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DEN EUROPÆISKE UNIONS DOMSTOL  
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COUR DE JUSTICE DE L'UNION EUROPÉENNE  
CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH  
SUD EUROPSKE UNĚJE  
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LUXEMBOURG

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EUROOPAN UNIONIN TUOMIOISTUIN  
EUROPEISKA UNIONENS DOMSTOL

OPINION OF ADVOCATE GENERAL  
KOKOTT

delivered on 26 March 2026 <sup>1</sup>

**Cases C-531/24 and C-895/24**

**An Taisce – The National Trust for Ireland and Others**

(Requests for a preliminary ruling from the High Court (Ireland))

(References for a preliminary ruling – Environment – Directive 91/676/EEC – Protection of waters against pollution caused by nitrates from agricultural sources – Action programmes in respect of vulnerable zones – Grant of a derogation for the purpose of allowing the application to the land of a higher amount of nitrogen from livestock manure than the maximum amount provided for – Directive 2000/60/EC – Establishment of a framework for Community action in the field of water policy – Programme of measures – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Assessment of implications for Natura 2000 sites in view of the sites' conservation objectives – Directive 2001/42/EC – Assessment of the effects of certain plans and programmes on the environment – Monitoring measures – Material assets – Alternatives)

<sup>1</sup> Original language: German.

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## I. Introduction

1. What requirements arise from the interaction between the Nitrates Directive<sup>2</sup> and the Habitats Directive,<sup>3</sup> the Water Framework Directive<sup>4</sup> and the SEA Directive (SEA stands for ‘strategic environmental assessment’)<sup>5</sup> where the European Commission grants a derogation requested by a Member State which makes it possible it to apply more livestock manure to agricultural land than is provided for in the Nitrates Directive? That is the subject of these two requests for a preliminary ruling from the High Court (Ireland).

2. The requests are intended to clarify the requirements under the Habitats Directive, the Water Framework Directive and the SEA Directive governing the environmental assessment of such a derogation which is included in the Irish action programme to regulate nitrate emissions in agriculture. The High Court also asks whether the answers to the questions concerning the environmental assessment call into question the validity of the derogation granted by the Commission.<sup>6</sup>

## II. Legal framework

### A. European Union law

#### 1. *The Nitrates Directive*

3. Article 1 of the Nitrates Directive defines its objectives:

‘This Directive has the objective of:

<sup>2</sup> Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1), as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008 (OJ 2008 L 311, p. 1).

<sup>3</sup> 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), as amended by Council Directive 2013/17/EU of 13 May 2013 adapting certain directives in the field of environment, by reason of the accession of the Republic of Croatia (OJ 2013 L 158, p. 193).

<sup>4</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1), as amended by Commission Directive 2014/101/EU of 30 October 2014 (OJ 2014 L 311, p. 32).

<sup>5</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

<sup>6</sup> Commission Implementing Decision (EU) 2022/696 of 29 April 2022 granting a derogation requested by Ireland pursuant to Council Directive 91/676/EEC (OJ 2022 L 129, p. 37).

- reducing water pollution caused or induced by nitrates from agricultural sources and
- preventing further such pollution.’

4. Article 2(j) of the Nitrates Directive defines the meaning of pollution:

‘... the discharge, directly or indirectly, of nitrogen compounds from agricultural sources into the aquatic environment, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water’.

5. Under Article 3 of the Nitrates Directive, Member States must designate as vulnerable zones certain areas of land in their territories which are excessively polluted with nitrogen, where there is a risk of such pollution or which could contribute to such pollution through drainage in such areas of land.

6. Article 5 provides that Member States must establish action programmes for vulnerable zones or throughout their national territory:

‘1. Within a two-year period following the initial designation referred to in Article 3(2) or within one year of each additional designation referred to in Article 3(4), Member States shall, for the purpose of realising the objectives specified in Article 1, establish action programmes in respect of designated vulnerable zones.

2. An action programme may relate to all vulnerable zones in the territory of a Member State or, where the Member State considers it appropriate, different programmes may be established for different vulnerable zones or parts of zones.

3. Action programmes shall take into account:

- (a) available scientific and technical data, mainly with reference to respective nitrogen contributions originating from agricultural and other sources;
- (b) environmental conditions in the relevant regions of the Member State concerned.

4. Action programmes shall be implemented within four years of their establishment and shall consist of the following mandatory measures:

- (a) the measures in Annex III;
- (b) those measures which Member States have prescribed in the code(s) of good agricultural practice established in accordance with Article 4, except those which have been superseded by the measures in Annex III.

5. Member States shall moreover take, in the framework of the action programmes, such additional measures or reinforced actions as they consider

necessary if, at the outset or in the light of experience gained in implementing the action programmes, it becomes apparent that the measures referred to in paragraph 4 will not be sufficient for achieving the objectives specified in Article 1. In selecting these measures or actions, Member States shall take into account their effectiveness and their cost relative to other possible preventive measures.’

7. The necessary content of the action programmes follows from the requirements of good agricultural practice under Article 4 of the Nitrates Directive and from special requirements under Annex III. If those measures are not sufficient to prevent pollution by nitrates, the Member State must provide for more comprehensive measures under Article 5(5).

8. Point 2 of Annex III to the Nitrates Directive governs the measures which Member States must include in their action programmes in relation to the amount of livestock manure applied to the land:

‘These measures will ensure that, for each farm or livestock unit, the amount of livestock manure applied to the land each year, including by the animals themselves, shall not exceed a specified amount per hectare.

The specified amount per hectare [shall] be the amount of manure containing 170 kg N. However:

- (a) ...
- (b) during and after the first four-year action programme, Member States may fix different amounts from those referred to above. These amounts must be fixed so as not to prejudice the achievement of the objectives specified in Article 1 and must be justified on the basis of objectives criteria, for example:
  - long growing seasons,
  - crops with high nitrogen uptake,
  - high net precipitation in the vulnerable zone,
  - soils with exceptionally high denitrification capacity.

If a Member State allows a different amount under point (b) of the second subparagraph, it shall inform the Commission, which shall examine the justification in accordance with the regulatory procedure referred to in Article 9(2).’

## 2. *Derogation granted by the Commission*

9. The Commission explained the contested derogation granted in recitals 17 and 23 of Implementing Decision (EU) 2022/696 as follows:

‘(17) In the light of the data referred to in recitals 11 to 13, the conditions provided for in this Decision should be strengthened compared to those provided for in Implementing Decision (EU) 2018/209. The conditions established as well as the monitoring and control systems should be sufficient to ensure that this derogation is coherent with the legally binding targets of the Water Framework Directive ...

...

(23) The derogation provided for in this Decision is without prejudice to the obligations of Ireland to apply [the Habitats Directive], including the [judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:C:2018:882)], in particular on the interpretation of Article 6(3) of that Directive.’

10. Article 1 of Implementing Decision (EU) 2022/696 authorises fertilisation higher than 170 kg nitrogen/ha per year subject to the conditions set out in Articles 4 to 12.

11. Under Article 4 of Implementing Decision (EU) 2022/696, grassland farmers who want to benefit from a derogation must submit an application for an authorisation each year. Article 5 permits authorisations to apply an amount of livestock manure on grassland farms containing up to 250 kg nitrogen/ha per year and refers to further conditions.

## 3. *The Habitats Directive*

12. Article 6(2) to (4) of the Habitats Directive regulates the protection of Natura 2000 sites:

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

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having

ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

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.

...’

#### **4. *The Water Framework Directive***

13. Article 4(1)(a)(i) and (ii) of the Water Framework Directive lays down the prohibition of deterioration and the requirement for improvement in respect of surface waters. Point (c) contains a special provision for protected areas:

‘1. In making operational the programmes of measures specified in the river basin management plans:

(a) for surface waters

(i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;

(ii) Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;

(iii) ...

without prejudice to the relevant international agreements referred to in Article 1 for the parties concerned;

...

(c) for protected areas

Member States shall achieve compliance with any standards and objectives at the latest 15 years after the date of entry into force of this Directive, unless otherwise

specified in the Community legislation under which the individual protected areas have been established.’

14. Article 5 of the Water Framework Directive governs the assessment of water status:

‘1. Each Member State shall ensure that for each river basin district or for the portion of an international river basin district falling within its territory:

- an analysis of its characteristics,
- a review of the impact of human activity on the status of surface waters and on groundwater, and
- an economic analysis of water use

is undertaken according to the technical specifications set out in Annexes II and III and that it is completed at the latest four years after the date of entry into force of this Directive.

2. The analyses and reviews mentioned under paragraph 1 shall be reviewed, and if necessary updated at the latest 13 years after the date of entry into force of this Directive and every six years thereafter.’

15. Article 10 of the Water Framework Directive sets out a combined approach for discharges of pollutants from point and diffuse sources. It expressly includes the establishment of emission controls based on best available techniques and best environmental practices under the Nitrates Directive. Furthermore, Article 10(3) provides for the possibility of stricter conditions:

‘Where a quality objective or quality standard, whether established pursuant to this Directive, in the Directives listed in Annex IX, or pursuant to any other Community legislation, requires stricter conditions ... more stringent emission controls shall be set accordingly.’

16. Article 11(1) of the Water Framework Directive provides for a programme of measures in order to achieve the objectives of the directive:

‘1. Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. ...

2. Each programme of measures shall include the “basic” measures specified in paragraph 3 and, where necessary, “supplementary” measures.

3. “Basic measures” are the minimum requirements to be complied with and shall consist of:

- (a) those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI;

...’

5. Where monitoring or other data indicate that the objectives set under Article 4 for the body of water are unlikely to be achieved, the Member State shall ensure that:

- the causes of the possible failure are investigated,
- relevant permits and authorisations are examined and reviewed as appropriate,
- the monitoring programmes are reviewed and adjusted as appropriate, and
- additional measures as may be necessary in order to achieve those objectives are established, including, as appropriate, the establishment of stricter environmental quality standards following the procedures laid down in Annex V.

Where those causes are the result of circumstances of natural cause or *force majeure* which are exceptional and could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, the Member State may determine that additional measures are not practicable, subject to Article 4(6).’

17. Under paragraph (ix) of part A of Annex VI to the Water Framework Directive, the Nitrates Directive is a regime to be included within the programmes of measures under Article 11(3)(a) of the Water Framework Directive.

18. Point 1.4 of Annex II of the Water Framework Directive clarifies the identification of pressures:

‘Member States shall collect and maintain information on the type and magnitude of the significant anthropogenic pressures to which the surface water bodies in each river basin district are liable to be subject, in particular the following.

...

Estimation and identification of significant point source pollution, in particular by substances listed in Annex VIII, from urban, industrial, agricultural and other installations and activities, based, inter alia, on information gathered under:

- (i) Articles 3, 5 and 6 of [the Nitrates Directive];

...’

19. The consequences of the information thus identified are governed by point 1.5 of Annex II to the Water Framework Directive:

‘Member States shall carry out an assessment of the susceptibility of the surface water status of bodies to the pressures identified above.

Member States shall use the information collected above, and any other relevant information including existing environmental monitoring data, to carry out an assessment of the likelihood that surface waters bodies within the river basin district will fail to meet the environmental quality objectives set for the bodies under Article 4. Member States may utilise modelling techniques to assist in such an assessment.

For those bodies identified as being at risk of failing the environmental quality objectives, further characterisation shall, where relevant, be carried out to optimise the design of both the monitoring programmes required under Article 8, and the programmes of measures required under Article 11.’

## 5. *The SEA Directive*

20. The objectives of the SEA Directive are set out, in particular, in Article 1 thereof:

‘The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.’

