Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

12 June 2019*

[Text rectified by order of 4 September 2019]

(Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Decree — Designation of a special area of conservation pursuant to Directive 92/43/EEC — Setting of conservation objectives and provision of certain preventive measures — Concept of 'plans and programmes' — Obligation to carry out an environmental assessment)

In Case C-43/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Council of State, Belgium), made by decision of 12 January 2018, received at the Court on 24 January 2018, in the proceedings

Compagnie d'entreprises CFE SA

v

Région de Bruxelles-Capitale,

THE COURT (First Chamber),

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

Advocate General: J. Kokott,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 13 December 2018,

having considered the observations submitted on behalf of:

– Compagnie d'entreprises CFE SA, by J. van Ypersele de Strihou, avocat,

– Région de Bruxelles-Capitale, by J. Sambon, avocat,

– the Czech Government, by M. Smolek, J. Vláčil and L. Dvořáková, acting as Agents,

* Language of the case: French.

– [As rectified by order of 4 September 2019] Ireland, by M. Browne, G. Hodge and A. Joyce, acting as Agents, and by C. Toland and G. Simons, Senior Counsel, and M. Gray, Barrister-at-Law,

– the European Commission, by C. Hermes, F. Thiran and M. Noll-Ehlers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 January 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(2), (4) and (5) of 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) ('the SEA Directive').

2 The request has been made in proceedings between Compagnie d'entreprises CFE SA ('CFE') and Région de Bruxelles-Capitale (Brussels-Capital Region, Belgium), concerning the validity of the decree of 14 April 2016 of the Government of that region designating Natura 2000 site BE1000001 'La Forêt de Soignes avec lisières et domaines boisés avoisinants et la Vallée de la Woluwe — complexe Forêt de Soignes — Vallée de la Woluwe' ('The Sonian forest together with forest margins and surrounding wooded areas and the Woluwe valley — Sonian forest complex — Woluwe valley') (*Moniteur belge*, 13 May 2016, p. 31558, 'the decree of 14 April 2016').

Legal background

EU law

The SEA Directive

3 Under recital 4 of the SEA Directive:

'Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.'

4 Article 1 of that directive, headed 'Objectives', provides:

'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.'

5 Article 2 of the directive reads as follows:

‘For the purposes of this directive:

(a) “plans and programmes” shall mean plans and programmes, including those co-financed by the European [Union], 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;

(b) “environmental assessment” shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

…’

6 Article 3 of the SEA Directive, headed ‘Scope’, provides:

‘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 [Council] Directive 85/337/EEC [of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 (OJ 2012 L 26, p. 1)], 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 [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)].

…

4. Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this directive.

…’

The Habitats Directive

7 Article 4 of Directive 92/43 ('the Habitats Directive') provides:

'1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction. For aquatic species which range over wide areas, such sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction. Where appropriate, Member States shall propose adaptation of the list in the light of the results of the surveillance referred to in Article 11.

The list shall be transmitted to the Commission, within 3 years of the notification of this directive, together with information on each site. That information shall include a map of the site, its name, location, extent and the data resulting from application of the criteria specified in Annex III (Stage 1) provided in a format established by the Commission in accordance with the procedure laid down in Article 21.

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the five biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory referred to in Article 2(1), the Commission shall establish, in agreement with each Member State, a draft list of sites of Community importance drawn from the Member States' lists identifying those which host one or more priority natural habitat types or priority species.

Member States whose sites hosting one or more priority natural habitat types and priority species represent more than 5% of their national territory may, in agreement with the Commission, request that the criteria listed in Annex III (Stage 2) be applied more flexibly in selecting all the sites of Community importance in their territory.

The list of sites selected as sites of Community importance, identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.

3. The list referred to in paragraph 2 shall be established within 6 years of the notification of this directive.

4. Once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible and within 6 years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.

5. As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).'

8 Article 6(3) of the Habitats Directive provides:

'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the

site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.'

The Nitrates Directive

9 Article 1 of 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) ('the Nitrates Directive') provides:

'This directive has the objective of:

– reducing water pollution caused or induced by nitrates from agricultural sources and

– preventing further such pollution.'

