

JUDGMENT OF THE COURT (First Chamber)

9 September 2020 (*)

(Reference for a preliminary ruling – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Article 6(3) – Scope – Concepts of ‘project’ and ‘agreement’ – Appropriate assessment of the implications of a plan or project for a protected site – Decision extending the duration of a development consent for the construction of a liquefied natural gas regasification terminal – Original decision based on national legislation which did not properly transpose Directive 92/43)

In Case C-254/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland) made by decision of 13 March 2019, received at the Court on 26 March 2019, in the proceedings

Friends of the Irish Environment Ltd

v

An Bord Pleanála,

intervening party:

Shannon Lng Ltd,

THE COURT (First Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, M. Safjan, L. Bay Larsen, C. Toader and N. Jääskinen, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Friends of the Irish Environment Ltd, by F. Logue, Solicitor, J. Kenny, Barrister-at-Law, and J. Devlin, Senior Counsel,
- An Bord Pleanála, by B. Magee, Solicitor, F. Valentine, Barrister-at-Law, and N. Butler, Senior Counsel,
- the European Commission, by C. Hermes and M. Noll-Ehlers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2020,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation 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 (OJ 1992 L 206, p. 7; ‘the Habitats Directive’).
- 2 The request has been made in proceedings between Friends of the Irish Environment Ltd and An Bord Pleanála (Planning Board, Ireland; ‘the Board’) concerning the latter’s decision to grant an additional period of five years for the construction of a liquefied natural gas regasification terminal, on top of the 10-year period originally set in a previous decision.

Legal context

European Union law

The Habitats Directive

- 3 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, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.’

The EIA Directive

- 4 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ 2014 L 124, p. 1) (‘the EIA Directive’), defines, in the first indent of Article 1(2)(a) thereof, the concept of ‘project’ as meaning ‘the execution of construction works or of other installations or schemes’.
- 5 Under Article 1(2)(c) of the directive ‘development consent’ is defined as meaning ‘the decision of the competent authority or authorities which entitles the developer to proceed with the project’.

Irish law

- 6 Section 40(1) of the Planning and Development Act 2000, in its version applicable to the main proceedings (‘the PDA 2000’), provides:
- ‘Subject to subsection (2), a permission granted under this Part shall, on the expiration of the appropriate period (but without prejudice to the validity of anything done pursuant thereto prior to the expiration of that period), cease to have effect as regards—
- (a) in case the development to which the permission relates is not commenced during that period, the entire development, and
- (b) in case the development is commenced during that period, so much of the development as is not completed within that period.’

- 7 Section 42 of the PDA 2000 provides that, on application by the interested party, the duration of a planning permission may be extended where substantial works were carried out pursuant to the planning permission during the period originally set, and the development will be completed within a reasonable time or where there were considerations of a commercial, economic or technical nature beyond the control

of an applicant which substantially militated against either the commencement of the development or the carrying out of substantial works. In that last scenario, an extension of duration cannot be granted however if there have been significant changes in the development objectives in the development plan since the date of the permission such that the development would no longer be consistent with the proper planning and sustainable development of the area concerned. It is also necessary that the project not be inconsistent with the 'Ministerial guidelines'.

8 In addition, section 42 of the PDA 2000 states that, where the development has not commenced, the local planning authority must be satisfied that an environmental impact assessment, or an appropriate assessment, or both of those assessments, if required, was or were carried out before the planning permission was granted. Moreover, the additional period cannot exceed five years and an application for extension of the duration of a planning permission can be made only once.

9 Section 50 of the PDA 2000 provides that a person cannot question the validity of a planning permission otherwise than by way of judicial review, within a period of eight weeks if it is not to be out of time, which may be extended in certain circumstances.

10 Section 146B of the PDA 2000 establishes a special procedure whereby the planning permission for a strategic infrastructure development can be altered.

11 Section 146B of the PDA 2000 provides:

'...

(3) If the Board decides that the making of the alteration—

...