21. Plans and programmes are defined in Article 2(a) of the SEA Directive:

‘For the purposes of this Directive:

- (a) “plans and programmes” shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:
- which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and
  - which are required by legislative, regulatory or administrative provisions’.

22. The obligation to carry out a strategic environmental assessment is laid down by Article 3 of the SEA Directive:

‘1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

- (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to [the EIA Directive <sup>7</sup>], or
- (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of [the Habitats Directive <sup>8</sup>]

...’

23. Article 5 of the SEA Directive concerns the content of the environmental assessment and consideration of alternatives:

‘1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

3. ...’

24. Article 9(1) of the SEA Directive governs the content of the decision on the plan or programme:

<sup>7</sup> 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), last amended by Directive 2014/52/EU (OJ 2014 L 124, p. 1).

<sup>8</sup> 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), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193).

‘1. Member States shall ensure that, when a plan or programme is adopted, the authorities referred to in Article 6(3), the public and any Member State consulted under Article 7 are informed and the following items are made available to those so informed:

- (a) the plan or programme as adopted;
- (b) a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared pursuant to Article 5, the opinions expressed pursuant to Article 6 and the results of consultations entered into pursuant to Article 7 have been taken into account in accordance with Article 8 and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with, and
- (c) the measures decided concerning monitoring in accordance with Article 10.’

25. Article 10(1) of the SEA Directive regulates the monitoring of the environmental effects of plans and programmes:

‘Member States shall monitor the significant environmental effects of the implementation of plans and programmes in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action.’

26. The information to be provided in the environmental report is regulated in Annex I to the SEA Directive:

‘The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

- (a) ...
- ...
- (c) the environmental characteristics of areas likely to be significantly affected;
- (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to [the Habitats Directive or the Birds Directive];
- (e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;
- (f) the likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic

factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors.

- (g) ...
- (h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;
- (i) a description of the measures envisaged concerning monitoring in accordance with Article 10;
- (j) ...’

## **B. Irish law**

27. Under Section 4 of the Planning and Development Act, 2000 and Regulation 28 of the European Communities (Birds and Natural Habitats) Regulations 2011, agricultural activities may be prohibited if they are likely to have a significant effect on protected areas under the Habitats Directive or the Birds Directive.

28. The application to land of livestock manure with in excess of 170 kg of nitrogen per hectare per year is regulated primarily by Article 35(1) of the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 (S.I. No 113/2022), as amended by S.I. No 393/2022 (‘Regulations 2022’):

‘The application to land, on a holding in any year of livestock manure in excess of the amount specified in Article 20(1) shall be deemed not to be a contravention of that sub-article where all of the following conditions are met –

- (a) the occupier of the holding has made application in respect of that year to the Minister for Agriculture, Food and the Marine for authorisation of a derogation from the requirements of that sub-article;
- (b) the application under paragraph (a) is duly completed in the form and on or before the date specified for the time being by that Minister;
- (c) the application under paragraph (a) is accompanied by an undertaking in writing by the occupier to comply with all the conditions specified in Schedule 5, and
- (d) all the conditions set out in Schedule 5 are met by the occupier in relation to the holding.’

29. Schedule 5 of the Regulations 2022 limits, inter alia. the amount of nitrogen to 250 kg.

30. Where the application does not comply with the requirements, it is to be refused by the Minister pursuant to Article 35(2) of the Regulations 2022. Paragraph 3 provides that a farm is not eligible for an authorisation for the following year where it is established that it does not fulfil the conditions set out in Articles 6 to 9 of the Commission decision in the current year.

### III. Facts and requests for a preliminary ruling

31. The requests for a preliminary ruling set out the facts as follows.

32. Under Article 5(2) of the Nitrates Directive, Ireland applies a nitrates action programme throughout its national territory.

33. The request for a preliminary ruling cites Commission decisions since 2007 which allow Ireland, in the context of its nitrates action programmes, to allow farms, under certain conditions, to apply to the land livestock manure up to a limit of 250 kg nitrogen per hectare per year.<sup>9</sup> The most recent of those decisions at the time of the request for a preliminary ruling and the corresponding nitrates action programme for 2022 to 2025 are the subject of the main proceedings.

34. At the same time, the request for a preliminary ruling cites reports by the Irish Environmental Protection Agency (EPA) according to which almost half of the rivers and lakes in Ireland no longer have a satisfactory status due to excessive phosphorus and nitrogen concentrations.<sup>10</sup>

35. The Minister for Housing, Local Government and Heritage made the contested nitrates action programme subject to an assessment of implications for Natura 2000 sites. However, there was no full assessment of the environmental effects of the nitrate-emitting agricultural activities to be carried out on the basis of the derogation for the application of nitrogen to the land. The focus of the

<sup>9</sup> Commission Decision 2007/697/EC of 22 October 2007 granting a derogation requested by Ireland pursuant to Directive 91/676/EEC (OJ 2007 L 284, p. 27); Commission Decision 2011/127/EU of 24 February 2011 amending Decision 2007/697/EC granting a derogation requested by Ireland pursuant to Directive 91/676/EEC (OJ 2011 L 51, p. 19); Commission Implementing Decision 2014/112/EU of 27 February 2014 on granting a derogation requested by Ireland pursuant to Directive 91/676/EEC (OJ 2014 L 61, p. 7); Commission Implementing Decision (EU) 2018/209 of 8 February 2018 granting a derogation requested by Ireland pursuant to Directive 91/676/EEC (OJ 2018 L 39, p. 5), and the contested implementing decision.

The chronological sequence of those decisions suggests that Ireland requested a derogation following the judgment of 11 March 2004, *Commission v Ireland* (C-396/01, EU:C:2004:136), which found that the Nitrates Directive had been inadequately implemented.

<sup>10</sup> Water Quality Monitoring Report on Nitrogen and Phosphorus Concentrations in Irish Waters 2020 and Water Quality 2020 Indicators Report.

assessments was the proposed protective measures alone. It is, however, clear from the material (in particular the EPA reports and the ‘Natura Impact Statement’ – a scientific opinion provided for in Irish law on the impact on Natura 2000 sites – for the management plan under the Water Framework Directive for Irish waters from 2022 to 2027) that an assessment of the environmental effects of the underlying agricultural activities would have been likely to have demonstrated significant adverse environmental effects, including on European sites for the purposes of the Habitats Directive.

36. According to the ‘Natura Impact Statement’ for the management plan for Irish waters, it is vital that any derogations for individual farms which emerge from the nitrates action programme will be subject to an assessment of implications, which should also include a robust assessment of cumulative adverse effects. Out of more than 130 000 farms in Ireland, approximately 6 500 farmers make an application for a derogation to be applied each year. The vast majority of those applicants are dairy farmers. The individual derogations are not published, but only aggregated data as to the location, by local electoral area, of the farms concerned. In practice, an assessment of implications has not been carried out for any of those decisions; nor is there a practicable system in place to do so. The domestic legislation to give effect to the Habitats Directive is not applied in practice in that context.

37. Furthermore, the Minister for Housing, Local Government and Heritage made the nitrates action programme subject to a strategic environmental assessment, but the alternatives were not considered in comparable detail to the programme itself. There was also no assessment of the nitrates action programme by reference to Article 4 of the Water Framework Directive and no full assessment of the impacts of the underlying agricultural activities.

38. Full details of monitoring were not included in the environmental report for the strategic environmental assessment. The environmental report did not include a description of the measures envisaged concerning monitoring in accordance with Article 10 of the SEA Directive in sufficient detail to demonstrate that Article 10 would be complied with. In particular, it contained no details of how that monitoring would occur, when it would be done, or how it would be carried out and how any identified unforeseen adverse environmental effects would be addressed.

39. The economic implications for material assets were considered in the strategic environmental assessment and treated as outweighing otherwise possibly more environmentally friendly options. The assessment took into account and included, inter alia, broader economic matters such as material assets, the broad societal impacts of agricultural activities, the impact of the plan or project on the agricultural industry and on the output and income of farmers, the sustainability of the agricultural industry in Ireland, the food supply chain and the employment of a significant portion of the population.

40. On 9 March 2022, the Minister for Housing, Local Government and Heritage approved the Fifth Nitrates Action Programme 2022 to 2025 and signed the Good Agricultural Practice Regulations (S.I. No 113). On 29 April 2022, the Commission extended the derogation previously granted to Ireland pursuant to point 2 of Annex III to the Nitrates Directive. Thereupon, on 28 July 2022, the Minister supplemented the action programme by regulations to that effect (S.I. No 393).

41. On 31 May 2022, An Taisce brought proceedings for the judicial review of the action programme before the High Court (Ireland). The High Court has made two requests for a preliminary ruling arising from those proceedings to the Court of Justice, which the Court of Justice registered as Cases C-531/24 and C-895/24 and joined on 11 November 2025.

42. The questions in Case C-531/24 read as follows:

- ‘(1) Do Article 6(3) of the Habitats Directive, Article 4(1) [of the Water Framework Directive] and/or Article 3(1) of [the SEA Directive] read in the light of Article 3(3) TEU and/or Article 11 and/or [Article] 191(2) TFEU and/or Article 37 of the [EU] Charter of Fundamental Rights have the effect that an action programme under Article 5 of [the Nitrates Directive] that is assessed under or by reference to such Directives is required to be assessed in relation to the effects on the environment of the nitrate-emitting agricultural activities which will be carried out on foot of derogations granted consequent on the plan, either generally or in so far as such effects are indirectly contributed to by the absence of more rigorous protective measures in the plan, as opposed to being assessed by reference to the protective measures the plan positively includes and those alone?
- (2) If the answer to the first question in general is no, do the provisions referred to have that effect where provisions in the domestic law of the Member State concerned for assessment of individual derogations granted consequent on an action programme pursuant to Article 5 of [the Nitrates Directive] are not operated in practice in that context so that there is in practice no assessment carried out under [the Habitats Directive] of individual derogations granted consequent on the plan in terms of the effect on European sites of nitrate-emitting agricultural activities which will be carried out on foot of such derogations?
- (3) Do Article 6(3) of [the Habitats Directive] and/or Article 3(1) and/or [Article] 5(1) and/or [Article] 11(2) of [the SEA Directive] read in the light of Article 3(3) TEU and/or Article 11 and/or [Article] 191(2) TFEU and/or Article 37 of the Charter of Fundamental Rights have the effect that assessment of a plan or programme that is subject to those articles and that is capable of having environmental effects on a water body must include assessment by reference to Article 4 of [the Water Framework Directive] either alone or together with other binding measures adopted by the Member

State are sufficiently rigorous to ensure that the plan or programme will not cause a deterioration of the status of a body of surface water or jeopardise the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by [the Water Framework Directive], and if so, do those provisions or either of them require such an assessment to state in express and/or clearly ascertainable terms whether the relevant environmental objectives of [the Water Framework Directive] will be met following adoption of the plan or programme; either generally or in the specific case of the proposed adoption of a basic measure as defined by Article 11(3) of [the Water Framework Directive] and in particular a nitrates action programme under Article 5 of [the Nitrates Directive] (as referred to in Annex VI part A para (ix) of [the Water Framework Directive] as referenced in Article 11(3)(a) of that Directive)?