10 Article 5 of that directive provides:

'1. Within a 2-year period following the initial designation referred to in Article 3(2) or within 1 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 4 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.'

Belgian law

11 The ordonnance du 1 mars 2012, relative à la conservation de la nature (order of 1 March 2012 on nature conservation; *Moniteur belge*, 16 March 2012, p. 16017; 'the order of 1 March 2012') supplies the legal basis for the decree of 14 April 2016.

12 Chapter 4 of the order of 1 March 2012, headed 'Natura 2000 sites', contains Articles 40 to 56. Article 44 of that order provides, inter alia:

'Every site of Community importance shall be designated as a Natura 2000 site by Governmental decree within 6 years of the establishment or amendment, by the Commission, of the list of the region's sites of Community importance, having regard to the priorities dictated by the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type of Community interest or a species of Community interest and for the coherence of Natura 2000, and by the threats of degradation or destruction to which those sites are exposed.'

13 Article 47 of the order of 1 March 2012, concerning 'Preventive measures', provides:

'Art. 47 § 1 — Without prejudice to the application of Article 64, it is prohibited, within a Natura 2000 site, to cause the deterioration of natural or species habitats, or to disturb populations of the species covered by the Natura 2000 site conservation objectives.

§ 2 — The Government shall adopt general prohibitions and other preventive measures, without limitation of type, for the benefit of some or all of the Natura 2000 sites, such measures to apply to projects which are not subject to a requirement for a subdivision permit, nor to a requirement for planning permission, nor to a requirement for environmental permit or any of measures referred to in Article 62 § 1, subject to any dispensation provided for in the management plan adopted pursuant to Article 50, or derogation granted pursuant to Article 64 or 85, inside or outside the boundaries of the Natura 2000 sites concerned; this shall include the adoption of ecological quality standards to prevent deterioration of the natural habitats, and significant disturbance to the species, in respect of which the Natura 2000 sites have been designated.'

14 The decree of 14 April 2016 states, in Article 2, that the term 'order' is to be understood as referring to the order of 1 March 2012 on nature conservation.

15 Articles 3 and 4 of the decree of 14 April 2016 designate part of the territory of the Brussels-Capital Region as a 'Natura 2000' site:

'Art. 3 The following is designated as Natura 2000 site BE1000001: "SAC I: The Sonian forest together with forest margins and surrounding wooded areas and the Woluwe valley — Sonian forest complex — Woluwe valley".

The site is subdivided into 28 Natura 2000 stations identified as follows:

…

5° IA.5 Plateau de la Foresterie;

…

Art. 4 The site thus designated covers a surface area of 2 066 ha. Its boundaries are geographically delimited on the maps which have been produced and appear in Annex 1.1.

It includes all the cadastral parcels and parts of cadastral parcels referred to in Annex 2 to this decree and situated in the communes of Uccle, Watermael-Boitsfort, Ville de Bruxelles, Auderghem, Woluwe-Saint-Pierre and Woluwe Saint-Lambert.

The various stations identified in Article 3 are the site management units and are geographically delimited on the maps in Annex 1.1.'

16 Article 15 of the decree of 14 April 2016 provides:

'Art. 15 § 1 This article establishes, pursuant to Article 47 § 2 of [the order of 1 March 2012], general prohibitions for the benefit of the Natura 2000 site designated by this decree.

§ 2 Subject to specific provisions for dispensation or derogation, it is prohibited, as regards projects not requiring any of the permits or consents referred to in Article 47 § 2 of [the order of 1 March 2012]:

(1) to remove, uproot, damage or destroy indigenous plant species, including bryophytes, fungi and lichens, or to destroy or cause degradation or alteration of the vegetation cover;

(2) in woods and forests subject to forest regulations, to fell, uplift or remove dead or hollow trees, whether standing or fallen, except where there is a real and urgent safety risk;

(3) to remove stumps of native non-invasive tree species in forest habitats of Community interest covered by conservation objectives;

(4) in natural habitats of Community interest, to plant trees or shrubs of non-indigenous species, except in connection with the restoration of properties which have been designated or appear on the protected list. This prohibition shall not apply to old varieties of fruit tree, which may be exotic;

