



Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

6 March 2025*

(Reference for a preliminary ruling – Environment – Directive 2011/92/EU – Assessment of the effects of certain public and private projects on the environment – Article 2(1) and Article 4(2) – Projects covered by Annex II – Urban development projects – Article 4(4) and (5) – Obligations of the developer and the competent authority when the Member State concerned decides to require the determination provided for in those paragraphs 4 and 5 for those projects – Account taken of observations submitted by a third party, indicating a potential impact of the project concerned on an animal species covered by the strict protection provided for in Article 12 of Directive 92/43/EEC)

In Case C-41/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 1 December 2023, received at the Court on 22 January 2024, in the proceedings

Waltham Abbey Residents Association

v

An Bord Pleanála,

Ireland,

The Attorney General,

notice party:

O'Flynn Construction Co. Unlimited Company,

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of the Chamber, J. Passer (Rapporteur) and B. Smulders, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: English.

after considering the observations submitted on behalf of:

- Waltham Abbey Residents Association, by J. Devlin, Senior Counsel, J. Kenny, Barrister-at-Law, and D. Healy, Solicitor,
- An Bord Pleanála, by B. Foley, Senior Counsel, A. Carroll, Barrister-at-Law, and P. Reilly, Solicitor,
- Ireland, by M. Browne, Chief State Solicitor, S. Finnegan, K. Hoare and A. Joyce, acting as Agents, and by D. McGrath, Senior Counsel, F. Valentine, Senior Counsel, and E. O’Callaghan, Barrister-at-Law,
- the European Commission, by M. Noll-Ehlers and N. Ruiz García, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ 2014 L 124, p. 1) (‘Directive 2011/92’).
- 2 The request has been made in proceedings between, on the one hand, Waltham Abbey Residents Association and, on the other hand, An Bord Pleanála (Planning Board, Ireland; ‘the Board’), Ireland and the Attorney General (Ireland), concerning authorisation granted by the Board for a strategic residential housing development.

Legal context

European Union law

Directive 2011/92

- 3 Recitals 7 to 9 of Directive 2011/92 state:
 - ‘(7) Development consent for public and private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out. ...
 - (8) Projects belonging to certain types have significant effects on the environment and those projects should, as a rule, be subject to a systematic assessment.

(9) Projects of other types may not have significant effects on the environment in every case and those projects should be assessed where the Member States consider that they are likely to have significant effects on the environment.’

4 Article 2(1) of that directive provides:

‘Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4.’

5 Under Article 3(1) of that directive:

‘The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:

...

(b) biodiversity, with particular attention to species and habitats protected under [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) (“Directive 92/43”)] and Directive 2009/147/EC [of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7)];

...’

6 Article 4 of Directive 2011/92 provides:

‘1. Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

(a) a case-by-case examination;

or

(b) thresholds or criteria set by the Member State.

Member States may decide to apply both procedures referred to in points (a) and (b).

3. Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.

4. Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.
5. The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:
 - (a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or
 - (b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.
6. Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required pursuant to paragraph 4. In exceptional cases, for instance relating to the nature, complexity, location or size of the project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected.'
7. Annex II.A of that directive contains the list of 'information to be provided by the developer on the projects listed in Annex II'. That list reads as follows:
 1. A description of the project, including in particular:
 - (a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;
 - (b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
 2. A description of the aspects of the environment likely to be significantly affected by the project.
 3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:
 - (a) the expected residues and emissions and the production of waste, where relevant;
 - (b) the use of natural resources, in particular soil, land, water and biodiversity.

4. The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.’
- 8 Annex III to that directive sets out the ‘criteria to determine whether the projects listed in Annex II should be subject to an environmental impact assessment’.