- (4) If the answer to the third question is such that that assessment of a plan or programme that is subject to Article 6(3) of [the Habitats Directive] and/or Article 3(1) of [the SEA Directive] and that is capable of having environmental effects on a water body must include assessment by reference to Article 4 of [the Water Framework Directive] and the answer to the first or second questions is such that assessment for the purposes of [the SEA Directive] in terms of compliance with [the Water Framework Directive] is required to include an assessment of the effects on the environment of the nitrate-emitting agricultural activities which will be carried out on foot of derogations granted consequent on the plan and/or in particular the omission of more rigorous provisions in a plan, does Article 4(1) of [the Water Framework Directive] (and specifically the principle of law having the effect that Member States are required, unless a derogation is granted, to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the Directive), read in the light of Article 3(3) TEU and/or Article 11 and/or [Article] 191(2) TFEU and/or Article 37 of the Charter of Fundamental Rights, have the effect that a Member States must also refuse to adopt a plan if the particular protections afforded by the plan either alone or together with other binding measures adopted by the Member State are insufficiently rigorous to ensure that the nitrate-emitting agricultural activities which will be carried out on foot of derogations granted consequent on the plan will not cause a deterioration of the status of a body of surface water or jeopardise the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by [the Water Framework Directive], either generally or in the specific case of the proposed adoption of a basic measure as defined by Article 11(3) of [the Water Framework Directive] and in particular a nitrates action programme under Article 5 of [the Nitrates Directive] (as referred to in Annex VI, part A, para. (ix) of [the Water Framework Directive] as referenced in Article 11(3)(a) of that Directive)?

- (5) If the answer to the third and/or fourth questions in general is no, do the provisions referred to have the effect referred to where provisions in the domestic law of the Member State concerned for assessment of individual derogations granted consequent on an action programme pursuant to Article 5 of [the Nitrates Directive] are not operated in practice in that context so that there is in practice no assessment carried out under [the Habitats Directive] (whether by reference to Article 4 of [the Water Framework Directive] or otherwise) of individual derogations granted consequent on the plan in terms of the effect on water bodies in the Member State of nitrate-emitting agricultural activities which will be carried out on foot of such derogations?
- (6) Does Article 4 of [the Water Framework Directive] read in the light of Article 3(3) TEU and/or Article 11 and/or [Article] 191(2) TFEU and/or Article 37 of the Charter of Fundamental Rights have the effect that a plan or programme in particular a nitrates action programme under [the Nitrates Directive] with the potential to affect the status of any relevant water body within a Member State cannot be adopted by the competent authority of a Member State unless the competent authority is required to satisfy itself firstly, that the adoption of the plan or programme is not liable to cause a deterioration of the status of any surface water body which has been or ought to have been identified by that Member State as constituting a surface water body “type”, nor is it liable to compromise the attainment of good surface water status or of good ecological potential and good chemical status of such a surface water body and, secondly, that the adoption of the plan or programme is compatible with the measures implemented pursuant to the programme under [the Water Framework Directive] established, in accordance with Article 11 of that Directive, for the river basin district concerned?
- (7) Do Article 5(1) and Annex I para, (i) to [the SEA Directive] read in the light of Article 3(3) TEU and/or Article 11 and/or [Article] 191(2) TFEU and/or Article 37 of the Charter of Fundamental Rights have the effect that the environmental report itself must include a description of the measures envisaged concerning monitoring in accordance with Article 10 of [the SEA Directive] in sufficient detail to demonstrate that Article 10 will be complied with, including details of how this monitoring will occur; when it will be done; and/or how the monitoring will be used and how any identified unforeseen adverse environmental effects will be addressed?
- (8) Does the term “material assets” in para, (f) of [A]nnex I [to the SEA Directive] exclude the value of such assets and/or in particular in the case of the assessment of an action programme pursuant to Article 5 of [the Nitrates Directive], does that term exclude the broad societal impacts of agricultural activities, the impact of the plan or project on the agricultural industry and on the output and income of farmers, the sustainability of the agricultural industry in the Member State concerned, the food supply chain, and the

employment of a significant portion of the population, and if so does [the SEA Directive] have the effect that consideration of such matters is unlawful in assessing the effects of the plan?

- (9) If the answers to one or more of the first to eighth questions have the consequence that the adoption of the [Nitrates Action Programme] involved a breach of [the Habitats Directive, the Water Framework Directive and/or the SEA Directive], is Commission Decision 2022/696 invalid having regard inter alia to Article 3(3) TEU and/or Article 11 and/or [Article] 191(2) TFEU and/or Article 37 of the Charter of Fundamental Rights?’

43. The two additional questions in Case C-895/24 read as follows:

‘(1) Does Article 5(1) and/or [Article] 9(1)(b) of, and paragraph (f) of Annex I to, the SEA Directive have the effect that material assets cannot be treated as the factor effectively outweighing other factors including other effects on the environment, for the purposes of the assessment under Article 3(1) of that Directive and/or that the option with the least adverse effects on the environment must be selected as the preferred outcome of that assessment?’

(2) Does Article 5(1) and/or [Article] 9(1)(b) of, and paragraph (h) of Annex I to, the SEA Directive have the effect that alternatives must be identified, described and evaluated in a comparable way for the purposes of the assessment under Article 3(1) of that Directive?’

44. Written observations have been submitted in both cases by An Taisce – The National Trust for Ireland, the Irish Creamery Milk Suppliers Association (ICMSA), Ireland, and the Commission and also in Case C-531/24 by Feirmeoirí Aontuithe na hÉireann Iontaobaithe Teoranta, as a trustee for the Irish Farmers’ Association (IFA), and in Case C-895/24 by Germany.

45. On 11 December 2025, the Court held a hearing on both cases in which An Taisce, IFA, ICMSA, Ireland and the Commission participated.

#### **IV. Legal assessment**

46. The Nitrates Directive seeks to create the instruments needed to ensure that waters are protected against pollution caused by nitrates from agricultural sources.<sup>11</sup> As is laid down in Article 5(1) of the Nitrates Directive, Member States are obliged, for the purpose of realising those objectives, to draw up and implement action programmes for designated vulnerable zones.<sup>12</sup> However, like

<sup>11</sup> Judgments of 2 October 2003, *Commission v Netherlands* (C-322/00, EU:C:2003:532, paragraph 41), and of 4 September 2014, *Commission v France* (C-237/12, EU:C:2014:2152, paragraph 25).

<sup>12</sup> See judgment of 4 September 2014, *Commission v France* (C-237/12, EU:C:2014:2152, paragraph 26).

Ireland, they may also apply such programmes throughout their national territory pursuant to Article 3(5).

47. Under Article 5(4)(a) and (b), those action programmes must consist of certain mandatory measures listed in Annexes II and III to that directive.<sup>13</sup> In the case at issue, most of those measures were adopted on 9 March 2022. They are not the subject of the requests for a preliminary ruling or – as far as can be seen – of the underlying domestic legal proceedings. In that respect, I will not discuss further the implementation of those requirements and any environmental assessments which may be necessary in that connection.

48. Under point 2 of Annex III to the Nitrates Directive, however, the action programme must ensure, in particular, that farmers apply only livestock manure containing at most 170 kg of nitrogen per hectare per year. Member States may allow higher amounts, in accordance with point 2(b) of Annex III, if the objectives of the directive are not thereby prejudiced. Accordingly, under the Fifth Nitrates Action Programme, as in earlier action programmes, Ireland allows all farms, under certain conditions, to apply up to 250 kg nitrogen per hectare per year. That provision alone, which was not adopted until 28 July 2022, is the subject of the present requests for a preliminary ruling.

49. Member States must justify the compatibility of such a derogation with the objectives of the directive to the Commission under point 2(b) of Annex III to the Nitrates Directive. The Commission examines that justification and decides whether to authorise the increased amount of nitrogen.

50. Aside from that, the Nitrates Directive does not provide for any further assessment of the environmental effects of the increased application of nitrogen. The two requests for a preliminary ruling are intended, however, to clarify whether and to what extent such an assessment is necessary on the basis of the Habitats Directive, the Water Framework Directive and the SEA Directive.

51. The Water Framework Directive does, in fact, require Member States to assess the effects on waters of an increased application of nitrogen (see A). Although effects on groundwater must also be assessed in that connection,<sup>14</sup> I will restrict my statements to surface waters, as the questions referred by the High Court are directed only at them.

52. The obligation to carry out an assessment under the Water Framework Directive also includes adverse effects on Natura 2000 sites, although the conditions governing the assessment stem from the Habitats Directive (see B). Further requirements governing the assessment of environmental effects and

<sup>13</sup> See judgment of 4 September 2014, *Commission v France* (C-237/12, EU:C:2014:2152, paragraph 28).

<sup>14</sup> See judgment of 20 November 2025, *Commission v Ireland (Water Framework Directive)* (C-204/24, EU:C:2025:912).

public participation follow from the SEA Directive (see C). Lastly, it must be examined whether any infringements of EU law relating to the approval of the application to the land of increased amounts of nitrogen which may be established in connection with the other questions affect the validity of the Commission decision on such approval (see D). Furthermore, a few remarks should be made on whether the referring court may maintain the effects of the action plan if it were to establish that Ireland adopted it wholly or at least in part in breach of the abovementioned measures (see E).

#### **A. Assessment under the Water Framework Directive**

53. Although the first six questions in Case C-531/24 all refer to the Water Framework Directive, the third, fourth, fifth and sixth questions are intended, above all, to clarify whether Ireland was permitted to adopt the action programme and, in particular, to approve the application to the land of increased amounts of nitrogen in the light of the Water Framework Directive.

54. By the fourth question, the High Court wishes to ascertain whether Article 4(1) of the Water Framework Directive precludes the adoption of an action programme if the envisaged protective measures are not sufficient to ensure the attainment of good surface water status in accordance with Article 4(1)(a)(ii).

55. However, that question is hypothetical and therefore inadmissible. It is true that there are indications that an assessment of the envisaged protective measures would lead to the conclusion that the action programme would infringe the requirement for improvement under Article 4(1)(a)(ii) of the Water Framework Directive.<sup>15</sup> However, according to the request for a preliminary ruling and, in particular, the remarks made by the High Court concerning the third question, there was no meaningful assessment of the effects of the action programme on the objectives of Article 4 and certainly no specific evaluation in that regard.<sup>16</sup> This means that the fifth question is also partially hypothetical in so far as it is linked to the fourth question.

56. On the other hand, the third and sixth questions, which seek to ascertain whether the approval of the application to the land of increased amounts of nitrogen must be assessed in order to determine whether it is compatible with the objectives of Article 4 of the Water Framework Directive, and the fifth question, in so far as it is linked to the third question, are admissible.

57. Accordingly, I will begin by explaining below the role of the action programme under the Nitrates Directive in the context of the implementation of the Water Framework Directive and then examine the ensuing obligations to carry out an assessment in respect of the approval of the application of higher amounts

<sup>15</sup> See, for example, paragraphs 46 and 47 of the request for a preliminary ruling.

<sup>16</sup> Paragraphs 67 and 96 of the request for a preliminary ruling.

of nitrogen. Lastly, I will consider the significance of the authorisation by the Commission of such approval.

***1. The action programme under the Nitrates Directive in the regime established by the Water Framework Directive***

58. Under Article 1(1)(a), the purpose of the Water Framework Directive is to establish, in particular, a framework for the protection of inland surface waters. The purpose of that framework is to prevent further deterioration, but also to enhance the status of aquatic ecosystems and terrestrial ecosystems directly depending on the aquatic ecosystems.<sup>17</sup>

59. Article 4(1)(a) of the Water Framework Directive thus contains two separate, albeit closely related obligations. First, under Article 4(1)(a)(i), Member States must implement the necessary measures to prevent deterioration of the status of all bodies of surface water (*prohibition of deterioration*). Second, under Article 4(1)(a)(ii), Member States must protect, enhance and restore all bodies of surface water with the aim of achieving ‘good status’ of waters at the latest by the end of 2015 (*requirement for improvement*).<sup>18</sup> Article 4(4) does, however, permit Member States to defer the deadlines of Article 4(1) until 2027.