(5) to destroy the natural forest margins, to destroy lines of trees, or to remove hedges;

(6) permanently to convert grassland with highly productive species, excepting isolated interventions intended to restore the herbaceous layer;

(7) to scatter seeds or deposit food of a kind which attracts stray or invasive animals;

(8) to stock ponds with exotic invasive species of fish or with the burrowing species common carp (*Cyprinus carpio*), bream (*Abramis brama*), roach (*Rutilus rutilus*) or crucian carp (*Carassius carassius*), or with more than 50 kilos per hectare of non-burrowing fish, except for ponds reserved exclusively for fishing;

(9) to alter the terrain contours of natural habitats of Community interest or regional interest;

(10) to use or park motorised vehicles, other than service or maintenance vehicles, in natural habitats of Community or regional interest, this prohibition not to affect car parks intended for the use of visiting members of the public;

(11) to plough the soil or spread chemical fertilisers or pesticides in natural habitats of Community or regional interest;

(12) intentionally to modify the surface water or groundwater regime, or to make a permanent structural change to ditches or watercourses;

(13) to dispose of chemical products or disperse the contents of septic tanks;

(14) to dump or deposit waste outside the areas set aside for that purpose;

(15) to play amplified music exceeding a noise threshold of 65 dB;

(16) to climb trees in woods and forests subject to forest regulations or in public green spaces.

§ 3 This article shall not apply to works directly connected with or necessary to the management of the site, or the maintenance of natural assets.'

The main proceedings and the questions referred for a preliminary ruling

17 Since 1983, CFE, a Belgian industrial group, has been the owner of land (cadastral parcel F64 L 4) encompassing most of the Plateau de la Foresterie in Watermael-Boitsfort (Belgium).

18 When establishing the Natura 2000 network, in 2003, the Government of the Brussels-Capital Region (Belgium) drew up a list of proposed special areas of conservation (SACs) (*Moniteur belge*, 27 March 2003, p. 14886).

19 On 29 August 2003, CFE brought an action for annulment of that decision before the Conseil d'État (Council of State, Belgium). That action was dismissed by judgment of 14 March 2011, on the basis that CFE no longer had any interest in the annulment because the subject matter of the decision had, in the meantime, been dealt with by the Commission.

20 On 7 December 2004, the Commission had adopted Decision 2004/813/EC adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance (SCIs) for the Atlantic biogeographical region (OJ 2004 L 387, p. 1), which was subsequently repealed. Currently, the site in question — the Sonian Forest — is an SCI by virtue of Commission Implementing Decision (EU) 2016/2335 of 9 December 2016 adopting a 10th update of the list of sites of Community importance for the Atlantic biogeographical region (OJ 2016 L 353, p. 533).

21 By application of 21 February 2005, CFE brought an action for annulment of that decision before the General Court of the European Union. By order of 19 September 2006, *CFE* v *Commission* (T-100/05, not published, EU:T:2006:260), the General Court declared the action to be inadmissible on the ground that CFE was not directly concerned by that decision, in view of the discretion left to the Member States as regards the measures to be taken in relation to designated SCIs. That order has become final.

22 The referring court states that, since 27 March 2015, the Kingdom of Belgium has been on formal notice of failure to fulfil its obligation to designate SCIs as SACs and establish conservation priorities for them, as well as its obligation to adopt the necessary conservation measures.

23 On 9 July 2015, the Government of the Brussels-Capital Region, on a first reading, approved a preliminary draft decree designating Natura 2000 site BE1000001 'The Sonian forest together with forest margins and surrounding wooded areas and the Woluwe valley — Sonian forest complex — Woluwe valley'. A public inquiry into that preliminary draft decree took place between 24 September and 7 November 2015. It gave rise to 202 objections, one of which was from CFE.

24 On 14 April 2016, by the contested measure, the Government of the Brussels-Capital Region adopted the decree designating Natura 2000 site BE1000001 'The Sonian forest together with forest margins and surrounding wooded areas and the Woluwe valley — Sonian forest complex — Woluwe valley', which includes the land at issue, cadastral parcel F64 L 4.

25 On 12 July 2016, CFE made an application to the Conseil d'État (Council of State) for annulment of the decree of 14 April 2016.