(b) would constitute the making of such a material alteration, it shall determine whether to (i) make the alteration, (ii) make an alteration of the terms of the development concerned, ... that would be different from that to which the request relates ..., or (iii) refuse to make the alteration.

(4) Before making a determination under subsection (3)(b), the Board shall determine whether the extent and character of (a) the alteration requested under subsection (1), and (b) any alternative alteration it is considering under subsection (3)(b)(ii), are such that the alteration, were it to be made, would be likely to have significant effects on the environment (and, for this purpose, the Board shall have reached a final decision as to what is the extent and character of any alternative alteration the making of which it is so considering).'

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

12 On 31 March 2008, the Board granted development consent for a project for the construction of a liquefied natural gas regasification terminal on the south bank of the River Shannon estuary in County Kerry (Ireland). The development consent provided that the works were to be carried out within a period of maximum 10 years ('the original consent').

13 The project was to be carried out in the vicinity of two Natura 2000 sites, namely the Lower River Shannon Special Area of Conservation (Site IE0002165) and the River Shannon and River Fergus Estuaries Special Protection Area (Site IE0004077).

14 The referring court points out that, at the time the original consent was granted, the Court had ruled, in its judgment of 13 December 2007, *Commission v Ireland* (C-418/04, EU:C:2007:780), that the Irish legislation did not transpose the Habitats Directive properly, in particular, as follows from paragraphs 230 and 231 of that judgment, in that the appropriate assessment of the implications for the purposes of that directive was equated with the assessment required for the purposes 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 (OJ 1985 L 175, p. 40).

- 15 According to the referring court, the original consent made no reference to either the Habitats Directive or the two protected sites that might be affected by the project at issue in the main proceedings, nor did it contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works.
- 16 In September 2017, construction of the terminal still had not commenced and the developer applied to the Board, pursuant to section 146B of the PDA 2000, for an extension of the duration of the development consent. He explained on that occasion that the delays in commencing work arose, inter alia, as a result of changes to the Irish policy on access to the national gas transmission grid, and, more generally, as a result of Ireland's economic situation. The application thus submitted to the Board entailed no material alteration of the development.
- 17 The original consent expired on 31 March 2018 without any works having been carried out.
- 18 On 13 July 2018, the Board granted the developer an additional period of five years to carry out the project for the construction of the terminal, namely until 31 March 2023 ('the consent at issue in the main proceedings').
- 19 It is apparent from the order for reference that the Board on that occasion carried out an environmental impact assessment that led to the conclusion that the extension of the duration of the construction project under consideration had no significant effect on the environment.
- 20 The consent at issue in the main proceedings was challenged before the High Court (Ireland) by Friends of the Irish Environment.
- 21 In those circumstances, taking the view that the case in the main proceedings raised difficulties in the interpretation of EU law, the High Court decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:
 - (1) Does a decision to extend the duration of a development consent constitute the agreement of a project such as to trigger Article 6(3) of the [Habitats Directive]?
 - (2) Is the answer to [the first question] above affected by any of the following considerations?
 - (a) The development consent (the duration of which is to be extended) was granted pursuant to a provision of national law which did not properly implement the Habitats Directive in that the legislation incorrectly equated an appropriate assessment for the purposes of the Habitats Directive with an environmental impact assessment for the purposes of [Directive 85/337].
 - (b) The development consent as originally granted does not record whether the consent application was dealt with under [the first stage] or [the second stage] of Article 6(3) of the Habitats Directive, and does not contain "complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the site concerned" as required [by the Court under its judgment of 24 November 2011, *Commission v Spain* (C-404/09, EU:C:2011:768)].
 - (c) The original period of the development consent has expired, and as a consequence the development consent has ceased to have effect in respect of the entire development. No development works can be carried out pursuant to the development consent pending its possible extension.
 - (d) No development works were ever carried out pursuant to the development consent.