60. According to the Irish EPA, good ecological status of surface waters within the meaning of Article 4 of the Water Framework Directive requires them to have less than 8 mg/l NO<sub>3</sub>.<sup>19</sup> By contrast, the limit on which the Nitrates Directive is based is much higher at 50 mg/l NO<sub>3</sub>. Under point 1 of section A of Annex I in conjunction with the now repealed Directive 75/440/EEC,<sup>20</sup> that is the limit for water from which drinking water is abstracted, to which the same limit applies under the Drinking Water Directive.<sup>21</sup> That difference shows that certain habitats and species are significantly more sensitive to nitrates than humans are.<sup>22</sup>

<sup>17</sup> Judgments of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 36); of 28 May 2020, *Land Nordrhein-Westfalen* (C-535/18, EU:C:2020:391, paragraph 67); and of 24 June 2021, *Commission v Spain (Deterioration of the Doñana natural area)* (C-559/19, EU:C:2021:512, paragraph 36).

<sup>18</sup> Judgments of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 39), and of 28 May 2020, *Land Nordrhein-Westfalen* (C-535/18, EU:C:2020:391, paragraph 68).

<sup>19</sup> *Water Quality in Ireland 2019-2024* (2025), pp. 22 and 33.

<sup>20</sup> Council Directive of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (OJ 1975 L 194, p. 26).

<sup>21</sup> Now Article 4(1) and part B of Annex I to Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (OJ 2020 L 455, p. 1).

<sup>22</sup> See also below, point 94.

61. Although the Nitrates Directive thus provides for a much higher limit for nitrates than is – possibly – required under the Water Framework Directive, action programmes under the Nitrates Directive are important in the context of the Water Framework Directive. Under Article 11(1), each Member State must establish a programme of measures in order to achieve the objectives of Article 4 of the Water Framework Directive. Under Article 11(2) and (3)(a) and Article 10 and paragraph (ix) of part A of Annex VI to the Water Framework Directive, the implementation of the Nitrates Directive is among the ‘basic measures’ to be included in the programme of measures. The action programmes are therefore part of that programme of measures.

## ***2. Assessment of action programmes under the Nitrates Directive in the context of the Water Framework Directive***

62. Because an action programme under the Nitrates Directive is part of the programme of measures under the Water Framework Directive, the measures in an action programme and, specifically, the agricultural application of nitrogen approved thereunder must be assessed in order to determine whether they are compatible with the objectives of Article 4 of the Water Framework Directive. In particular, according to settled case-law, the prohibition of deterioration under Article 4(1)(a) remains binding at each stage of implementation of the Directive and is applicable to ‘every’ surface water body type and status,<sup>23</sup> as the Commission correctly asserts. The same must hold for the requirement for improvement.

63. As ICMSA and Ireland rightly note, it is not a matter of an isolated assessment of the action programme or of the approval of increased amounts of nitrogen. Rather, they must be assessed together as elements of the programme of measures. Nevertheless, the effects of the action programme, and in particular of the approval, on the objectives of Article 4 of the Water Framework Directive must be taken fully in account in that assessment. It must therefore be possible to identify what effects are attributable to the approval of increased amounts of nitrogen and how the assessment arrived at that conclusion.

64. The need to include the agricultural application of nitrogen also follows from the information which Member States must identify pursuant to Articles 5 and 8 of, and Annexes II, V and VIII, to the Water Framework Directive and take into account in establishing the programme of measures pursuant to Article 11(1) and (5).

65. Article 11(1) of the Water Framework Directive expressly provides that the programme of measures is to be established taking into account of the results of the analyses required under Article 5. Under point 1.4 of Annex II, those analyses

<sup>23</sup> Judgments of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 50), and of 25 April 2024, *Sweetman* (C-301/22, EU:C:2024:347, paragraph 54).

include inter alia significant diffuse source pollution from agricultural installations and activities. Point 1.4 of Annex II expressly refers in that regard to the information to be collected under the Nitrates Directive, above all information on nitrogen contributions, and to substances listed in Annex VIII to the Water Framework Directive, where nitrates are still listed in point 11 among substances which contribute to eutrophication.<sup>24</sup>

66. For those water bodies identified as being at risk of failing the environmental quality objectives, under the third paragraph of point 1.5 of Annex II of the Water Framework Directive, Member States must, where relevant, optimise the design of the programme of measures required under Article 11.

67. In addition, Article 11(5) of the Water Framework Directive requires that the programme of measures be adjusted where monitoring data show that the objectives of Article 4 are unlikely to be achieved. In that case, the Member State must, in particular, investigate the causes of the possible failure, examine and review relevant permits and authorisations as appropriate and establish additional measures as may be necessary. The details of that monitoring are regulated in Article 8 and Annex V. Point 1.3.3 of Annex V lays down, in particular, detailed monitoring arrangements by which causes of failure to achieve environmental objectives are to be identified with a view to designing the programme of measures under Article 11 on that basis.

68. In the context of an action programme under the Nitrates Directive, a Member State may therefore approve the application to the land of an increased amount of nitrogen only after it has assessed and determined, on the basis of Articles 5 and 8 of the Water Framework Directive in particular, that the objectives of Article 4 thereof are not prejudiced.

69. It is conceivable to minimise the assessment of the approval of increased amounts of nitrogen by creating an effective system for guaranteeing the objectives of Article 4 of the Water Framework Directive where individual farms benefit from that approval. In principle, that system would have to ensure that those farms together apply only so much nitrogen that, taking into account all other nitrogen contributions, no deterioration of surface water status occurs and the achievement of good status is not prevented. The fifth question in Case C-531/24 is, however, based on the finding that no such system exists. The approval therefore required a full assessment.

70. If a Member State was to establish that an increased application of nitrogen is incompatible with the prohibition of deterioration or the requirement for improvement under Article 4(1) of the Water Framework Directive, that does not

<sup>24</sup> The Parliament and the Council recently agreed to delete point 11 of Annex VIII to the Water Framework Directive (Council Document 13706/25 of 8 October 2025, p. 121).

necessarily mean that such application would not be lawful. Rather, it could be permitted if one of the derogations also provided for in Article 4 was applicable.<sup>25</sup>

71. Ireland's submission that the objectives of Article 4 of the Water Framework Directive cannot be achieved by the action programme alone does not preclude that conclusion. It is clearly true that other parts of the programme of measures are also necessary to the objectives of Article 4. It is also conceivable, in the case of excessive nitrogen contributions, to prioritise reducing contributions from other sources within the framework of the programme of measures. Nevertheless, in taking an overview of the programme of measures, a Member State must ensure that, on the basis of all the envisaged measures, only such amounts of nitrates are applied that the objectives of Article 4 are complied with. That requires in turn that the effects of the approval of an increased application of nitrogen in the context of an action programme under the Nitrates Directive are identified and taken into account.

### **3. *Derogation granted by the Commission***

72. By Implementing Decision (EU) 2022/696, the Commission authorised the approval of the application to the land of an increased amount of nitrogen and, in recital 17, considered, on the basis of conditions, that the grant of that derogation is compatible with the objectives of the Water Framework Directive. However, that does not affect the Member State's obligation to carry out an assessment and does not necessarily mean that the authorised measures are compatible with the Water Framework Directive.

73. The Water Framework Directive does not contain any indication that the Commission could authorise a deviation from its objectives. The rules governing the possibilities for deviation are laid down definitively in Article 4 and fall within the responsibility of the Member States. The Commission is merely able to monitor compliance with those rules and, if necessary, to initiate treaty infringement proceedings.

74. The Nitrates Directive, and in particular the possibility provided for therein of approving increased amounts of nitrogen, also cannot be construed as a derogation from the objectives of Article 4 of the Water Framework Directive. Although it might be methodologically conceivable to interpret the Nitrates Directive as a *lex specialis* in relation to the Water Framework Directive, the latter directive aims at *enhanced* protection and *improvement* of the aquatic environment, according to Article 1(c) thereof. Furthermore, under Article 4(2), the most stringent objective must always apply. That is also reflected in the fact that, according to the Irish EPA, good surface water status requires a much lower

<sup>25</sup> See, with regard to development consent for infrastructure projects, judgments of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 50), and of 28 May 2020, *Land Nordrhein-Westfalen* (C-535/18, EU:C:2020:391, paragraph 74).

limit for nitrates than is provided for in the Nitrates Directive.<sup>26</sup> This ambitious objective of the Water Framework Directive could not be achieved if older, less ambitious objectives continued to apply in certain areas of water policy.

75. Accordingly, the Water Framework Directive, as a *lex posterior*, contains stricter requirements which measures based on the earlier Nitrates Directive must also meet.

76. There is no need to determine here whether the Commission’s supervisory powers under point 2(b) of Annex III to the Nitrates Directive include the stricter requirements under the Water Framework Directive or are limited to the stipulations of the Nitrates Directive. That supervision is limited to examining the justification given by the Member State. On the other hand, the Commission does not have investigatory powers or instruments of its own on the ground in the Member State to assess compliance with the Water Framework Directive. In so far as the Commission examines compliance with the objectives of the Water Framework Directive in that procedure, the Member State must therefore demonstrate such compliance in the justification and, consequently, must have first examined it itself.

77. For that reason, recital 17 of Implementing Decision (EU) 2022/696 merely contains an assessment by the Commission of the approval of the application to the land of an increased amount of nitrogen. The Implementing Decision cannot, however, establish with binding effect that such approval is compatible with the Water Framework Directive.

#### **4. *Interim conclusion***

78. It must therefore be concluded that, in the context of an action programme under Article 5 of the Nitrates Directive, a Member State may approve the application to the land of an increased amount of nitrogen only after it has assessed and determined, on the basis of Articles 5 and 8 of the Water Framework Directive in particular, that the objectives of Article 4 of that directive are not prejudiced. There is no need for a Member State to carry out such an assessment, however, if it is ensured that utilisation of that possibility by individual farms is assessed. If an assessment was to show that an increased application of nitrogen is incompatible with the prohibition of deterioration or the requirement for improvement under Article 4(1), the objectives of Article 4 would be guaranteed only if one of the derogations also provided for therein was applicable.

#### **B. Assessment of effects on Natura 2000 sites**

79. However, the objectives of Article 4(1) of the Water Framework Directive amount to more than the prohibition of deterioration and the requirement for

<sup>26</sup> See above, point 60.

improvement under point (a). As the Commission asserts, under Article 4(1)(c), within the same timeframe, that is to say, by 2027 at the latest,<sup>27</sup> Member States are also to achieve compliance with any standards and objectives for protected areas. That applies in particular, under Article 6 and point 1(v) of Annex IV, to Natura 2000 sites, where the maintenance or improvement of the status of water is an important factor in the protection of the sites.<sup>28</sup>

80. That constitutes a further objective to be achieved by the programme of measures under Article 11 of the Water Framework Directive and therefore also by the action programmes under the Nitrates Directive.<sup>29</sup> Before establishing an action programme, Member States must thus also assess its effects on Natura 2000 sites.

81. The criteria for that assessment are evident from Article 6(3) of the Habitats Directive. It must therefore be examined, first of all, whether the approval of an increased application of nitrogen in an action programme under the Nitrates Directive requires an assessment pursuant to that provision. The object of that assessment must then be clarified. Accordingly, the first two questions referred in Case C-531/24 concern the assessment of the implications of the approval under Article 6(3) of the Habitats Directive. The court wishes to know whether the assessment may be restricted to the protective measures proposed in the action programme or whether it must cover the effects caused by nitrate-releasing agricultural activities which are approved under that programme. If that assessment may, in principle, be restricted to the proposed protective measures, the referring court further asks whether that conclusion is affected if, in practice, those agricultural activities are also not subject to an assessment of implications at the level of the individual farms.

