it will not adversely affect the integrity of the site concerned.

57. So, where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation.

58. In this respect, it is clear that the authorisation criterion laid down in the second sentence of Article 6(3) of the Habitats Directive integrates the precautionary principle (see Case C-157/96 National Farmers Union and Others

[1998] ECR I2211, paragraph 63) and makes it possible effectively to prevent adverse effects on the integrity of protected sites as the result of the plans or projects being considered. A less stringent authorisation criterion than that in question could not as effectively ensure the fulfilment of the objective of site protection intended under that provision.

59. Therefore, pursuant to Article 6(3) of the Habitats Directive, the competent national authorities, taking account of the conclusions of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned, in the light of the sites conservation objectives, are to authorise such activity 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, by analogy, Case C-236/01 Monsanto Agricoltura Italia and Others [2003] ECR I-0000, paragraphs 106 and 113).

60. Otherwise, mechanical cockle fishing could, where appropriate, be authorised under Article 6(4) of the Habitats Directive, provided that the conditions set out therein are satisfied.

61. In view of the foregoing, the answer to the fourth question must be that, 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 the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the sites conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the sites conservation objectives, are to authorise such an activity 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.

Fifth question

62. In the light of the finding in paragraph 51 above, it is not necessary to consider the fifth question in so far as it relates to Article 6(2) of the Habitats Directive.

63. It is therefore appropriate to consider that question only in so far as it concerns Article 6(3) of the Habitats Directive.

64. By its fifth question, the national court asks in essence whether, when a national court is called on to ascertain the lawfulness of an authorisation for a plan or project within the meaning of Article 6(3) of the Habitats Directive, it may examine whether the limits of discretion of the competent national authorities laid down by that provision have been complied with even though it has not been transposed into the legal order of the Member State concerned despite the expiry of the time-limit laid down for that purpose.

65. It should be recalled that the obligation of a Member State to take all the measures necessary to achieve the result prescribed by a directive is a binding obligation imposed by the third paragraph of Article 249 EC and by the directive itself. That duty to take all appropriate measures, whether general or particular, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts (see Case C-72/95 Kraaijeveld and Others [1996] ECR I-5403, paragraph 55).

66. As regards the right of an individual to rely on a directive and of the national court to take it into consideration, it would be incompatible with the binding effect attributed to a directive by Article 249 EC to exclude, in principle, the possibility that the obligation which it imposes may be relied on by those concerned. In particular, where the Community authorities have, by directive, imposed on Member States the obligation to pursue a particular course of conduct, the effectiveness of such an act would be weakened if individuals were prevented from relying on it before their national courts, and if the latter were prevented

from taking it into consideration as an element of Community law in order to rule whether the national legislature, in exercising the choice open to it as to the form and methods for implementation, has kept within the limits of its discretion set by the directive (see Kraaijeveld and Others , paragraph 56). That also applies to ascertaining whether, failing transposition into national law of the relevant provision of the directive concerned, the national authority which has adopted the contested measure has kept within the limits of its discretion set by that provision. 67. More particularly, as regards the limits of discretion set by Article 6(3) of the Habitats Directive, it follows from that provision that in a case such as that in the main action, the competent national authorities, taking account of the conclusions of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the sites conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site, that being the case if there remains no reasonable scientific doubt as to the absence of such effects (see paragraph 59 above).

68. Such a condition would therefore not be observed were the national authorities to authorise that activity in the face of uncertainty as to the absence of adverse effects for the site concerned.

69. It follows that Article 6(3) of the Habitats Directive may be taken into account by the national court in determining whether a national authority which has granted an authorisation relating to a plan or project has kept within the limits of the discretion set by the provision in question.

70. Consequently, the answer to the fifth question must be that where a national court is called on to ascertain the lawfulness of an authorisation for a plan or project within the meaning of Article 6(3) of the Habitats Directive, it can determine whether the limits on the discretion of the competent national authorities set by that provision have been complied with, even though it has not been transposed into the legal order of the Member State concerned despite the expiry of the time-limit laid down for that purpose.

Decision on costs

Costs

71. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

Operative part of the judgment

On those grounds, the Court (Grand Chamber) rules as follows:

1. Mechanical cockle fishing which has been carried on for many years but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may be carried on, falls within the concept of plan or project within the meaning of 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. Article 6(3) of Directive 92/43 establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site, while Article 6(2) of that directive establishes an obligation of general protection consisting in avoiding deterioration and disturbances which could have significant effects in the light of the Directives

objectives, and cannot be applicable concomitantly with Article 6(3).

3. (a) The first sentence of Article 6(3) of Directive 92/43 must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the sites conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.

(b) Pursuant to the first sentence of Article 6(3) of Directive 92/43, where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the sites conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project.

4. Under Article 6(3) of Directive 92/43, an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the sites conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the sites conservation objectives, are to authorise such an activity 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.

5. Where a national court is called on to ascertain the lawfulness of an authorisation for a plan or project within the meaning of Article 6(3) of Directive 92/43, it can determine whether the limits on the discretion of the competent national authorities set by that provision have been complied with, even though it has not been transposed into the legal order of the Member State concerned despite the expiry of the time-limit laid down for that purpose.