- (3) In the event that the answer to [the first question] is “yes”, what considerations are the competent authority required to have regard to in carrying out a [first-stage] screening exercise pursuant to Article 6(3) of the Habitats Directive? For example, is the competent authority required to have regard to any or all of the following considerations: (i) whether there are any changes to the proposed works and use; (ii) whether there has been any change in the environmental background, e.g. in terms of the designation of European Sites subsequent to the date of the decision to grant development consent; (iii) whether there have been any relevant changes in scientific knowledge, e.g., more up-to-date surveys in respect of qualifying interests of European Sites?

Alternatively, is the competent authority required to assess the environmental impacts of the entire development?

- (4) Is there any distinction to be drawn between (i) a development consent which imposes a time limit on the period of an activity (operational phase), and (ii) a development consent which only imposes a time limit on the period during which construction works may take place (construction phase) but, provided that the construction works are completed within that time limit, does not impose any time limit on the activity or operation?
- (5) To what extent, if any, is the obligation of a national court to interpret legislation in so far as possible in accordance with the provisions of the Habitats Directive and the [Convention on the access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; “the Aarhus Convention”)] subject to a requirement that the parties to the litigation have expressly raised those interpretive issues? More specifically, if national law provides two decision-making processes, only one of which ensures compliance with the Habitats Directive, is the national court obliged to interpret national legislation to the effect that only the compliant decision-making process can be invoked, notwithstanding that this precise interpretation has not been expressly pleaded by the parties in the case before it?
- (6) (a) If the answer to [the second question, under (a)] above is to the effect that it is relevant to consider whether the development consent (the duration of which is to be extended) was granted pursuant to a provision of national law which did not properly implement the Habitats Directive, is the national court required to disapply a rule of domestic procedural law which precludes an objector from questioning the validity of an earlier (expired) development consent in the context of a subsequent application for development consent?
- (b) Is such a rule of domestic procedural law inconsistent with the remedial obligation as recently restated in [the judgment of 17 November 2016, *Stadt Wiener Neustadt* (C-348/15, EU:C:2016:882)]?’

Consideration of the questions referred

First and second questions referred

22 The considerations mentioned in points (a) to (d) of the second question referred are as follows: the original consent was granted pursuant to national legislation which did not transpose the Habitats Directive properly; the consent made no reference to the directive nor did it contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works; the consent ceased to have legal effect on expiry of the period which it had set for those works and the latter have not commenced.

23 It follows, *inter alia*, that the referring court starts from the premiss that, in the main proceedings, the original consent was not preceded by an assessment of its implications for the site in accordance with that

required under Article 6(3) of the Habitats Directive.

- 24 Consequently, it must be held that, by its first and second questions, which must be examined together, the referring court asks, in essence, whether a decision extending the period originally set for carrying out a project for the construction of a liquefied natural gas regasification terminal constitutes the agreement of a project under Article 6(3) of the Habitats Directive, where the original consent for the project was not preceded by an assessment of its implications for the site concerned in accordance with that provision, that authorisation ceased to have legal effect on expiry of the period which it had set for those construction works and the latter were not undertaken.
- 25 Article 6(3) of the Habitats Directive establishes an assessment procedure intended to ensure, by means of a prior examination, that a plan or project not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 117 and the case-law cited).
- 26 In that regard, it should be noted that the fact that the project the environmental assessment of which is challenged is not situated in the Natura 2000 areas concerned, but outside those zones, as appears to be the case in the case in the main proceedings, in no way precludes the requirements laid down in Article 6(3) of the Habitats Directive from applying. It is clear from the wording of that provision that ‘any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon’ is subject to the environmental protection mechanism it prescribes (see, to that effect, judgment of 26 April 2017, *Commission v Germany*, C-142/16, EU:C:2017:301, paragraph 29).
- 27 That provision distinguishes two stages in the prescribed assessment procedure. The first, the subject of that provision’s first sentence, requires Member States to carry out an appropriate assessment of the implications for a protected site of a plan or project when there is a likelihood that the plan or project will have a significant effect on the site. The second, the subject of the second sentence, which arises following the appropriate assessment, allows such a plan or project to be authorised only if it will not adversely affect the integrity of the site concerned, subject to the provisions of Article 6(4) of the Habitats Directive (see, to that effect, judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraphs 118 and 119).
- 28 In the first place, in order to assess whether a decision extending the period set in the original consent for the construction of a natural liquefied gas regasification terminal, in respect of which works have not commenced, relates to a ‘project’ within the meaning of Article 6(3) of the Habitats Directive, it is important to observe that it follows from the case-law that the concept of ‘project’ within the meaning of Article 1(2)(a) of the EIA Directive can be taken into account in that regard (see, to that effect, judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 122 and the case-law cited).
- 29 Furthermore, since the definition of the concept of ‘project’ under the EIA Directive is more restrictive than that under the Habitats Directive, the Court has held that, if an activity is covered by the EIA Directive, it must, a fortiori, be covered by the Habitats Directive (judgments of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraph 65, and of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 123).
- 30 It follows that if an activity is regarded as a ‘project’, within the meaning of the EIA Directive, it may constitute a ‘project’ within the meaning of the Habitats Directive (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 124 and the case-law cited).
- 31 The term ‘project’ in Article 1(2)(a) of the EIA Directive refers, in the first indent thereof, to the execution of construction works or of other installations or schemes and, in the second indent thereof, to