82. Because the parties are in dispute as to whether an action programme must be actually subject to an assessment of implications for the site under Article 6(3) of the Habitats Directive, I will first consider that issue (see 1) and then the object of that assessment (see 2).

### ***1. Obligation to carry out an assessment of implications for the site***

83. Under the second sentence of Article 6(3), the competent national authorities are to agree to a plan or project, in the light of the conclusions of an assessment of the implications for the site and subject to the derogation in Article 6(4), only after having ascertained that it will not adversely affect the integrity of the Natura 2000 site concerned. To that end, the first sentence of

<sup>27</sup> See above, point 59.

<sup>28</sup> Judgment of 24 June 2021, *Commission v Spain (Deterioration of the Doñana natural area)* (C-559/19, EU:C:2021:512, paragraph 132).

<sup>29</sup> See, to that effect, judgment of 24 June 2021, *Commission v Spain (Deterioration of the Doñana natural area)* (C-559/19, EU:C:2021:512, paragraph 134).

Article 6(3) provides that any plan or project not directly connected with or necessary to the management of a protected site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, is subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives.

84. The approval of an increased application of nitrogen in an action programme under the Nitrates Directive is neither directly connected with nor necessary to the management of Natura 2000 sites.

85. The approval does not, however, constitute agreement to a project for the purposes of Article 6(3) of the Habitats Directive. It merely offers a large number of farms the possibility to apply an increased amount of nitrogen. At most, the utilisation of that possibility by individual farms could be regarded as a project.<sup>30</sup>

86. The approval in the action programme could, however, constitute a plan within the meaning of Article 6(3) of the Habitats Directive.

87. Because the Directive does not define the term ‘plan’, it seems reasonable to consider specific instruments of national law, although in the absence of any reference to such instruments, it is also a term of EU law to be given an autonomous interpretation.<sup>31</sup>

88. The different language versions of Article 6(3) of the Habitats Directive theoretically allow different meanings to be attributed to the term ‘plan’ to varying degrees. For example, in French it can also refer to a flat surface and it often denotes special graphic representations.

89. In the light of the regulatory context, however, the term ‘plan’ should be understood according to its more abstract meaning to the effect that it lays down certain objectives and explains how they are to be achieved. That interpretation makes it possible, in principle, to assess the implications of a plan for a Natura 2000 site in view of the site’s conservation objectives in accordance with the first sentence of Article 6(3) of the Habitats Directive or to agree to it as an authority in accordance with the second sentence of Article 6(3).

90. Although the term ‘plan’ is thereby given a very broad meaning, that is specifically why it allows the objective of Article 6(3) of the Habitats Directive to be achieved, as that provision is intended to prevent in an effective manner adverse effects on Natura 2000 sites as a result of plans or projects.<sup>32</sup> That

<sup>30</sup> See judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:C:2018:882, paragraphs 69 to 72).

<sup>31</sup> See judgments of 18 January 1984, *Ekro* (327/82, EU:C:1984:11, paragraph 11); of 11 July 2006, *Chacón Navas* (C-13/05, EU:C:2006:456, paragraph 40); and of 8 April 2025, *EPPO (Judicial review of procedural acts)* (C-292/23, EU:C:2025:255, paragraph 51).

<sup>32</sup> Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 58); of 17 April 2018, *Commission v Poland (Białowieża)*

objective would not be served if the term ‘plan’ (or the term ‘project’) were interpreted as meaning that certain effects – for which humans are responsible – should not be assessed. That objective is also reflected in the fact that most of the original language versions of the provision cover ‘all’<sup>33</sup> plans and projects. It is not necessary, however, to make a sharp distinction between the terms ‘plan’ and ‘project’, at least for the purposes of Article 6(3) of the Habitats Directive, as the same legal consequences are associated with both terms.

91. Accordingly, the general approval of the application of increased amounts of nitrogen by farms is a plan within the meaning of Article 6(3) of the Habitats Directive, since it includes, as an objective, the facilitation of such a practice and, as a means to achieve that objective, the permission to do so.

92. The broad understanding of the term ‘plan’ does not mean, however, that all measures which include objectives and the manner in which they are to be achieved must necessarily be subject to an assessment of implications for the site. Limitations on the obligation to carry out an assessment arise from the need for a sufficiently identifiable risk to the site and from the fact that the assessment of implications must be *appropriate*.

93. *First*, Article 6(3) of the Habitats Directive requires an assessment of implications for the site only when the measure is likely to have a significant effect on a Natura 2000 site, which the Court understands as a probability or risk of such effect.<sup>34</sup> In the light, in particular, of the precautionary principle, such a probability or 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.<sup>35</sup> That assessment must be made in the light, in particular, of the characteristics and specific environmental conditions of the sites concerned by the action programme.<sup>36</sup> Accordingly, the Court required certain land use plans under

*Forest*) (C-441/17, EU:C:2018:255, paragraph 118); and of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:C:2018:882, paragraph 100).

<sup>33</sup> Spanish: ‘cualquier’, Danish: ‘alle’, Greek: ‘κάθε’, English: ‘any’, French: ‘tout’, Italian: ‘qualsiasi’ and Dutch: ‘elk’. Only the German- and Portuguese-language versions do not have any such indefinite pronoun.

<sup>34</sup> Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraphs 41 and 43); of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 111); and of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 119).

<sup>35</sup> Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 44); of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 134); and of 9 September 2020, *Friends of the Irish Environment* (C-254/19, EU:C:2020:680, paragraph 51).

<sup>36</sup> Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 48); of 29 July 2019, *Inter-Environnement Wallonie and*

United Kingdom law to be subject to an assessment because they could have considerable influence on consent for projects and, as a result, on the protected areas concerned.<sup>37</sup>

94. Excessive nitrogen deposition as a result of agricultural fertilisation is likely to have a significant effect on Natura 2000 sites.<sup>38</sup> A relevant factor in that regard is, in particular, the scientific load limits for different habitat types, known as ‘critical loads’.<sup>39</sup> The Commission mentions as examples bog and wetland habitats and the freshwater pearl mussel (*Margaritifera margaritifera*), which react very sensitively to nitrates at levels well below the limit under the Nitrates Directive (50 mg/l). If farms within or around Natura 2000 sites are permitted to apply an increased amount of nitrogen to their land, there is therefore a probability or risk of a significant effect on such sites.

95. *Second*, an assessment of implications can be meaningfully carried out only if the impending adverse effects on Natura 2000 sites are already sufficiently identifiable. Measures which entail an abstract risk of adverse effects on protected areas but do not yet allow the specific effects on individual sites to be identified cannot be assessed in terms of their implications on Natura 2000 sites in view of the sites’ conservation objectives. The Court thus ruled in proceedings brought against Italy that plans must be distinguished from mere preliminary administrative reflection and must carry a degree of precision which calls for an environmental assessment of their effects.<sup>40</sup>

96. The approval of the application of increased amounts of nitrogen does not necessarily result in certain Natura 2000 sites being adversely affected by excessive nitrogen deposition. The risk of such an effect can be established only if it is known which farms utilise the possibility offered by the approval.

97. That does not mean, however, that an assessment of the implications of the approval would not be possible. Rather, it could be assumed that *all* farms fully utilise the possibility offered by the approval and it could be assessed on that basis whether Natura 2000 sites would be affected.

*Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 134); and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 112).

<sup>37</sup> Judgment of 20 October 2005, *Commission v United Kingdom* (C-6/04, EU:C:2005:626, paragraph 55).

<sup>38</sup> See judgment of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:C:2018:882, paragraphs 69 to 72), and my Opinion in those cases (C-293/17 and C-294/17, EU:C:2018:622, points 58 to 64).

<sup>39</sup> See, in that regard, my Opinion in Joined Cases *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:C:2018:622, points 62 to 64 and the case-law cited).

<sup>40</sup> Judgment of 4 October 2007, *Commission v Italy* (C-179/06, EU:C:2007:578, paragraph 41). See also judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 143).

98. Because such an assessment would be possible, but would be very laborious, *third*, the constraint that the assessment of implications should be ‘appropriate’ is relevant. That qualification of the assessment does not appear in all the original language versions of Article 6(3) of the Habitats Directive,<sup>41</sup> but can at least be found consistently in its tenth recital.

99. It would not therefore be appropriate if, in consent procedures carried out in several stages, certain questions were assessed multiple times even though the risk or probability of a significant effect remained unchanged from one stage to the next.<sup>42</sup> It is also appropriate, however, to carry out an assessment as early as possible so that possible effects can be fully taken into account.<sup>43</sup> In particular, it must be prevented that, at early planning stages, decisions are taken which produce adverse environmental effects during the implementation of projects, but can no longer be altered at a later stage.<sup>44</sup>

100. In the present case, it does not appear appropriate, *prima facie*, to assume that all farms utilise the possibility of applying increased amounts of nitrogen and to carry out an assessment of implications on that basis. Such an assessment would be very laborious and also unnecessary based on previous experience relating to utilisation of consent as, according to the request for a preliminary ruling, ‘only’ around 6 500 out of more than 130 000 farms actually benefit from the derogation.

101. The mere possibility of applying increased amounts does not constitute a decision which could no longer be called into question in a subsequent assessment of implications. Instead, it would be sufficient to make only farms wishing to

<sup>41</sup> Spanish: ‘adecuada’, Greek: ‘δεόντως’, English: ‘appropriate’, French: ‘appropriée’, Italian: ‘opportuna’, Dutch: ‘passende’ and Portuguese: ‘adequada’. That term is absent from the Danish- and German-language versions of Article 6(3).

<sup>42</sup> See also Article 4(3), Article 5(2) and Article 11(2) of the SEA Directive and judgments of 22 September 2011, *Valčiukienė and Others* (C-295/10, EU:C:2011:608, paragraph 62); of 10 September 2015, *Dimos Kropias Attikis* (C-473/14, EU:C:2015:582, paragraph 58); and of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 152).

<sup>43</sup> See Article 6(2) of the SEA Directive, Article 6(2) and (4) of the EIA Directive and Article 2(2) of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17), as well as my Opinion in Joined Cases *Comune di Corridonia and Others* (C-196/16 and C-197/16, EU:C:2017:249, point 26). See also judgment of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 143).

<sup>44</sup> See, with regard to the SEA Directive, judgment of 9 March 2023, *An Bord Pleanála and Others (Site of St Teresa’s Gardens)* (C-9/22, EU:C:2023:176, paragraphs 57 and 58), and my Opinions in Joined Cases *Terre wallonne and Inter-Environnement Wallonie* (C-105/09 and C-110/09, EU:C:2010:120, point 32) and in *CFE and Terre wallonne* (C-43/18 and C-321/18, EU:C:2019:56, point 84).

apply more nitrogen subject to a preliminary assessment to determine whether this gives rise to a probability or risk of a significant effect on Natura 2000 sites. If that could not be ruled out, particularly in view of geographical conditions and the conservation objectives of potentially affected Natura 2000 sites, a full assessment would be required, as a result of which the competent authorities might have to refuse utilisation of the derogation.

102. On account of the cumulative effect of the application of nitrogen,<sup>45</sup> it is necessary, however, to undertake a joint assessment of farms from which the release of nitrogen may lead to deposition in a certain Natura 2000 site. Otherwise, there would be a risk that farms which were assessed first would exhaust the acceptable amount of nitrogen and farms assessed subsequently would be left with nothing. In addition, parallel but separate assessments could result in too much nitrogen being permitted.

103. Ireland was possibly entitled to assume, when approving increased amounts of nitrogen for the first time on the basis of its implementation of the Habitats Directive, that such an assessment of individual farms would be conducted. However, experience with earlier action programmes now precludes that assumption. According to the request for a preliminary ruling, the application of increased amounts of nitrogen by individual farms has never been made subject to an assessment under Article 6(3). Nor does Ireland's Fifth Nitrates Action Programme contain any indication that that provision or the Irish implementing rules would have to be complied with in relation to the application of increased amounts of nitrogen. Accordingly, at the hearing, Ireland acknowledged that no assessment at farm level has taken place thus far and announced that the competent authorities would work to ensure compliance with Article 6(3) in future.