26 CFE states that during the period from 1937 to 1987, a significant part of that land had been used by the municipality of Watermael-Boitsfort (Belgium) as an illegal waste disposal site, and that it had only become aware of that fact on 9 October 2007. That was the date on which the Institut bruxellois pour la gestion de l'environnement (Brussels Institute for the Management of the Environment, IBGE) had given it notice that, according to a characterisation study carried out by an approved agency in 2006, the pollution present on that land carried a risk to human health, the environment, and ecosystems, and the waste deposited on it was affecting the soil, the surface waters, the groundwaters, and the air. The notice requested the appellant to submit a proposal for environmental remediation of the site.

27 In support of its action, the appellant relies, inter alia, on breach of Article 3 of the SEA Directive, arguing that the Government of the Brussels-Capital Region ought to have carried out an environmental assessment, the decree of 14 April 2016 being likely to have significant environmental effects, or that at the very least, it ought to have assessed whether that measure was likely to have such effects, which it did not do.

28 In response, the Government of the Brussels-Capital Region submits, essentially, that the measure in question is directly connected with or necessary to the 'management of the site', within the meaning of Article 6(3) of the Habitats Directive, and is exempted from the requirement for an environmental assessment under Article 3(2)(b) of the SEA Directive.

29 That government goes on to specify that the prohibitions laid down in Article 15 of the decree of 14 April 2016 would not prevent treatment of the pollution affecting the land in question. Environmental remediation of the contaminated land would require an environmental permit and the specific prohibitions in the contested measure would thus not apply, as Article 15 itself confirms. Equally, it would be possible to derogate from those prohibitions. On that basis, it submits that the measure is not likely to have significant environmental effects.

30 In those circumstances, the Conseil d'État (Council of State) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does a decree by which a Member State body designates [an SAC] under [the Habitats Directive], which decree contains conservation objectives and general preventive measures having regulatory force, constitute a plan or programme within the meaning of [the SEA Directive]?

(2) More particularly, does such a decree fall within Article 3(4) [of the SEA Directive], as a plan or programme which sets the framework for future development consent of projects, with the result that the Member States must determine whether it is likely to have significant effects on the environment, in compliance with Article 3(5)?

(3) Must Article 3(2)(b) of [the SEA Directive] be interpreted as meaning that the designation decree in question is exempt from the application of Article 3(4) of that directive?'

Consideration of the questions referred

31 It should be noted at the outset that the national court's questions refer to three paragraphs of Article 3 of the SEA Directive, namely paragraphs 2, 4 and 5.

32 Under the first sentence of Article 3(5) of the SEA Directive, Member States are to determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches.

33 Given that Article 3(5) refers back to Article 3(4), the national court's questions fall to be answered in the light of Article 3(2) and (4) of that directive.

34 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3(2) and (4) of the SEA Directive is to be interpreted as meaning that a decree such as that at issue in the main proceedings, whereby a Member State designates an SAC and makes provision as to conservation objectives and certain preventive measures, is one of the 'plans and programmes' in respect of which an environmental impact assessment is required.

35 By way of preliminary remarks, it must be borne in mind, first, that recital 4 of the SEA Directive describes environmental assessment as an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes. In that regard, under Article 1 of the directive, its objective 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 the directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

36 Second, given the objective of the SEA Directive, which is to provide for so high a level of protection of the environment, the provisions which delimit the directive's scope, in particular those setting out the definitions of the measures envisaged by the directive, must be interpreted broadly (judgments of 7 June 2018, *Inter-Environnement Bruxelles and Others*, C-671/16, EU:C:2018:403, paragraphs 32 to 34 and the case-law cited, and, of the same date, *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraphs 38 to 40 and the case-law cited).

37 Lastly, it should be noted that SACs are designated by the three-stage process set out in Article 4 of the Habitats Directive. At the first stage, under Article 4(1) of that directive, each Member State proposes a list of sites indicating which natural habitat types and native species they host, and that list is transmitted to the Commission. At the second stage, under Article 4(2), the Commission establishes, in agreement with each Member State, a draft list of SCIs drawn from the Member States' lists. On the basis of that draft list, the Commission adopts the list of selected sites. At the third stage, under Article 4(4), once an SCI has been adopted, the Member State concerned designates it as an SAC as soon as possible and within 6 years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type or species and for the coherence of Natura 2000.