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

- 32 In addition, it follows from the Court's case-law that the definition of the term 'project', specifically in the context of the wording of the first indent of Article 1(2)(a) of the EIA Directive, refers to work or interventions involving alterations to the physical aspect of the site (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 62 and the case-law cited).
- 33 In the present case, the decision to extend a period originally set for the construction of a liquefied natural gas regasification terminal, for which works have not commenced, meets such criteria and must therefore be regarded as relating to a 'project' within the meaning of the EIA Directive.
- 34 Such a decision must therefore also be regarded as relating to a 'project' within the meaning of Article 6(3) of the Habitats Directive.
- 35 However, as Advocate General Kokott observed in point 32 of her Opinion, if, having regard in particular to the regularity or nature of those activities or the conditions under which they are carried out, certain activities must be regarded as constituting a single operation, they can be considered to be one and the same project for the purposes of Article 6(3) of the Habitats Directive, exempted from a new assessment procedure under that provision (see, to that effect, judgments of 14 January 2010, *Stadt Papenburg*, C-226/08, EU:C:2010:10, paragraphs 47 and 48, and of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others*, C-293/17 and C-294/17, EU:C:2018:882, paragraphs 78 and 80).
- 36 In the present case, it is apparent from the order for reference that the consent at issue in the main proceedings relates to the same project as that originally authorised.
- 37 However, it cannot be inferred therefrom that a consent such as the consent at issue in the main proceedings was not, by that fact alone, subject to the application of Article 6(3) of the Habitats Directive.
- 38 Unlike the cases that gave rise to the case-law referred to in paragraph 35 above, the purpose of such a consent is not to renew the consent for a recurrent activity in the course of operation, but to allow the execution of a project which, as is apparent from the order for reference, in particular the description of the Irish legal framework, was the subject of a first consent that lapsed without the intended works having even commenced.
- 39 It follows that that consent relates to a 'project' subject to the requirements of Article 6(3) of the Habitats Directive, irrespective, moreover, of whether that provision had to be complied with when the original consent was granted.
- 40 In the second place, it is important to determine whether a consent such as the consent at issue in the main proceedings constitutes an 'agreement' of that project under that provision.
- 41 The Board rejects this analysis on the grounds that two characteristics must be satisfied, namely allowing the project to proceed and relating to the very substance of the project. In the present case, according to the Board, those two conditions are not fulfilled, on the ground that, as regards the first, construction of the liquefied natural gas regasification terminal could have commenced once the original consent was granted and, as regards the second, the consent at issue in the main proceedings simply extends the project's construction period without changing it.
- 42 It is important in that regard to note that, while the Habitats Directive does not define the conditions governing how the authorities 'agree' to a given project under Article 6(3) of that directive, the definition of 'development consent' in Article 1(2)(c) of the EIA Directive is relevant in defining that term (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, point 142).