104. As long as the Irish authorities have not taken any measures to that effect, however, farms will apply to the land increased amounts of nitrogen on the basis of the approval granted in the action programme. Furthermore, in the absence of any individual or group assessment, reasonable scientific doubt still remains that adverse effects on Natura 2000 sites as a result of nitrogen deposition are precluded in the event of increased application to the land.

105. Consequently, the measure approving such application to the land may not be adopted without an assessment of implications pursuant to Article 6(3) of the Habitats Directive.

106. Ireland rightly asserts that I have previously maintained that it is not evident from the Nitrates Directive that an action programme necessarily influences the development consent of projects likely to have significant effects

<sup>45</sup> See my Opinion in Joined Cases *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:C:2018:622, points 41 to 44).

on areas of conservation.<sup>46</sup> That remark was, however, also clearly still based on the assumption – which has been refuted by the request for a preliminary ruling in the present case – that the competent national authorities assess on a case-by-case basis the measures covered by the action programme pursuant to Article 6(3) of the Habitats Directive.

107. Moreover, an action programme which merely implements the requirements of the Nitrates Directive – for example, by setting the maximum amount of nitrogen to be applied under that directive – differs from a derogation which approves an increased amount of nitrogen. The former is a statutory limitation of adverse environmental effects. The latter permits measures which have greater adverse effects on the environment than is provided for by law.

108. Only for the sake of completeness, it should be noted that the application of nitrogen within the scope of the maximum amount provided for in the Nitrates Directive may also necessitate an assessment of implications in an individual case. That maximum amount was not set having regard to the much lower load limits of habitat types and species present in the protected areas.<sup>47</sup> If those limits are exceeded, there is a risk of significant effects on Natura 2000 sites.

## **2. *Object of the assessment of implications***

109. Under the second sentence of Article 6(3) of the Habitats Directive, the competent national authorities may agree to a plan, in this case the action programme, only after having ascertained, in the light of the conclusions of the assessment of the implications for the site, that the plan will not adversely affect the integrity of any Natura 2000 site. According to settled case-law, they may make that ascertainment only where reasonable scientific doubt is ruled out that no such adverse effects will occur.<sup>48</sup>

110. The assessment of implications cannot therefore have lacunae and must contain complete, precise and definitive conclusions capable of removing all reasonable scientific doubt as to the effects of the plans or the projects proposed on the protected site concerned.<sup>49</sup> It must identify, in the light of the best

<sup>46</sup> See my Opinion in Joined Cases *Terre wallonne and Inter-Environnement Wallonie* (C-105/09 and C-110/09, EU:C:2010:120, point 92).

<sup>47</sup> See above, point 94.

<sup>48</sup> Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 59); of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 120); and of 15 June 2023, *Eco Advocacy* (C-721/21, EU:C:2023:477, paragraph 38).

<sup>49</sup> Judgments of 24 November 2011, *Commission v Spain* (C-404/09, EU:C:2011:768, paragraph 100); of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 139); of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:C:2018:882, paragraph 98); and of 15 June 2023, *Eco Advocacy* (C-721/21, EU:C:2023:477, paragraph 39).

scientific knowledge in the field, all the aspects of the plan or the project which can, either by themselves or in combination with other plans or projects, affect the conservation objectives of the sites concerned.<sup>50</sup>

111. The need for an assessment of the implications of the action programme is based on reasonable scientific doubt as to whether Natura 2000 sites will not be affected by nitrogen deposition as a result of the increased application of nitrogen.<sup>51</sup>

112. The assessment of implications must therefore seek to remove such doubt. It must examine whether the increased application of nitrates will result in the conservation objectives of Natura 2000 sites being undermined as a result of nitrate deposition.

### **3. *Interim conclusion***

113. Having regard to the Habitats Directive, the answer to the first two questions in Case C-531/24 is therefore that an action programme under Article 5 of the Nitrates Directive which permits all farms in a Member State, under certain conditions, to apply to the land increased amounts of nitrates must be examined, in the context of the establishment of the programme of measures under Article 11 of the Water Framework Directive and under Article 6(3) of the Habitats Directive, in order to determine whether any reasonable scientific doubt is ruled out that such application will adversely affect the integrity of Natura 2000 sites as a result of nitrogen deposition. There is no need to carry out such an assessment, however, if it is ensured that utilisation of that possibility by individual farms is assessed pursuant to Article 6(3).

### **C. Strategic environmental assessment**

114. The first to fourth questions and the seventh and eighth questions in Case C-531/24 and both questions in Case C-895/24 concern the application of the SEA Directive. The first four questions in Case C-531/24, going beyond the issues already raised, ask whether the approval of an increased application of nitrogen in the context of the action programme required a strategic environmental assessment, which included in particular the effects on Natura 2000 sites and on the objectives of Article 4 of the Water Framework Directive (see 1). By the seventh question in Case C-531/24, the High Court wishes to ascertain how measures for monitoring environmental effects are to be treated (see 2). The eighth question in Case C-531/24 and the first question in Case C-895/24 concern

<sup>50</sup> Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 54); of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 113); and of 15 June 2023, *Eco Advocacy* (C-721/21, EU:C:2023:477, paragraph 38).

<sup>51</sup> See above, point 94.

the treatment of material assets (see 3). The second question in Case C-895/24 relates to the assessment of alternatives (see 4).

### ***1. First to fourth questions in Case C-531/24***

115. First of all, in order to answer the first to fourth questions in Case C-531/24, it must be explained why the approval of the application to the land of an increased amount of nitrogen requires a strategic environmental assessment in which the effects on the objectives of Article 4 of the Water Framework Directive and on Natura 2000 sites must be examined.

116. The approval comes under the definition of plans and programmes in Article 2(a) of the SEA Directive, since it was subject to adoption by the Irish Government through a legislative procedure and was required by the Nitrates Directive.

117. The approval is part of the action programme under the Nitrates Directive, which, as a whole, requires a strategic environmental assessment pursuant to Article 3(2)(a) of the SEA Directive because it sets a framework for projects under the EIA Directive.<sup>52</sup> Specifically in relation to the approval, moreover, an obligation to carry out an assessment follows from Article 3(2)(b) because, as has already been explained,<sup>53</sup> the approval, at least in the present case,<sup>54</sup> required an assessment of its implications pursuant to Article 6(3) of the Habitats Directive in view of its possible effects on Natura 2000 sites.

118. The environmental report for a strategic environmental assessment must, under Article 5(1) of the SEA Directive, identify, describe and evaluate, in particular, the likely significant effects on the environment of implementing the plan or programme. These include, under Annex I(d), any existing environmental problems which are relevant to the plan or programme. Account must be taken, in particular, of problems relating to any areas of a particular environmental importance, such as Natura 2000 sites designated pursuant to the Birds Directive and the Habitats Directive. Furthermore, under point (e), the environmental protection objectives which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation must be described. Under point (f), the information to be provided also includes the likely significant environmental effects, including on issues such as, in particular, biodiversity, fauna, flora and water.

<sup>52</sup> Judgment of 17 June 2010, *Terre wallonne and Inter-Environnement Wallonie* (C-105/09 and C-110/09, EU:C:2010:355, paragraph 54).

<sup>53</sup> See above, points 86 to 105.

<sup>54</sup> See above, points 103 and 104, with regard to the appropriateness of the assessment in relation to the approval.

119. Accordingly, the abovementioned contents of the assessment of compatibility with the objectives of Article 4 of the Water Framework Directive<sup>55</sup> and the assessment of implications under Article 6(3) of the Habitats Directive<sup>56</sup> had to be addressed in the environmental report. If those assessments were absent, the environmental report was incomplete.

120. That environmental report had to be made the basis for the public participation under Article 6 of the SEA Directive and, under Article 8, the report and the opinions had to be taken into account during the adoption of the derogation. Those steps would also have been defective if the environmental report was incomplete.

121. In summary, the approval of an increased application of nitrogen by farms in the context of an action programme under the Nitrates Directive requires an environmental assessment under the SEA Directive in which the effects of such approval on the objectives of Article 4 of the Water Framework Directive and on Natura 2000 sites are identified, described and evaluated.

**2. *Seventh question in Case C-531/24 – monitoring measures in the environmental report***

122. Article 10(1) of the SEA Directive provides that Member States must monitor the significant environmental effects of the implementation of plans and programmes in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action. By the seventh question in Case C-531/24, the High Court wishes to know whether the environmental report must include a description of the measures envisaged in sufficient detail to demonstrate that Article 10 will be complied with (see a), including details of how this monitoring will occur, when it will be done, and/or how the monitoring will be used (see b), and how any identified unforeseen adverse environmental effects will be addressed (see c).

**(a) *Description of monitoring measures which satisfy the requirements of Article 10 of the SEA Directive***

123. Under the second sentence of Article 5(1) of the SEA Directive, the information to be given in the environmental report is referred to in Annex I. That information includes, under Annex I(i), a description of the measures envisaged concerning monitoring in accordance with Article 10.

124. Since Annex I(i) of the SEA Directive requires only the description of the measures envisaged concerning monitoring, it could be assumed that the

<sup>55</sup> See above, points 62 to 70.

<sup>56</sup> See above, points 109 to 112.

environmental report does not have to include any such information if measures are not (yet) envisaged.

125. Ireland rightly maintains, however, that the information referred to in Annex I of the SEA Directive is to be provided subject to Article 5(2) and (3). Under Article 5(2), the environmental report must include the information that may *reasonably* be required. It must take into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

126. Ireland is therefore correct in asserting that Member States have a degree of discretion as to the information regarding monitoring measures which they provide in the environmental report.

127. However, at the same time, Article 5(2) of the SEA Directive shows the limits of that discretion, the monitoring of which is a matter for national courts.<sup>57</sup> The report does not have to include any more information than may reasonably be required, but also it may not include any less information.

128. It may (and must) however be reasonably required that the environmental report is submitted only after the competent authorities have envisaged the necessary measures to comply with Article 10 of the SEA Directive. Indeed, Article 9(1)(c) provides that the monitoring measures under Article 10 are to be decided with the adoption of the plan or programme. Annex I(i) is thus founded on the assumption that such measures are envisaged and it provides for that information to be given, even though, strictly speaking, that does not constitute identification, description or evaluation of environmental effects.

129. A further factor in relation to the action programme at issue and the approval of the application to the land of an increased amount of nitrogen is that Ireland did not adopt it for the first time, but for the fifth time. Appropriate monitoring measures should therefore have already existed. It is not clear why the continuation of those measures could not be described in the environmental report.

130. Furthermore, there should also be monitoring measures under Article 8 of, and Annex V to, the Water Framework Directive which can be applied pursuant to Article 10(2) of the SEA Directive for the monitoring of the effects of the measures at issue. If that had been intended, Ireland should have referred to those measures.

<sup>57</sup> See judgments of 16 September 1999, *WWF and Others* (C-435/97, EU:C:1999:418, paragraph 71), and of 28 February 2008, *Abraham and Others* (C-2/07, EU:C:2008:133, paragraphs 38 and 39).

131. Accordingly, the environmental report must, under Article 5 of and Annex I(i) to, and Article 10 of, the SEA Directive, describe the measures for monitoring the significant effects of the implementation of the action programme and, in particular, of the approval of the application of increased amounts of nitrogen.

**(b) Precision of information on monitoring measures**

132. The High Court would also like to know to what extent that description must include the manner in which monitoring will be conducted.

