

*Defendants at first instance and respondents on appeal:* OJ, Novo Banco SA

### Question referred

Under Regulation (EU) 2015/848 <sup>(1)</sup> of the European Parliament and of the Council, do the courts of a Member State have jurisdiction to open main insolvency proceedings in respect of a citizen whose sole immovable asset is located in that State, while he, along with his family unit, is habitually resident in another Member State where he is in paid employment?

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<sup>(1)</sup> Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ 2015 L 141, p. 192).

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### Reference for a preliminary ruling from the High Court (Ireland) made on 26 March 2019 — Friends of the Irish Environment Limited v An Bord Pleanála

(Case C-254/19)

(2019/C 206/34)

*Language of the case:* English

### Referring court

High Court (Ireland)

### Parties to the main proceedings

*Applicant:* Friends of the Irish Environment Limited

*Defendant:* An Bord Pleanála

### Questions referred

- 1) Does a decision to extend the duration of a development consent constitute the agreement of a project such as to trigger Article 6(3) of Council Directive 92/43/EEC <sup>(1)</sup> of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (hereinafter 'the Habitats Directive')?
- 2) Is the answer to Question (1) above affected by any of the following considerations?
  - a) The development consent (the duration of which is to be extended) was granted pursuant to a provision of national law which did not properly implement the Habitats Directive in that the legislation incorrectly equated an appropriate assessment for the purposes of the Habitats Directive with an environmental impact assessment for the purposes of the EIA Directive (Directive 2011/92/EU <sup>(2)</sup>).
  - b) The development consent as originally granted does not record whether the consent application was dealt with under Stage 1 or Stage 2 of Article 6(3) of the Habitats Directive, and does not contain 'complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed works on the site concerned' as required under Case C-404/09, *Commission v. Spain* <sup>(3)</sup>.

- c) The original period of the development consent has expired, and as a consequence the development consent has ceased to have effect in respect of the entire development. No development works can be carried out pursuant to the development consent pending its possible extension.
- d) No development works were ever carried out pursuant to the development consent.
- 3) In the event that the answer to Question (1) is 'yes', what considerations are the competent authority required to have regard to in carrying out a Stage 1 screening exercise pursuant to Article 6(3) of the Habitats Directive? For example, is the competent authority required to have regard to any or all of the following considerations: (i) whether there are any changes to the proposed works and use; (ii) whether there has been any change in the environmental background, e.g. in terms of the designation of European Sites subsequent to the date of the decision to grant development consent; (iii) whether there have been any relevant changes in scientific knowledge, e.g., more up-to-date surveys in respect of qualifying interests of European Sites? Alternatively, is the competent authority required to assess the environmental impacts of the entire development?
- 4) Is there any distinction to be drawn between (i) a development consent which imposes a time-limit on the period of an activity (operational phase), and (ii) a development consent which only imposes a time-limit on the period during which construction works may take place (construction phase) but, provided that the construction works are completed within that time-limit, does not impose any time-limit on the activity or operation?
- 5) To what extent, if any, is the obligation of a national court to interpret legislation insofar as possible in accordance with the provisions of the Habitats Directive and the Aarhus Convention subject to a requirement that the parties to the litigation have expressly raised those interpretive issues? More specifically, if national law provides two decision-making processes, only one of which ensures compliance with the Habitats Directive, is the national court obliged to interpret national legislation to the effect that only the compliant decision-making process can be invoked, notwithstanding that this precise interpretation has not been expressly pleaded by the parties in the case before it?
- 6) If the answer to Question (2)(a) above is to the effect that it is relevant to consider whether the development consent (the duration of which is to be extended) was granted pursuant to a provision of national law which did not properly implement the Habitats Directive, is the national court required to disapply a rule of domestic procedural law which precludes an objector from questioning the validity of an earlier (expired) development consent in the context of a subsequent application for development consent? Is such a rule of domestic procedural law inconsistent with the remedial obligation as recently restated in Case C-348/15, *Stadt Wiener* <sup>(4)</sup>?

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<sup>(1)</sup> OJ 1992, L 206, p. 7.

<sup>(2)</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).

<sup>(3)</sup> EU:C:2011:768.

<sup>(4)</sup> EU:C:2016:882.

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**Reference for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber) London  
(United Kingdom) made on 26 March 2019 — Secretary of State for the Home Department v O A**

**(Case C-255/19)**

(2019/C 206/35)

*Language of the case: English*

**Referring court**

Upper Tribunal (Immigration and Asylum Chamber) London