- 43 Article 1(2)(c) of the EIA Directive defines the term ‘development consent’ as ‘the decision of the competent authority or authorities which entitles the developer to proceed with the project’.
- 44 Contrary to the Board’s assertions, it does not follow from the judgment of 7 January 2004, *Wells* (C-201/02, EU:C:2004:12), cited by the Board in support of its argument, that only a decision changing the project as originally permitted can constitute a ‘consent’ within the meaning of that provision. It is apparent from paragraphs 44 to 47 of that judgment that it was the finding that the original consent had lapsed and the fact that a new consent was necessary in order to resume the operation of the activity which led the Court to hold that the decision allowing that activity to resume had replaced not only the terms but also the very substance of the original consent and that that decision thus constituted a new consent.
- 45 However, as is apparent from the order for reference, the original consent ceased to have effect on expiry of the 10-year period it had set and work could no longer be carried out. It follows that, at the end of that period, the original consent had lapsed and was therefore not altered by the consent at issue in the main proceedings, but replaced by it.
- 46 The fact that the project at issue in the main proceedings could have proceeded under the original consent is, in that regard, irrelevant.
- 47 It follows that a consent such as the consent at issue in the main proceedings does constitute a new consent under the EIA Directive and, consequently, also an ‘agreement’ under Article 6(3) of the Habitats Directive.
- 48 In the light of the foregoing considerations, the answer to the first and second questions referred is that a decision extending the 10-year period originally set for carrying out a project for the construction of a liquefied natural gas regasification terminal is to be regarded as an agreement of a project under Article 6(3) of the Habitats Directive where the original consent for that project, having lapsed, ceased to have legal effect on expiry of the period which it had set for those works and the latter have not been undertaken.

The third question

- 49 By its third question, the referring court asks, in essence, to specify, if the answer to the first question referred is in the affirmative, the conditions for applying the requirement to carry out an appropriate assessment of the implications for the site concerned, laid down in the first sentence of Article 6(3) of the Habitats Directive, to a consent such as the consent at issue in the main proceedings. In particular, it seeks to know whether the competent authority is required to take into account any changes to the works as originally permitted and to the proposed use as well as change in the ‘environmental background’ and in scientific knowledge since the original consent was granted. The referring court also asks whether the competent authority must assess the effects of the entire project on the site.
- 50 In that regard, as pointed out in paragraph 27 above, Article 6(3) of the Habitats Directive distinguishes two stages in the prescribed assessment procedure and the first, the subject of the first sentence of that provision, requires Member States to carry out an appropriate assessment of the implications of a plan or project for a protected site where there is a likelihood that the plan or project will have a significant effect on the site (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 119 and the case-law cited).
- 51 Having regard to the precautionary principle, in particular, that risk is deemed to be present where it cannot be ruled out, having regard to the best scientific knowledge in the field, that the plan or project might affect the conservation objectives of the site. The assessment of that risk must be made in the light, in particular, of the characteristics and specific environmental conditions of the site concerned by such a plan or project (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 134).