38 The questions referred fall to be answered in the light of those considerations.

39 It is necessary, first of all, to reject the submissions to the effect that Article 3(2)(b) of the SEA Directive and the first sentence of Article 6(3) of the Habitats Directive mean that an obligation to carry out an environmental assessment could not arise, in any circumstances, in a case such as that before the referring court.

40 In that regard, in their written observations, the Brussels-Capital Region and Ireland submit that, in so far as the decree of 14 April 2016 establishes conservation objectives, it can have only beneficial effects, and, consequently, there can be no requirement for an environmental impact assessment.

41 It must be borne in mind, however, that, in relation to Directive 85/337, the Court has previously held that the fact that projects should have beneficial effects on the environment is not relevant in determining whether it is necessary to make those projects subject to an assessment of their environmental impact (judgment of 25 July 2008, *Ecologistas en Acción-CODA*, C-142/07, EU:C:2008:445, paragraph 41).

42 Furthermore, according to the Government of the Brussels-Capital Region, the Czech Government and the Commission, strategic environmental impact assessments under the SEA Directive are required, as regards Natura 2000 sites, only for plans and projects in respect of which an assessment of the implications for the site is also required under the Habitats Directive, that being apparent from Article 3(2)(b) of the SEA Directive and the exception for site management measures contained in Article 6(3) of the Habitats Directive. On that analysis, an environmental assessment would never be required in respect of management measures relating to such sites.

43 In the present case, the Government of the Brussels-Capital Region decided that the decree of 14 April 2016 would not be subject either to an assessment of implications for the site under Article 6(3) of the Habitats Directive, or to an environmental assessment under Article 3(2)(b) of the SEA Directive.

44 As regards the reference to Articles 6 and 7 of the Habitats Directive in Article 3(2)(b) of the SEA Directive, it must be noted that, in accordance with Article 4(5) of the Habitats Directive, the protective measures prescribed in Article 6(2) to (4) of that directive are required once a site which, in accordance with the third subparagraph of Article 4(2) of that directive, is placed on the list of sites selected as SCIs as adopted by the Commission (judgment of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 32 and the case-law cited).

45 In the present case, it is apparent from the order for reference that the land belonging to the appellant in the main proceedings had been placed on that list.

46 It follows that Article 6(3) of the Habitats Directive is applicable in a case such as that before the referring court.

47 Under that provision, any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, is subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.

48 In that regard, the Court has previously held that the existence of a plan or project not directly connected with or necessary to the management of a protected site depends essentially on the nature of the intervention at issue (see, to that effect, judgment of 17 April 2018, *Commission* v *Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 125).

49 A measure by which a Member State designates a site as a special area of conservation pursuant to the Habitats Directive is, by its nature, directly connected with or necessary to the management of the site. Article 4(4) of the Habitats Directive requires such designations to be made for the purposes of implementing that directive.

50 Accordingly, a measure such as the decree of 14 April 2016 may be exempt from the requirement for an 'appropriate assessment' within the meaning of Article 6(3) of the Habitats Directive, and consequently from the requirement for an 'environmental assessment' within the meaning of Article 3(2)(b) of the SEA Directive. Moreover, Article 6(3) of the Habitats Directive provides that the 'appropriate assessment' it contemplates is to be made by reference to 'the site's conservation objectives'. The measure defining the objectives cannot logically be assessed in the light of those same objectives.

51 That said, the fact that a measure such as that at issue in the main proceedings is not subject to a requirement for a prior environmental assessment under Article 6(3) of the Habitats Directive, in conjunction with Article 3(2)(b) of the SEA Directive, does not mean that it cannot be subject to any requirements in that area, since the possibility remains that it may lay down rules such that it can be regarded as a plan or programme within the meaning of the latter directive, in respect of which an assessment of the effects on the environment may be required.

