

| Case Nr. | Decision type | Case type | MS | Task Force | Legislation | Commentary |
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| C-535/18 | Judgment | 267 TFUE | DE | Water, EIA, Access to Justice | Directive 2011/92/EU, Directive 2000/60/EC, Aarhus Convention | <p>The Court's ruling in a preliminary reference introduced by the German Bundesverwaltungsgericht concerns the EIA for the construction of a motorway and sheds further light on the judgments in C-461/13, (Weser) and C-197/18 (WLV Burgenland). The following conclusions could be drawn from this judgment:</p> <p>1. Member States may limit the admissibility of an action for judicial review provided for in Art. 11 EIA-Directive in such a way, that a procedural flaw, that couldn't have had any influence on the material content of the decision, does not constitute a ground for annulment.</p> |
| C-15/19 | Judgment | 267 TFUE | IT | Waste | Directive 1999/31/EC | <p>This judgment is about the temporal scope of the Landfill Directive. It applies the principles of legal certainty, non-retroactivity and protection of legitimate expectations to the relation between the operator of a landfill and the holder of the waste. The conclusions of the judgment are the following:</p> <p>1. A landfill site in operation at the date of transposition of the Landfill Directive is subject to the obligation to extend the after-care period following the closure of the landfill.</p> |

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| C-556/19 | Opinion | 267 TFEU | FR | Waste | Directive 2008/98 | <p>The Court's ruling in a preliminary reference introduced by the Conseil d'Etat (France) concerns the question whether a system whereby a private, non-profit eco-body, approved by the public authorities, receives contributions from those who place on the market a particular category of products (textiles, shoes) in return for a service consisting in the treatment of waste of these products, and redistributes to the operators responsible for the sorting and recovery of that waste subsidies, has to be regarded as State aid.</p> <p>According to the Opinion of the AG Pitruzzella:</p> <p>1. The system of extended producers' responsibility established in France for the waste of textile products and shoes, whereby an eco-body distributes subsidies to the operators responsible of sorting and recovery of that waste it is not in principle a State aid, because the financial support to these operators is not a transfer of state resources.</p> <p>2. However, the AG advises the Court to invite the national judge to assess, on the basis of the facts of the case, whether:</p> <ul style="list-style-type: none"> - the contributions are collected on a compulsory basis; - the resources are under public control; - there is a sufficient direct link between the advantage and a reduction of the State budget; - the additional criteria that the eco-body can establish and that the operators must satisfy in order to be affiliated with it have a character of selectivity and can be qualified, in light of the objective pursued by the system under examination, as discriminatory.. |
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| C-24/19 | Judgement | 267 TFEU | BE | SEA | Directive 2001/42/EC | This judgement delivered by the Grand Chamber in a reference for a preliminary ruling concerns the interpretation of the notion of plans and programmes laid down in Article 2(a) and 3 (2) (a) of the SEA directive. In particular, in this case the conditions for authorising plans or projects were set in a national regulatory act (order and circular adopted by the Flemish government and Flemish administration). The legal issue arising is whether such a national regulatory act, containing various provisions on the installation of wind turbines, is covered by the concept of “plans and programmes” and therefore should be submitted to an environmental assessment. Moreover, the referring Court asked the Court of Justice to reconsider its line of case-law pursuant to which plans and programmes are “required” not only if their adoption is mandatory according to legislative or regulatory provisions, but also if they are mentioned in such provisions. The Court confirms the broad definition of the term “required”, stating that the order and circular are to be considered as plans and programmes in the meaning of the SEA Directive, because they emanate from an executive authority implementing rules of legislative character and constituting a framework, even if a not an exhaustive one. Therefore, they should have been submitted to an environmental assessment. The effects of those instruments can be maintained by the national Court if the national law permits it, if the annulment of the consent would be likely to have significant implications for the electricity supply of the whole Member State concerned and only for the period of time strictly necessary to remedy to that illegality. |
| C-88/19 | Judgement | 267 TFUE | RO | Nature | Directive 92/43/EEC | In its judgment in a preliminary reference from the Court of first instance of Zărnești, Romania, the Court ruled on the territorial scope of the system of strict protection of certain animal species provided for in Article 12(1) of the Habitats Directive. The Court confirmed that this system of strict protection laid down in respect of the species listed in point (a) of Annex IV to that directive also applies to specimens that leave their natural habitat and stray into human settlements. For animal species which, like the wolf, occupy vast stretches of territory, the concept of ‘natural range’ in Article 12(1) of the Habitats Directive is greater than the geographical space that contains the essential physical or biological elements for their life and reproductions, and therefore corresponds to the geographical space in which the animal species concerned is present in the course of its natural behaviour. |