133. The description of the monitoring measures envisaged in the environmental report is intended to enable those measures to be discussed in the context of the public participation under Articles 6 and 7 of the SEA Directive. The information in the environmental report must therefore be in such detail that the public is able to assess whether the measures envisaged are sufficient to satisfy the requirements of Article 10.

134. Article 10 of the SEA Directive requires *all* the significant environmental effects of the implementation of plans and programmes to be monitored, that is to say, all the effects which have already been identified, described and evaluated in the environmental assessment.

135. It seems to be obvious in the main proceedings that, in particular, the effects of the application of increased amounts of nitrogen by farms on the amounts of nitrates in surface waters and Natura 2000 sites require monitoring.

136. Furthermore, the need for monitoring of Natura 2000 sites does not depend on whether an assessment of implications under Article 6(3) of the Habitats Directive is unnecessary in respect of the general approval of the application of nitrates in the action programme on the ground that it is ensured that the application is assessed at the level of individual farms.<sup>58</sup> The fact that it is more appropriate to carry out that assessment at farm level does not justify disapplying Article 10 of the SEA Directive. Rather, the monitoring required under that provision is an important check whether the assessments at farm level have produced the correct results.

137. Consequently, the monitoring measures must be described in the environmental report in such detail that compliance with Article 10 of the SEA Directive can be assessed, which includes, in respect of the approval of the application of increased amounts of nitrogen by farms, the effects on the amounts of nitrates in surface waters and Natura 2000 sites.

<sup>58</sup> See above, points 100 to 104.

**(c) Addressing unforeseen adverse environmental effects**

138. Lastly, the High Court asks whether it must also be described in the environmental report how any identified unforeseen adverse environmental effects will be addressed.

139. The Commission correctly asserts that the SEA Directive does not include any requirements in that regard. Article 10 merely seeks to enable Member States to undertake appropriate remedial action.

140. It can, however, result from other rules whether Member States must undertake remedial action. As has already been explained, under Article 11(5) of the Water Framework Directive, they must adjust the programme of measures where monitoring data show that the objectives of Article 4 are unlikely to be achieved.<sup>59</sup> In addition, Article 6(2) of the Habitats Directive requires Member States to avoid the deterioration of natural habitats and the habitats of species in Natura 2000 sites.

141. Nevertheless, it can be determined what measures are to be taken where unforeseen adverse environmental effects occur only in the light of those effects. Different measures will often be conceivable and the competent authorities of the Member States therefore have discretion in making a choice.

142. That is also possible if higher amounts of nitrates than expected occur in surface waters or Natura 2000 sites. A reduction of nitrogen contributions can possibly also be achieved if the Member State reduces releases of nitrates by sources other than agriculture.

143. In the context of the environmental assessment, it is not therefore necessary to define how unforeseen adverse environmental effects will be addressed.

**3. Eighth question in Case C-531/24 and first question in Case C-895/24 – material assets**

144. The eighth question in Case C-531/24 and the first question in Case C-895/24 concern the consideration of ‘material assets’ in the environmental assessment. The background to those questions is the fact that regard was had in the environmental assessment to the economic importance of agriculture in giving preference to the approval of the application of increased amounts of nitrogen over more environmentally friendly options. An Taisce doubts whether that is compatible with the SEA Directive.

145. The basic premiss of the view taken by An Taisce is correct. Article 5 of, and Annex I(f) to, the SEA Directive do provide that the environmental report must identify, describe and evaluate the effects on material assets. However,

<sup>59</sup> See above, point 67.

according to the introduction to Annex I(f), that means environmental effects on material assets. Furthermore, in connection with the EIA Directive, the Court has stressed that it is permitted to take into account only those effects on material assets which, by their very nature, are also likely to have an impact on the environment. Effects on the value of those assets, by contrast, are immaterial in the context of the application of the EIA Directive.<sup>60</sup>

146. In respect of the approval of the application to the land of increased amounts of nitrogen, it could therefore be considered, for example, that fisheries are adversely affected if there is eutrophication of waters as a result of that practice. It is also conceivable that any increases in yield as a result of fertilisation should be taken into account as environmental effects.

147. On the other hand, the fact that farms have to apply nitrogen-containing manure because it occurs in livestock farming,<sup>61</sup> such that stricter limitations on application would require a reduction in livestock numbers, is not an environmental effect of the approval, but an economic consequence of any possible limitation.

148. That nevertheless only means that that aspect does not *have* to be identified, described and evaluated in the environmental report pursuant to Article 5 of and Annex I(f) to the SEA Directive.

149. Those provisions do not, however, prohibit considerations relating to the economic importance of agriculture being taken into account in the environmental assessment. On the contrary, it is even necessary to make statements in that regard when choosing between alternatives if such considerations are among the reasons why certain measures were preferred over others.

150. Under Article 9(1)(b) of the SEA Directive, when a plan or programme is adopted, a statement summarising in particular the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with, must be made available to the public and the authorities involved.

151. The term ‘material assets’ in Annex I(f) to the SEA Directive thus covers only material assets which are influenced by the environmental effects of a plan or programme. Nevertheless, the societal impacts of agricultural activities, the impact of the plan or project on the agricultural industry and on the output and income of farmers, the sustainability of the agricultural industry in the Member State concerned, the food supply chain, and the employment of a significant portion of the population may be taken into account in the environmental assessment in order to justify the choice between different alternatives pursuant to Article 9(1)(b) of the Directive.

<sup>60</sup> Judgment of 14 March 2013, *Leth* (C-420/11, EU:C:2013:166, paragraphs 25 and 30).

<sup>61</sup> See, by way of illustration, judgment of 3 October 2013, *Brady* (C-113/12, EU:C:2013:627).

#### ***4. Second question in Case C-895/24 – assessment of alternatives in the environmental report***

152. The second question in Case C-895/24 is intended to clarify whether Article 5(1) and/or Article 9(1)(b) of, and Annex I(h) to, the SEA Directive have the effect that alternatives must be identified, described and evaluated in a comparable way for the purposes of the assessment under Article 3(1) of that directive.

153. In answering that question, I will largely draw from my reasoning in the Opinion in *Friends of the Irish Environment (Project Ireland 2040)*,<sup>62</sup> which the Court did not address in its judgment in that case.<sup>63</sup>

154. Under Article 5(1) of the SEA Directive, in the environmental report the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are to be identified, described and evaluated.

155. Consequently, the reasonable alternatives must be addressed in the environmental report. That provision could, however, be interpreted to the effect that likely significant effects on the environment must be identified, described and evaluated only for the preferred option. That is also supported by the fact that the other provisions of the SEA Directive relate to the environmental assessment of the plan or programme concerned and not the assessment of reasonable alternatives.

156. However, at least the Dutch version of Article 5(1) of the SEA Directive requires that the significant effects on the environment of the alternatives must also be identified, described and evaluated. In any case, the *evaluation* of alternatives provided for in all the language versions *can* also include their effects on the environment, which would in turn require those effects to be identified and described.

157. Such consideration of the effects on the environment of alternatives is consistent with the objective of the SEA Directive. According to recital 4 and Article 1, the environmental assessment is intended to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes. An assessment of alternatives without taking into account their effects on the environment would run counter to that objective.

158. Moreover, in choosing between different alternatives, taking environmental considerations into account is of particular importance. The SEA Directive was adopted because it was often found with development consent for projects under

<sup>62</sup> Case C-727/22, EU:C:2024:266, points 43 to 67.

<sup>63</sup> Judgment of 4 October 2024 (C-727/22, EU:C:2024:825).

the EIA Directive that there were already stipulations which excluded certain options, even though they had fewer adverse effects on the environment.<sup>64</sup> The environmental assessment is therefore intended to ensure that such stipulations are adopted only if there is at least awareness of alternatives which are more favourable to the environment.

159. Consequently, the effects on the environment of the reasonable alternatives must also be identified, described and evaluated in the environmental report. In that regard, Article 5(1) of the SEA Directive mentions the objectives and the geographical scope of the plan or programme as points of reference. Alternatives which cannot achieve the objectives or fall outside the geographical scope are generally not reasonable and do not require further assessment.

160. At the same time, the competent authorities may not, however, limit the scope of the assessment excessively by excluding potentially reasonable alternatives in defining the objectives or the geographical scope.

161. That idea is also enshrined in Article 5(2) of the SEA Directive, under which it is necessary to take into account the stage of the plan or programme in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment. For example, in a plan to construct a highway it could be asked whether a rail connection must be examined as a reasonable alternative. Such assessment is unnecessary, however, if the basic decision to implement the road construction project follows from a higher-level plan in which the two alternatives have already been compared.

162. As far as the information on the identification of reasonable alternatives is concerned, Annex I(h) of the SEA Directive makes clear that the information to be provided in the environmental report must include only an *outline* of the reasons for selecting the alternatives dealt with. The outline must show why the alternatives dealt with are considered reasonable, while other alternatives are not, and thus how the reasonable alternatives have been identified.

163. That notion of an outline does not, however, refer to the description and evaluation of reasonable alternatives. It cannot therefore be relied upon in order to limit the scope of that information. Rather, Article 5(2) of the SEA Directive refers to the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme and the other factors mentioned in point 161 above.

164. One of the most important criteria in relation to the contents of the environmental report is not expressly referred to, however: the presentation of the

<sup>64</sup> Judgment of 9 March 2023, *An Bord Pleanála and Others (Site of St Teresa's Gardens)* (C-9/22, EU:C:2023:176, paragraphs 57 and 58), and my Opinion in Joined Cases *Terre wallonne and Inter-Environnement Wallonie* (C-105/09 and C-110/09, EU:C:2010:120, point 32), each with further references.

effects on the environment must in particular show that the plan or programme adopted is compatible with the applicable substantive requirements of environmental law.<sup>65</sup> Effects on the environment which infringe environmental legislation would be significant in any case.<sup>66</sup>

165. Contrary to the concern raised by Ireland, that does not mean that the compatibility of all alternatives with all conceivable environmental requirements should be assessed. Rather, the assessment must start by determining whether the alternative ultimately adopted is compatible with those requirements.

166. In the present case, it must be considered, in particular, whether the approval of increased amounts of nitrogen is compatible with the Nitrates Directive, the Water Framework Directive and the Habitats Directive. If, however, the approval were based on a derogation pursuant to Article 4(7) of the Water Framework Directive and/or Article 6(4) of the Habitats Directive, the criteria set out therein for choosing between different alternatives would have to be applied. With regard to Article 6(4) of the Habitats Directive, the Court has already ruled that adverse effects on the integrity of Natura 2000 sites may be permitted only if – inter alia – no alternative solution exists which is less disadvantageous for the integrity of the site concerned.<sup>67</sup>

167. Conversely, the SEA Directive does not itself lay down any substantive criteria for selecting alternatives.<sup>68</sup> It does not therefore require the competent authorities to select the option which has the least adverse effects on the environment. As has already been stated,<sup>69</sup> the environmental assessment is intended only to ensure that the selection is made *taking into account* possible significant effects on the environment.

168. In so far as the choice between different alternatives does not depend on substantive legal requirements under other rules, two further factors are therefore relevant, above all, in determining the information that may reasonably be required, in addition to the indications in Article 5(2) of the SEA Directive. First, that information must allow a comparison to be made between the preferred

<sup>65</sup> See, to that effect, with regard to the EIA Directive, judgments of 28 May 2020, *Land Nordrhein-Westfalen* (C-535/18, EU:C:2020:391, paragraph 81), and of 24 February 2022, *Namur-Est Environnement* (C-463/20, EU:C:2022:121, paragraph 52).