Directive 2014/52

- 9 Recitals 11 and 29 of Directive 2014/52 state:
- ‘(11) The measures taken to avoid, prevent, reduce and, if possible, offset significant adverse effects on the environment, in particular on species and habitats protected under [Directive 92/43] and Directive 2009/147 ..., should contribute to avoiding any deterioration in the quality of the environment and any net loss of biodiversity, in accordance with the [European] Union’s commitments in the context of the [United Nations Convention on Biological Diversity, signed in Rio de Janeiro on 5 June 1992,] and the objectives and actions of the Union Biodiversity Strategy up to 2020 laid down in the [Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions] of 3 May 2011 entitled ‘Our life insurance, our natural capital: an EU biodiversity strategy to 2020’ [(COM(2011) 244 final)]
- ...
- (29) When determining whether significant effects on the environment are likely to be caused by a project, the competent authorities should identify the most relevant criteria to be considered and should take into account information that could be available following other assessments required by Union legislation in order to apply the screening procedure effectively and transparently. In this regard, it is appropriate to specify the content of the screening determination, in particular where no environmental impact assessment is required. Moreover, taking into account unsolicited comments that might have been received from other sources, such as members of the public or public authorities, even though no formal consultation is required at the screening stage, constitutes good administrative practice.’

Directive 92/43

- 10 Article 6(3) of Directive 92/43 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.’

11 Article 12(1) of that directive provides:

‘Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

- (a) all forms of deliberate capture or killing of specimens of these species in the wild;
- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
- (c) deliberate destruction or taking of eggs from the wild;
- (d) deterioration or destruction of breeding sites or resting places.’

12 Point (a) of Annex IV to that directive mentions ‘all species’ of bats belonging to the suborder of ‘microchiroptera’.

Irish law

The Planning and Development Regulations, 2001

13 Article 109 of the Planning and Development Regulations, 2001, in the version applicable to the dispute in the main proceedings, provides:

‘...

- (2B) (a) Where a planning application for sub-threshold development is not accompanied by an [environmental impact assessment report] but is accompanied by the information specified in Schedule 7A and sub-article (2A), or where an applicant submits to the Board such information pursuant to a requirement issued under sub-article (2)(b)(ii), the Board shall carry out an examination of, at the least, the nature, size or location of the development for the purpose of a screening determination.
- (b) The Board shall make a screening determination and—
- (i) if such determination is that there is no real likelihood of significant effects on the environment arising from the proposed development, it shall determine that an [environmental impact assessment] is not required, or
 - (ii) if such determination is that there is a real likelihood of significant effects on the environment arising from the proposed development, it shall—
 - (I) determine that the development would be likely to have such effects, and
 - (II) by notice in writing served on the applicant, require the applicant to submit to the Board an [environmental impact assessment report] and to comply with the requirements of article 112.

...

- (4) (a) the Board shall, in making its screening determination under sub-article (2B) whether there is no real likelihood of significant effects on the environment arising from a proposed development or there is a real likelihood of significant effects on the environment arising from the proposed development, have regard to—

- (i) the criteria set out in Schedule 7,
- (ii) the information submitted pursuant to Schedule 7A,
- (iii) the further information, if any, referred to in sub-article (2A)(a) and the description, if any, referred to in sub-article (2A)(b),
- (iv) the available results, where relevant, of preliminary verifications or assessments of the effects on the environment carried out pursuant to European Union legislation other than the Environmental Impact Assessment Directive, and
- (v) in respect of a development which would be located on, or in, or have the potential to impact on—
 - (I) a European site,
 - (II) an area the subject of a notice under section 16(2)(b) of the Wildlife (Amendment) Act 2000 (No 38 of 2000),
 - (III) an area designated as a natural heritage area under section 18 of the Wildlife (Amendment) Act 2000,
 - (IV) land established or recognised as a nature reserve within the meaning of section 15 or 16 of the Wildlife Act 1976 (No. 39 of 1976),
 - (V) land designated as a refuge for flora or as a refuge for fauna under section 17 of the Wildlife Act 1976,
 - (VI) a place, site or feature of ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan, draft development plan or draft local area plan, or proposed variation of the development plan, for the area in which the development is proposed, or
 - (VII) a place or site which has been included by the Minister for Culture, Heritage and the Gaeltacht in a list of proposed Natural Heritage Areas published on the National Parks and Wildlife Service website,

the likely significant effects of the development on such site, area, land, place or feature, as appropriate

- (b) The Board's screening determination under sub-article (2B) whether there is no real likelihood of significant effects on the environment arising from a proposed development or there is a real likelihood of significant effects on the environment arising from the proposed development, as the case may be, including the main reasons and considerations, with reference to the relevant criteria listed in Schedule 7, on which that determination is based, and any notice under sub-article (2C)(c), shall be placed and kept with the documents relating to the planning application.