52 In that regard, as the Advocate General noted in points 64 and 65 of her Opinion, it does not follow from the fact that the EU legislature did not consider it necessary, in the context of the Habitats Directive, to lay down rules on environmental assessment and public participation in connection with the management of Natura 2000 sites that it wished to exclude the management of such sites when it subsequently adopted general rules on environmental assessment. The assessments which are made pursuant to other environmental protection instruments coexist with and complement the rules of the Habitats Directive, as regards the assessment of potential effects on the environment and public participation.

53 To deal, first of all, with whether the decree at issue in the main proceedings can be regarded as a plan or programme within the meaning of the SEA Directive, it should be noted that Article 2(a) of the SEA Directive defines such plans and programmes as those satisfying two cumulative conditions: they must be subject to preparation and/or adoption by an authority at national, regional or local level, or prepared by an authority for adoption, through a legislative procedure, by Parliament or Government, and they must be required by legislative, regulatory or administrative provisions.

54 The Court has interpreted that provision as meaning that plans and programmes whose adoption is regulated by national legislative or regulatory provisions, which determine the competent authorities for adopting them and the procedure for preparing them, must be regarded as 'required' within the meaning, and for the application, of the SEA Directive and, accordingly, be subject to an assessment of their environmental effects in the circumstances which it lays down (judgments of 22 March 2012, *Inter-Environnement Bruxelles and Others*, C-567/10, EU:C:2012:159, paragraph 31, and of 7 June 2018, *Thybaut and Others*, C-160/17, EU:C:2018:401, paragraph 43).

55 In the present case, the decree of 14 April 2016 was prepared and adopted by a regional authority, namely the Government of the Brussels-Capital Region, and is required by Article 44 of the order of 1 March 2012.

56 Turning, second, to the question whether a plan or programme requires a prior environmental assessment, it should be noted that plans and programmes meeting the requirements laid down in Article 2(a) of the SEA Directive are subject to the requirement for an environmental assessment if they are among those referred to in Article 3 of that directive. Article 3(1) of the SEA Directive provides that an environmental assessment is to be carried out for plans and programmes referred to in paragraphs 2, 3 and 4 which are likely to have significant environmental effects.

57 Under Article 3(2)(a) of the SEA Directive, an environmental assessment is to be carried out for all plans and programmes 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 Directive 2011/92.

58 In this regard, the Brussels-Capital Region, the Czech Government and the Commission have expressed doubts as to whether a decree, such as that at issue in the main proceedings, by which, in accordance with Article 4 of the Habitats Directive, a Member State designates an SAC and makes provision as to conservation objectives and certain preventive measures, can fall within any of those categories.

59 As the Advocate General noted in point 44 of her Opinion, in so far as, under Article 3(4) of the SEA Directive, Member States must determine whether plans and programmes other than those referred to in paragraph 2, which set the framework for future development consent of other projects, are likely to have significant environmental effects, it is necessary to determine whether a measure such as that at issue in the main proceedings does set such a framework.

60 As the Advocate General observed in point 69 of her Opinion, the obligation to carry out an environmental assessment under Article 3(4) of the SEA Directive — just like the assessment requirement under Article 3(2)(a) of that directive — is dependent on whether the plan or programme in question sets the framework for future development consent of projects.

61 In that regard, the Court has held that the notion of 'plans and programmes' relates to any measure which establishes, by defining rules and procedures, a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment (judgments of 27 October 2016, *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraph 49 and the case-law cited, and of 8 May 2019, '*Verdi Ambiente e Società (VAS) — Aps Onlus' and Others*, C-305/18, EU:C:2019:384, paragraph 50 and the case-law cited).

62 In the present case, it is apparent from the order for reference that the decree of 14 April 2016 designates a Natura 2000 site and, in order to achieve the conservation and protection objectives it defines, provides for preventive measures and lays down general and specific prohibitions. To that end, it reflects choices and forms part of a hierarchy of measures intended to protect the environment, in particular the management plans to be adopted in the future.

63 In that regard, the referring court notes that the designation of a site has legal effects on the adoption of plans and on the consideration of applications for permits affecting the site, both procedurally and in terms of the criteria according to which decisions are made. That court therefore takes the view that such a designation contributes to setting the framework for activities that are, in principle, to be accepted, encouraged or prohibited, and thus is not unconnected with the concept of 'plan and programme'.