- 52 An appropriate assessment of the implications of a plan or project implies that, before the plan or project is approved, all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity only if they have made certain that it will not adversely affect the integrity of that site. This is so when there is no reasonable doubt from a scientific point of view as to the absence of such effects (judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 120 and the case-law cited).
- 53 Thus, 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 proposed works on the protected site (judgment of 24 November 2011, *Commission v Spain*, C-404/09, EU:C:2011:768, paragraph 100).
- 54 It should be added that account should also be taken of any assessments carried out for earlier consents, in order to avoid the same project being subject to several environmental assessments covering all the requirements of the Habitats Directive (see, by analogy, judgments of 10 September 2015, *Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 55, and of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraph 42).
- 55 However, the taking into account of such previous assessments when granting a consent extending the construction period for a project, such as the consent at issue in the main proceedings, cannot rule out the risk that it will have significant effects on the protected site unless those assessments contain complete, precise and definitive conclusions capable of removing all reasonable scientific doubt as to the effects of the works, and provided that there are no changes in the relevant environmental and scientific data, no changes to the project and no other plans or projects that must be taken into account.
- 56 It follows that it is for the competent authority to assess whether a consent such as the consent at issue in the main proceedings, which extends the period originally set in a first consent for carrying out a project for the construction of a liquefied natural gas regasification terminal, must be preceded by the appropriate assessment of its implications under the first sentence of Article 6(3) of the Habitats Directive and, if so, whether that assessment must relate to the entire project or part thereof, taking into account, inter alia, previous assessments that may have been carried out and changes in the relevant environmental and scientific data as well as changes to the project and the existence of other plans or projects.
- 57 In the present case, it follows from the order for reference that the project for the construction a liquefied natural gas regasification terminal was to be carried out in the vicinity of two protected sites and that the original consent was not preceded by an assessment containing complete, precise and definitive conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on those sites.
- 58 It follows, first, that it cannot be ruled out that such a project might have a significant effect on those sites and, secondly, that such considerations, which is a matter for the national court to ascertain, are such as to require a consent such as the consent at issue in the main proceedings to be preceded by an appropriate assessment of its implications as required under Article 6(3) of the Habitats Directive. It also follows that such an assessment cannot be a simple update of the assessment that may have been carried out previously, but must consist of a full assessment of the implications of the entire project for those sites.
- 59 In the light of the foregoing considerations, the answer to the third question referred is that it is for the competent authority to assess whether a decision extending the period originally set for carrying out a project for the construction of a liquefied natural gas regasification terminal, the original consent for which has lapsed, must be preceded by an appropriate assessment of its implications under the first sentence of Article 6(3) of the Habitats Directive and, if so, whether that assessment must relate to the entire project or part thereof, taking into account, inter alia, previous assessments that may have been carried out and changes in the relevant environmental and scientific data as well as any changes to the project and the

existence of other plans or projects. That assessment of a project's implications must be carried out where it cannot be ruled out, having regard to the best scientific knowledge in the field, that the plan or project might affect the conservation objectives of the site. A previous assessment of that project, carried out before the original consent for the project was granted, cannot rule out that risk unless it contains full, precise and definitive conclusions capable of removing all reasonable scientific doubt as to the effects of the works, and provided that there are no changes in the relevant environmental and scientific data, no changes to the project and no other plans or projects.

The fourth question

- 60 By its fourth question, the court asks, in essence, whether the answer to the first to third questions differs according to whether a development consent for a project imposes a time limit for the operational phase or sets a time limit only for the construction phase thereof, provided that the works are completed within that time limit.
- 61 It is important to note, in that regard, that a distinction between those two types of consent appears to have no bearing on the dispute in the main proceedings.
- 62 Consequently, since the justification for the reference for a preliminary ruling is not that it enables advisory opinions on general or hypothetical questions to be delivered, but rather that it is necessary for the effective resolution of a dispute (judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 44 and the case-law cited), the fourth question must be declared inadmissible.

The fifth question

- 63 By its fifth question, the referring court asks to what extent, if any, the obligation of a national court to interpret national legislation in so far as possible in accordance with the provisions of the Habitats Directive and the Aarhus Convention is subject to a requirement that the parties to the main proceedings have expressly raised those interpretive issues. Specifically, if national law provides two decision-making processes, only one of which complies with the Habitats Directive, the referring court asks whether a national court is obliged to interpret national legislation to the effect that only the compliant decision-making process can be invoked, notwithstanding that such interpretation has not been expressly pleaded by the parties in the case before it.
- 64 According to the Court's settled case-law, it is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (judgment of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115, paragraph 55 and the case-law cited).
- 65 It follows that questions referred by national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is apparent that the interpretation sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to those questions (judgment of 19 December 2019, *Junqueras Vies*, C-502/19, EU:C:2019:1115, paragraph 56 and the case-law cited).
- 66 However, it should be pointed out at the outset that the fifth question referred does not set out in sufficient detail the provisions of the Aarhus Convention whose interpretation is sought.
- 67 It is also apparent from the order for reference and the written observations submitted to the Court that that question is raised because the referring court wishes to point out that the provision of national law on the basis of which the consent at issue in the main proceedings was granted is erroneous on the ground that