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| C-254/19 | Opinion | 267 TFUE | IE | Nature, Appropriate assessment | Directive 92/43/EEC | This opinion issued in a case concerning a request for preliminary ruling from the High Court of Ireland is interesting for two reasons. Firstly, it examines the question whether a decision on the extension of the period of validity of a development consent has to be considered as a new plan or project within the meaning of Art. 6(3) of the Habitat Directive or whether the original development consent and the extension are a unique operation, and therefore no further appropriate assessment is necessary. The Advocate General proposes that in this case, given that Irish law provides that any extension of the construction works requires a development consent (i.e. non construction would be possible without development of consent), the extension must be considered as an independent agreement that triggers the application of Article 6(3) of the Habitat Directive. Secondly, the Advocate General states that the appropriate assessment must be carried out where it cannot be ruled out that the plan or project might affect the conservation objectives of the site . The appropriate assessment must be used to close any gaps in the previous assessment, taking into account the changes made to the project, the addition of other plans and projects, the changes occurred in the protected habitats and species concerned and the new scientific knowledge available. |
| C-477/19 | Judgement | 267 TFUE | AT | Nature | Directive 92/43/EEC | The Court's ruling in a preliminary reference from the Administrative court of Vienna concerns the interpretation of the notion of "resting places" (Article 12(1) point d) of Directive 92/43/CEE) of protected species, in this case <i>Cricetus cricetus</i> (grand hamster). The Court clarified that this notion included non-occupied resting places if there was a sufficient probability that a species protected according to Annex IV (a) of the Directive would return to this resting place. It was the task of the national Court to verify this probability. |
| C-297/19 | Judgement | 267 TFUE | DE | | Directive 2004/35/EC | <p>The Court's ruling in a preliminary reference from the Bundesverwaltungsgericht (DE) concerns the applicability of the Environmental Liability Directive (ELD) to public entities carrying out regular land drainage activities on a wetland protected for wild birds. In this context the Court interpreted the concept of "normal management of sites, as defined in habitat records or target documents or as carried on previously by owners or operators" and the concept of "occupational activity".</p> <ol style="list-style-type: none"> 1. The Court ruled, in particular, that 'common' ('usual', 'current') agricultural practice is only per se excluded from causing significant damage to protected species and natural habitats under the ELD if it complies with the objectives and obligations in the Birds and Habitats Directives. 2. The Court gives a very broad meaning to the concept of "occupational activity". Not only private and profit but also public and non-profit activities engage the liability and obligation to repair environmental damage. |

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| C-826/18 | Opinion | 267 TFUE | NL | | Aarhus Convention | <p>This preliminary reference from the Rechtsbank Limburg (NL) concern the access to justice in the context of the authorization of the construction of a pig pen. It raises a number of interesting questions on the interpretation of the Aarhus Convention (AC), because under Dutch law access to court depends on prior participation in the administrative procedure.</p> <p>AG Bobek comes to the following conclusions:</p> <p>1. Article 6 AC confers full participation rights only to "the public concerned", but not to "the public" at large. 2. Neither Article 9(2) AC, nor Article 11 of the EIAD, nor Article 25 of the IED, nor Article 47 of the Charter are opposed to the exclusion of "the public" (who do not fall within "the public concerned") from access to court. 3. Article 9(2) AC, Article 11 of the EIAD and Article 25 of the IED preclude a condition in national law which makes the right to justice of the "public concerned" dependent on prior participation in the administrative procedure. In this respect, the AG concludes that the Court's finding in C-664/15, Protect, according to which access to court may depend on prior participation in the procedure concerns only Article 9(3) AC and is not applicable in the context of Article 9(2) AC.</p> |
| C-619/19 | Opinion | 267 TFUE | DE | | Directive 2003/4/EC | <p>The Opinion of the Advocate General Hogan in this preliminary reference case sheds light on the concept of "internal communication", included in Article 4(1) of Directive 2003/4 as a exception to the right of access to environmental information. The case at stake concerns a request from a citizen to have access to information included in a project of transport and urban development (Stuttgart 21). The Opinion clarifies that notion of internal communication, as covering any document intended to be addressed to someone, regardless of its content and which has not yet left the sphere of the authority at the time of the request. Even a document likely to be published might fall in the exception in question. The temporal scope of the exception is unlimited, but the time elapsed may be a relevant element to be included in the balance of interests performed to assess the need to maintain a communication internally.</p> |