- (5) Where the screening determination under sub-article (2B) is that the proposed development would not be likely to have significant effects on the environment and the applicant has provided, under sub-article (2A)(b), a description of the features, if any, of the proposed development and the measures, if any, envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment, the Board shall specify such features, if any, and such measures, if any, in that determination.

...'

14 Article 299B(2) of those regulations provides:

- '(b) (i) Where the information referred to in sub-article (1)(b)(ii)(II) was provided by the applicant, the Board shall carry out an examination of, at the least, the nature, size or location of the development for the purposes of a screening determination.

- (ii) The Board shall make a screening determination and—
 - (I) if such determination is that there is no real likelihood of significant effects on the environment arising from the proposed development, it shall determine that an EIA is not required, or
 - (II) if such determination is that there is a real likelihood of significant effects on the environment arising from the proposed development, it shall—
 - (A) determine that the development would be likely to have such effects, and
 - (B) refuse to deal with the application pursuant to section 8(3)(a) of the [Planning and Development (Housing and Residential Tenancies) Act 2016 ('the 2016 Act')]

The 2016 Act

- 15 Section 8(3) of the 2016 Act is worded as follows:

‘(a) The Board may decide to refuse to deal with any application made to it under section 4(1) where it considers that the applicant for permission, or the environmental impact assessment report or Natura impact statement if such is required, is inadequate or incomplete, having regard in particular to the permission regulations and any regulations made under section 12, or section 177 of the [Planning and Development Act 2000 ('Act of 2000')], or to any consultations held under section 6.

...’

- 16 Section 9(5) of the 2016 Act provides:

‘Where the Board did not exercise its functions under section 8(3) to refuse to deal with an application, then nothing in that subsection shall be read so as to prevent the Board from refusing to grant permission for a proposed strategic housing development in respect of an application under section 4 where the Board considers that development of the kind proposed would be premature by reference to the inadequacy or incompleteness of the environmental impact assessment report or Natura impact statement submitted with the application for permission, if such is required.’

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

- 17 The dispute in the main proceedings concerns a proposed strategic housing development involving the construction of 123 apartments and associated works in Ballincollig (Ireland).
- 18 For the purposes of the application for development consent for that project, a tree study was carried out and two screening reports were prepared on behalf of the developer, the first for the purposes of the assessment of the environmental impact of that project under Directive 2011/92 ('the EIA') and the second for the purposes of the appropriate assessment of the implications of that project for the sites designated as special areas of conservation or special protection areas, provided for in Article 6(3) of Directive 92/43.
- 19 The first report does not include any particular analysis of flora and fauna, does not refer to the impact of the project on bats and the screening table included therein does not refer to biodiversity. In the second report, there is also no particular consideration of the actual impact of the project on bats, it including only a general reference to the fact that 'disturbance to fauna can

arise directly through the loss of habitat (e.g. bat roosts) or indirectly through noise, vibration and increased activity associated with construction and operation’. The only reference to biodiversity is in that second report, which however only refers to Natura 2000 sites rather than the ecology of the development site itself.