there is another provision, namely section 42 of the PDA 2000, which, interpreted in the light of Article 6(3) of the Habitats Directive, complies with EU law. However, that error of law was not pleaded by the applicant in the main proceedings and cannot, therefore, be raised of its own motion by the referring court.

68 It follows that the fifth question referred centres in fact on whether a national court may rely on an interpretation of a provision of national law that is consistent with EU law in order to raise of its own motion the incompatibility with EU law of another provision of national law that serves as the legal basis for the consent at issue in the main proceedings.

69 However, as the Advocate General pointed out in points 61 and 68 of her Opinion, it is not apparent why the referring court should seek to establish the correct legal basis for the consent at issue in the main proceedings if it finds in any event that that a consent was granted in breach of Article 6(3) of the Habitats Directive, given that, moreover, as far as can be seen from the file before the Court, Friends of the Irish Environment has in fact asserted that Article 6(3) of the Habitats Directive was infringed.

70 It is important to add that it is not clear from the order for reference whether Irish law prohibits in all cases a national court from raising of its own motion pleas in law which have not been raised by an applicant.

71 It follows that the Court does not have before it the factual or legal material necessary to give a useful answer to the fifth question referred and that, as a result, that question is inadmissible.

The sixth question

72 By its sixth question, the referring court asks, in essence, whether, if the answer to its second question, under (a), is to the effect that the application of Article 6(3) of the Habitats Directive to a consent such as the consent at issue in the main proceedings depends on non-compliance with that provision when the original consent was granted, EU law must be interpreted as precluding a procedural rule of national law which prevents an applicant, in the context of his or her action to challenge a consent such as the consent in the main proceedings, from raising, by way of an objection, the illegality of the consent originally granted on that ground. It further asks whether such a procedural rule is consistent with the Member States' obligation to remedy breaches of EU law.

73 It is apparent from the answers given to the first and second questions referred that compliance with the Habitats Directive by a consent such as the original consent is not relevant for the purposes of assessing whether a consent such as the consent at issue in the main proceedings constitutes an agreement to a project under Article 6(3) of that directive.

74 It follows that there is no need to answer the sixth question referred.

Costs

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

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

- 1. A decision extending the 10-year period originally set for carrying out a project for the construction of a liquefied natural gas regasification terminal must be regarded as an agreement of a project 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, where the original consent,**

having lapsed, ceased to have legal effect on expiry of the period originally set for those works and the latter have not been undertaken.

2. It is for the competent authority to assess whether a decision extending the period originally set for carrying out a project for the construction of a liquefied natural gas regasification terminal, the original consent for which has lapsed, must be preceded by the appropriate assessment of its implications under the first sentence of Article 6(3) of Directive 92/43 and, if so, whether that assessment must relate to the entire project or part thereof, taking into account, inter alia, previous assessments that may have been carried out and changes in the relevant environmental and scientific data as well as changes to the project and the existence of other plans or projects.

The assessment of a project's implications must be carried out where it cannot be ruled out, having regard to the best scientific knowledge in the field, that the plan or project might affect the conservation objectives of the site. A previous assessment of that project, carried out before the original consent for the project was granted, cannot rule out that risk unless it contains full, precise and definitive conclusions capable of removing all reasonable scientific doubt as to the effects of the works, and provided that there are no changes in the relevant environmental and scientific data, no changes to the project and no other plans or projects.

Bonichot

Safjan

Bay Larsen

Toader

Jääskinen

Delivered in open court in Luxembourg on 9 September 2020.

A. Calot Escobar

J.-C. Bonichot

Registrar

President of the First
Chamber

* Language of the case: English.