64 It is apparent from the judgments of 7 June 2018, *Inter-Environnement Bruxelles and Others* (C-671/16, EU:C:2018:403, paragraph 55), and *Thybaut and Others* (C-160/17, EU:C:2018:401, paragraph 55), that the concept of 'a significant body of criteria and detailed rules' must be construed qualitatively.

65 Undoubtedly, as the Advocate General noted in point 91 of her Opinion, the decree of 14 April 2016, and particularly Article 15 thereof, contains a number of prohibitions. However, it is for the referring court to determine whether those prohibitions apply only to projects not requiring consent.

66 If that court were to determine that to be the case, it would follow that the characteristics and normative properties of a decree such as that of 14 April 2016 do not set the framework for future development consent of other projects.

67 Thus, in so far as such a measure would not satisfy the conditions referred to in paragraphs 61 to 64 of this judgment, it would not constitute a plan or a programme requiring an environmental assessment within the meaning of Article 3(2) and (4) of the SEA Directive.

68 That consideration does not contradict the guidance in the judgment of 17 June 2010, *Terre wallonne and Inter-Environnement Wallonie* (C-105/09 and C-110/09, EU:C:2010:355), in which the Court held that an action programme adopted pursuant to Article 5(1) of the Nitrates Directive is, in principle, a plan or programme requiring an environmental assessment under Article 3 of the SEA Directive.

69 That judgment was given in circumstances where an overall analysis had demonstrated, first, that the specific nature of the action programmes concerned lay in the fact that they embodied a comprehensive and coherent approach, providing practical and coordinated arrangements. Second, as regards the content of the action programmes, it is apparent from Article 5 of the Nitrates Directive, amongst other provisions, that those programmes contained specific, mandatory measures (see, to that effect, judgment of 17 June 2010, *Terre wallonne and Inter-Environnement Wallonie*, C-105/09 and C-110/09, EU:C:2010:355, paragraphs 47 and 48).

70 Furthermore, it should be emphasised that, as the Advocate General noted in points 76 and 77 of her Opinion, a measure such as the decree of 14 April 2016 generally forms part of a hierarchy of measures with those preceding it, and may therefore constitute a modification of a plan or programme, and be subject on that basis, equally, to the requirement for an environmental assessment.

71 In that regard, the Court has repeatedly held that the concept of 'plans and programmes' not only includes their preparation, but also their modification, this being intended to ensure that provisions which are likely to have significant environmental effects are subject to an environmental assessment (judgment of 8 May 2019, '*Verdi Ambiente e Società (VAS) — Aps Onlus' and Others*, C-305/18, EU:C:2019:384, paragraph 52 and the case-law cited).

72 At the same time, it is important to avoid the same plan being subject to several environmental assessments covering all the requirements of the SEA Directive (see, to that effect, judgment of 10 September 2015, *Dimos Kropias Attikis*, C-473/14, EU:C:2015:582, paragraph 55).

73 To that end, and provided that the assessment of their effects has already been carried out, a measure does not fall within the meaning of 'plans and programmes' if it is part of a hierarchy of measures which have themselves been the subject of an assessment of their environmental effects and it may reasonably be considered that the interests which the SEA Directive is designed to protect have been taken into account sufficiently within that framework (see, to that effect, judgment of 22 March 2012, *Inter-Environnement Brussels and Others*, C-567/10, EU:C:2012:159, paragraph 42 and the case-law cited).

74 In the light of all the foregoing considerations, the answer to the questions referred is that Article 3(2) and (4) of the SEA Directive is to be interpreted, subject to those matters which are for the referring court to verify, as meaning that a decree such as that at issue in the main proceedings, whereby a Member State designates an SAC, and makes provision as to conservation objectives and certain preventive measures, is not among the 'plans and programmes' in respect of which an environmental impact assessment is required.

Costs

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

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

Article 3(2) and (4) of 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 is to be interpreted, subject to those matters which are for the referring court to verify, as meaning that a decree such as that at issue in the main proceedings, whereby a Member State designates an SAC, and makes provision as to conservation objectives and certain preventive measures, is not among the 'plans and programmes' in respect of which an environmental impact assessment is required.

[Signatures]