- 20 As regards the arboricultural assessment, it was carried out on a single day and identified 13 trees for removal. In the context of that assessment, the potential or actual use of the trees by bats or whether the site concerned was used for foraging or commuting was not taken into consideration. However, although the screening report relating to the EIA proposes the retention of existing vegetation on that site ‘where possible’ and states that its enhancement through new landscaping would result in the project at issue in the main proceedings having a positive impact on biodiversity, a certain number of trees are in fact being removed, including a number of cypress trees and two of the six oak trees on that site.
- 21 On 7 July 2020, the applicant in the main proceedings submitted observations to the Board stating that the proposed development site was in close proximity to a wildlife corridor on the river Lee, recording visual sightings of bats on the site and referencing, on the basis of a study of bats’ fauna carried out in 2016, inter alia, that ‘extant records of bats in the immediate area [indicated] that a diverse range of bat species use the river corridor and [that] the key impacts on these animals [arose] through potential roost loss, loss of feeding areas and disruption of commuting routes’.
- 22 On 11 September 2020, the inspector recommended that permission be granted. The inspector was of the view that the site concerned did not generally provide suitable habitats for wildlife or species of conservation interest, but said that tree-felling should be undertaken in accordance with the advice of a suitably qualified ecologist to obviate any potential impact of the project in question on bats. The inspector did not carry out an EIA screening, rejecting the need for screening after a preliminary examination.
- 23 By decision of 16 September 2020, the Board granted permission for that project without requiring an EIA and without collecting any further information regarding the presence of bats. On the basis of its own screening of the need to subject the project to an EIA, it considered that ‘the [EIA] report submitted by the developer [identified] and [described] adequately the direct, indirect secondary, and cumulative effects of the proposed development on the environment’ and concluded that, ‘by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment’. No further information was sought from the developer following the submission made by the applicant in the main proceedings. However, in accordance with a recommendation made by the inspector, the authorisation thus granted includes the following condition:
- ‘21. Trees to be removed on site shall be felled in late summer or autumn. Any disturbance to bats on site shall be in a manner to be agreed in writing with the planning authority on the advice of a qualified ecologist.
- Reason: In the interest of nature conservation.’
- 24 Hearing an action brought by the applicant in the main proceedings against that decision, the High Court (Ireland), which is the referring court, is uncertain, in the first place, whether Directive 2011/92 requires, inter alia, the developer to obtain all relevant information on the species or habitats that might be affected by the project in question by carrying out or obtaining scientific surveys that are adequate to remove doubt as regards significant effects on such species or

habitats. It is also uncertain as to the obligations, if any, that fall on the developer and the competent authority in the event that a third party provides the latter with additional information that is objectively such as to raise doubts as to the effects of that project on the environment.

- 25 In that regard, the referring court asks what threshold is to be applied, that is to say must the Board remove all reasonable doubt as to significant effects of that project on the environment or merely adopt a ‘reasonable’ decision based on the material before it. According to that court, if a decision to screen out the need for an EIA is dependent on excluding all reasonable doubt, the decision not to carry out an EIA in the present case would be unlawful. By contrast, there are factors which would render the Board’s decision reasonable if the test is merely reasonableness as opposed to exclusion of all doubt.
- 26 In the second place, the referring court is uncertain as to the effect, on the matters referred to in paragraphs 24 and 25 of the present judgment, of the fact that the doubts raised in the observations of the applicant in the main proceedings of 7 July 2020 concern species covered by the strict protection provided for in Article 12 of Directive 92/43.
- 27 In those circumstances, the High Court (Ireland) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Does Article 4(4) of and/or paragraph 3 of Annex IIA to [Directive 2011/92], interpreted in the light of the precautionary principle, have the effect in a case where information under Annex IIA to [that directive] should be furnished, and where there is material before the competent authority that a species or habitat might be affected by [a] project, that the developer concerned should obtain all relevant information on species or habitats that may be affected by the project by conducting or obtaining scientific surveys that are adequate to remove doubt about significant effects on such species or habitats, and that in the absence of the results of such surveys, the competent authority should be informed of and required to proceed on the basis of the absence of sufficient information to exclude doubt as to whether the project will have significant effects on the environment?
- (2) Does Article 4(4) of and/or paragraph 3 of Annex IIA to [Directive 2011/92], interpreted in the light of the precautionary principle, have the effect in a case where information under Annex IIA to [that directive] should be furnished, that the competent authority is required to exclude doubt as to the possibility of significant effects [of a project] on the environment if it proposes not to subject the project to an assessment under Articles 5 to 10 of [that directive], and thus that where in the course of a determination under Article 4(2) of [that directive], a competent authority objectively lacks sufficient information to exclude doubt as to whether the project will have significant effects on the environment, the project should be required to be subjected to an assessment under Articles 5 to 10 of [that directive]?
- (3) If the answer to the first question in general is no, do such consequences arise in so far as the potential significant effect on the environment relates to species that may be affected by the project where such species are entitled to strict protection under Article 12 of Directive 92/43, having regard inter alia to the importance of such species as recognised in Article 3(1)(b) of Directive 2011/92 and Recital 11 [of] Directive 2014/52?