<sup>66</sup> See my Opinions in *Mellor* (C-75/08, EU:C:2009:32, points 54 and 55) and in *Namur-Est Environnement* (C-463/20, EU:C:2021:868, point 45) and, to that effect, judgment of 9 March 2023, *Sdruzhenie 'Za Zemyata – dostap do pravosadie' and Others* (C-375/21, EU:C:2023:173, paragraph 50).

<sup>67</sup> Judgment of 16 July 2020, *WWF Italia Onlus and Others* (C-411/19, EU:C:2020:580, paragraph 43).

<sup>68</sup> See, with regard to the EIA Directive, judgment of 14 March 2013, *Leth* (C-420/11, EU:C:2013:166, paragraph 46).

<sup>69</sup> See above, point 157.

option and the alternatives in the light of the arguments that are relevant to the decision. Second, the information must allow the relevant environmental concerns to be taken into account in that comparison.

169. If the choice between the alternatives is based primarily on economic considerations, for example, the economic advantages and disadvantages of all reasonable alternatives must therefore be identified and described at least to the extent that it is clear how the different options relate to one another. However, it must also be clear whether economic advantages are associated with adverse effects on the environment which would be avoided with other options. Otherwise those environmental concerns might not be taken into account adequately in choosing between the alternatives dealt with.

170. Those requirements do not prevent the environmental assessment of the preferred option being more detailed than the environmental assessment of the other alternatives dealt with, including with regard to economic effects. This is to be expected, in particular, where the advantages of the preferred option clearly outweigh those of the alternatives dealt with, even taking into account the effects on the environment. In that case, detailed information on the alternatives dealt with would have no intrinsic function, whereas information on the effects on the environment of the preferred option is important for the subsequent implementation of the plan or programme.

171. If, however, the advantages and disadvantages of the different options have similar weight, it becomes more difficult to justify the selection. In that case, it may become necessary to provide more detailed information on the reasonable alternatives in the environmental report, even if this involves considerable effort. That holds a fortiori if the assessment of alternatives is, at the same time, substantive in nature because, for example, it serves the application of a derogation like Article 6(4) of the Habitats Directive or Article 4(7) of the Water Framework Directive.

172. The answer to the second question in Case C-895/24 should therefore be that, under Article 5(1) and (2) of the SEA Directive, the environmental report must contain the information on the reasonable alternatives to the adopted plan or programme dealt with which is necessary

- to determine compliance with the requirements under other rules relating to the assessment of alternatives and
- to be able to understand how the effects on the environment have been taken into account in the decision to select the adopted plan or programme in comparison with the alternatives dealt with.

**D. Ninth question in Case C-531/24 – effects on the authorisation by the Commission of the application to the land of increased amounts of nitrates**

173. By the ninth question in Case C-531/24, the High Court wishes to know whether any infringements of the Habitats Directive, the Water Framework Directive and/or the SEA Directive established in connection with the other questions have the consequence that Commission Implementing Decision (EU) 2022/696 is invalid.

174. At the hearing, the parties unanimously put forward the correct view, however, that that question is premature at the present time. At the moment, the infringements of EU law addressed in the question do arise as a possibility, but have not been established as yet. The referring court must examine, in the light of the answers given by the Court to the other questions referred and on the basis of further submissions by the parties, whether Ireland actually infringed those directives.

175. Ireland did acknowledge at the hearing that no assessment of the implications of the application of increased amounts of nitrogen by individual farms has been carried out thus far, in breach of Article 6(3) of the Habitats Directive. At the same time, however, that Member State vehemently denied that the approval of those increased amounts should be assessed in connection with the action programme.

176. Accordingly, the findings required in order to answer the ninth question in Case C-531/24 are not yet available.

177. That question is thus hypothetical at the present time and therefore inadmissible.

178. Merely for the sake of completeness, it should be noted that An Taisce could have raised any doubts as to the lawfulness of Implementing Decision (EU) 2022/696 by means of a request for internal review under Article 10 of the Aarhus Regulation.<sup>70</sup>

<sup>70</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13), as amended by Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 (OJ 2021 L 356, p. 1).

An Taisce has filed such a request against Commission Implementing Decision (EU) 2026/67 of 22 December 2025 amending Implementing Decision (EU) 2022/696 granting a derogation requested by Ireland pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (C/2025/9263) (IR/2026/359859).

## E. Maintenance of effects

179. In the event that the referring court were to conclude that Ireland adopted the action plan wholly or in part in breach of the provisions under examination in the present case, certain parties suggest that its effects be maintained.

180. In principle, the defects in the various environmental assessments could mean that the decision based on them must be suspended or repealed since, on the basis of the principle of sincere cooperation laid down in Article 4(3) TEU, Member States must eliminate the consequences of a breach of EU law.<sup>71</sup> The Court expressly made a finding to that effect with regard to the complete failure to carry out a required strategic environmental assessment<sup>72</sup> and required it, implicitly at least, with regard to defects in a strategic environmental assessment.<sup>73</sup>

181. It also appears impossible to avoid that legal consequence on the ground that it is established that the abovementioned defects could not alter the outcome of the decision-making process.<sup>74</sup> According to the available information, it is unlikely that the approval of the application of increased amounts of nitrogen would be lawful if Article 6(4) of the Habitats Directive and at least one of the derogations under Article 4 of the Water Framework Directive did not apply. The necessary overriding interests cannot, however, be assumed for every farm in Ireland which is able to rely on the approval.

182. Since the suspension or repeal of a national provision which is contrary to EU law may have adverse consequences, the Court has nevertheless permitted derogations from the rule that national measures adopted in breach of EU law must be repealed, as the Commission also points out. Having initially set four conditions for such derogation,<sup>75</sup> it rightly stripped these down in its judgment in *A and Others (Wind turbines at Aalter and Nevele)* to their core elements, namely: maintenance must first be necessary to safeguard an overriding interest, for example the continued transposition of an act of EU law concerning the protection

<sup>71</sup> Judgments of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103, paragraph 43), and of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)* (C-24/19, EU:C:2020:503, paragraph 83).

<sup>72</sup> Judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103, paragraphs 43 and 44)

<sup>73</sup> Judgment of 28 July 2016, *Association France Nature Environnement* (C-379/15, EU:C:2016:603, paragraphs 25 to 27 and 30 et seq.).

<sup>74</sup> See, with regard to the environmental impact assessment under the EIA Directive, judgment of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraphs 53 and 54).

<sup>75</sup> Judgments of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103, paragraph 63), and of 28 July 2016, *Association France Nature Environnement* (C-379/15, EU:C:2016:603, paragraph 43).

of the environment<sup>76</sup> or the prevention of a significant disruption to the Member State's energy supply.<sup>77</sup> Therefore, in particular, the derogation, second, may last only as long as is necessary to remedy defects in an environmental assessment by carrying out a subsequent assessment.<sup>78</sup>

183. On the basis of those criteria, there would be good reason to maintain the effects of the action plan. Its repeal would create a legal vacuum which would be incompatible with Ireland's obligation to adopt measures to implement the Nitrates Directive.<sup>79</sup> All restrictions on the application of nitrates by farms contained in the action plan would cease to apply until further notice without being replaced. That could also undermine the objectives of the Water Framework Directive and the Habitats Directive.

184. Nevertheless, the considerations expressed in this Opinion do not concern the action plan as a whole, but rather the approval of the application of increased amounts of nitrogen alone. That approval can be separated from the rest of the action plan, as is also evidenced by the fact that it was not granted until a few months after the other measures. If it was repealed, the other restrictions on the application of nitrates would continue to be valid and the upper limit of 170 kg nitrogen per hectare per year<sup>80</sup> would be restored.

185. As far as can be seen, the only obstacle to that conclusion would be economic disadvantages to farms which benefit from the derogation in order to apply increased amounts of nitrogen. Those farms would either have to reduce their livestock numbers or find other buyers for manure which they could not apply to previously used land. Although it does seem doubtful that that interest would have as much weight as the already recognised interest in a Member States' energy supply,<sup>81</sup> the national court would ultimately have to assess whether it would be sufficient to justify the temporary maintenance of the approval.

<sup>76</sup> Judgment of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)* (C-24/19, EU:C:2020:503, paragraph 90).

<sup>77</sup> Judgments of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 179), and of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)* (C-24/19, EU:C:2020:503, paragraph 92).

<sup>78</sup> Judgment of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)* (C-24/19, EU:C:2020:503, paragraph 94).

<sup>79</sup> Judgment of 17 June 2010, *Terre wallonne and Inter-Environnement Wallonie* (C-105/09 and C-110/09, EU:C:2010:355, paragraph 56).

<sup>80</sup> Article 20 of the Irish European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022.

<sup>81</sup> Judgments of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 179), and of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)* (C-24/19, EU:C:2020:503, paragraph 92).

## V. Conclusion

186. I therefore propose that the Court answer the two requests for a preliminary ruling as follows:

- (1) In the context of an action programme under Article 5 of Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources, a Member State may approve the application to the land of an increased amount of nitrogen in agriculture only after it has assessed and determined, on the basis of Articles 5 and 8 of Directive 2000/60/EC establishing a framework for Community action in the field of water policy in particular, that the objectives of Article 4 of that directive are not thereby prejudiced. There is no need for a Member State to carry out such an assessment, however, if it is ensured that utilisation of that possibility by individual farms is assessed. If an assessment was to show that an increased application is incompatible with the prohibition of deterioration or the requirement for improvement under Article 4(1), the objectives of Article 4 would be guaranteed only if one of the derogations also provided for therein was applicable.
- (2) An action programme under Article 5 of Directive 91/676 which permits all farms in a Member State, under certain conditions, to apply to the land increased amounts of nitrates must be examined, in the context of the establishment of the programme of measures under Article 11 of Directive 2000/60 and under Article 6(3) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, in order to determine whether any reasonable scientific doubt is ruled out that such application will adversely affect the integrity of Natura 2000 sites as a result of nitrogen deposition. There is no need to carry out such an assessment, however, if it is ensured that utilisation of that possibility by individual farms is assessed pursuant to Article 6(3).
- (3) The approval of the increased application of nitrogen by farms in the context of an action programme under Directive 91/676 requires an environmental assessment under Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment in which the effects of such approval on the objectives of Article 4 of Directive 2000/60 and on Natura 2000 sites are identified, described and evaluated.
- (4) The environmental report must, under Article 5 of, and Annex I(i) to, and Article 10 of Directive 2001/42, describe the measures for monitoring the significant effects of the implementation of the action programme and, in particular, of the approval of the application of increased amounts of nitrogen. The monitoring measures must be described in the environmental report in such detail that compliance with Article 10 of that directive can be assessed, which includes, in respect of the approval of the application of increased amounts of nitrogen by farms, the effects on the amounts of

nitrites in surface waters and Natura 2000 sites. In the context of the environmental assessment, it is not necessary to define how unforeseen adverse environmental effects will be addressed.

- (5) The term ‘material assets’ in Annex I(f) to Directive 2001/42 covers only material assets which are influenced by the environmental effects of a plan or programme. Nevertheless, the societal impacts of agricultural activities, the impact of the plan or project on the agricultural industry and on the output and income of farmers, the sustainability of the agricultural industry in the Member State concerned, the food supply chain, and the employment of a significant portion of the population may be taken into account in the environmental assessment in order to justify the choice between different alternatives pursuant to Article 9(1)(b) of the Directive.
- (6) Under Article 5(1) and (2) of Directive 2001/42, the environmental report must contain the information on the reasonable alternatives to the adopted plan or programme dealt with which is necessary
  - to determine compliance with the requirements under other rules relating to the assessment of alternatives and
  - to be able to understand how the effects on the environment have been taken into account in the decision to select the adopted plan or programme in comparison with the alternatives dealt with.