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| C-411/19 | Judgment | 267 TFUE | IT | Nature | Directive 92/43/CEE | <p>This judgment on a request for preliminary ruling concerns a project of a route in Lazio (Italy). The Italian Ministry of Environment issued a negative opinion on this project, because of the impacts that it might have on a site of community importance, included in the network Natura 2000. The Ministry excluded the possibility of compensation and mitigation measures. In the case under examination there was an alternative route already approved from an environmental perspective, but more costly. For this reasons the proponent of the project negatively evaluated claimed the existence of an overriding public interest to have the road built at lower costs.</p> <p>Firstly, the Court held that it competes to the referring judge to verify the existence of an alternative solution. Secundarily, the judges acknowledged that if no alternative solution is possible, Article 6 of the Habitat does not preclude a provision of a national legislation that for reasons of overriding public interest (also of economic nature) consents the prosecution of the procedure of authorisation of a plan/project whose impact on the protected site cannot be mitigated and on which the public authority had already expressed a negative opinion.</p> |
| C-254/19 | Judgment | 267 TFUE | IE | EIA | Directive 2011/92/EU | <p>This judgment on a request of a preliminary ruling provides an interpretation of what an agreement according to Article 6(3) of the Habitat Directive might be. In particular, in the main proceedings, it was question on a decision extending the 10-year period originally set for the realisation of a project for the construction of a liquefied natural gas regasification terminal. The Court ruled that the decision extending the period set for the construction of the terminal has to be regarded as an agreement. The judgment clarifies, in accordance with the precautionary principle, that an appropriate assessment on the project's implications must be carried out whenever it cannot be ruled out that the plan or project may affect the conservation objectives of the site. A previous assessment carried out before the original consent was granted, cannot exclude the risks unless it contains conclusions capable of removing all reasonable scientific doubts as to the effects of the works and provided that there are no significant changes in the relevant environmental and scientific data, no changes in the project and no other plans or projects.</p> |

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| C-473/19 and C-474/19 | Opinion | 267 TFEU | SE | Nature | Directive 2009/147/EC Directive 92/43/EEC | <p>These two preliminary references from a Swedish court concern questions regarding species protection in the context of proposed logging in a forest area.</p> <p>AG Kokott comes to the following conclusions:</p> <p>1. Pursuant to Articles 1 and 5 of the Birds Directive, Member States have to adopt systems of protection for all species of wild birds. A protection that covers only species listed in Annex I of that Directive is insufficient.</p> <p>2. The prohibition on the deterioration or destruction of breeding sites of animals listed in Annex IV of the Habitats Directive does not depend on the conservation status of populations of the species concerned.</p> <p>3. The prohibition on killing and destruction under Article 5(a) and (b) of the Birds Directive and Article 12(1)(a) and (c) of the Habitats Directive do not depend on the conservation status of the species concerned. However, where in the context of the Birds Directive the detriment to birds is not intended but only accepted as a possibility, these prohibitions apply only to the extent necessary to maintain populations on a level compatible with Article 2 of this Directive.</p> <p>4. The prohibition on disturbance under the Birds Directive - Article 5(d) - concerns only disturbances which have a significant effect on the objective of maintaining populations of bird species at a satisfactory level. Under the Habitats Directive - Article 12(1)(b) - the prohibition of disturbance is restricted to acts particularly likely to be detrimental to the conservation status of the protected species.</p> <p>5. The conservation status of the populations of a species must be assessed at the level of the territory of the Member State or, where necessary, at the level of the biogeographical region in question and, to the extent possible, at cross-border level.</p> |
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| C-629/19 | Judgment | 267 TFEU | AT | Waste | Directive 2008/98 | <p>The Court's ruling in a preliminary reference introduced by the Regional Administrative Court of Styria (Austria) provides some insights on the concepts of 'waste' and 'end-of-waste status'. The case concerns the operation of a sewage treatment plant which treats waste from paper production as well as municipal waste water. The arising sewage sludge (from both sources) is then incinerated and the steam reclaimed for the purposes of energy recovery is used in the production of paper and pulp. The competent authority determined, in line with the jurisprudence of the AT Administrative Supreme Court, that this was an incineration of waste and therefore subject to authorization.</p> <p>However, the referring court wondered whether the sewage sludge in question constituted 'waste' within the meaning of EU law.</p> <p>The Court made clear that despite Article 2(2)(a) of Directive 2008/98 waste water and sewage sludge were not excluded from the scope of Directive 2008/98. They have therefore to be considered as 'waste' within the meaning of point 1 of Article 3 of Directive 2008/98.</p> <p>However, the Court ruled that if, on the basis of technical analysis, the referring court were to find that the conditions of Article 6(1) of Directive 2008/98 were met before the incineration of the sewage sludge in question, this sewage sludge did not constitute waste.</p> |
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Last update: 12/10/2020

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