- (4) Does Article 4(4) of and/or paragraph 3 of Annex IIA to [Directive 2011/92], interpreted in the light of the precautionary principle, have the effect that, if, following the provision of information by the developer pursuant to Annex IIA of the Directive, additional information is provided by another party to the competent authority objectively capable of creating a doubt as to the effect of the project on the environment, either the developer is required to provide further information to the competent authority which would exclude such doubt or to inform the competent authority of the absence of such information, or the competent authority itself is required to obtain further information which would exclude such doubt or alternatively to determine that assessment under Articles 5 to 10 of [Directive 2011/92] is required in the absence of sufficient information to exclude doubt as to whether the project will have significant effects on the environment?
- (5) If the answer to the fourth question in general is no, do such consequences arise in so far as the potential significant effect on the environment relates to species that may be affected by the project where such species are entitled to strict protection under Article 12 of [Directive 92/43], having regard inter alia to the importance of such species as recognised in Article 3(1)(b) of Directive 2011/92 and Recital 11 [of] Directive 2014/52?

Consideration of the questions referred

- 28 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 4(4) to (6) of Directive 2011/92 must be interpreted as meaning that, where, in the context of a screening procedure carried out under that provision, a third party has provided the competent authority with information that is objectively such as to raise doubts in relation to potential significant effects of that project on the environment, in particular with regard to a species protected under Directive 92/43, the developer or, as the case may be, the competent authority itself must obtain all relevant information in order to dispel any doubt in relation to those effects, and that that authority must decide that an EIA is necessary if such doubt cannot be ruled out.
- 29 It should be borne in mind that Article 2(1) of Directive 2011/92 requires that projects likely to have significant effects on the environment, for the purpose of Article 4 of that directive, read in conjunction with Annexes I or II thereto, must be subject to an EIA before consent is granted (judgment of 28 February 2018, *Comune di Castellbellino*, C-117/17, EU:C:2018:129, paragraph 24 and the case-law cited).
- 30 Article 4(1) of Directive 2011/92 states that, subject to Article 2(4) of that directive, the projects listed in Annex I thereto are to be made subject to assessment in accordance with Articles 5 to 10 of that directive. Those projects are thus regarded as necessarily presenting a risk of significant effects on the environment.
- 31 For the projects listed in Annex II to Directive 2011/92, Article 4(2) of that directive states that Member States are to determine whether the project in question is to be made subject to an EIA through a case-by-case examination or through thresholds or criteria set by the Member State concerned or, where appropriate, through application of both procedures. As is apparent from a combined reading of that provision and recital 9 of that directive, those projects do not necessarily have significant effects on the environment in every case, with the result that they should be made subject to an assessment only if the Member States consider that they are likely to have such effects.

- 32 In that regard, Article 4(3) of Directive 2011/92 states that Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 of that article or an EIA, and/or thresholds or criteria to determine when projects are in any case to be made subject to an EIA without undergoing a determination set out under those paragraphs 4 and 5.
- 33 Lastly, where the Member States decide to require such a determination, those paragraphs 4 and 5 provide for a screening procedure which proceeds as follows.
- 34 First, the developer is to provide information on the characteristics of the project in question and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA of Directive 2011/92. That information must include a description of the aspects of the environment likely to be significantly affected by the project and a description of any significant effects, to the extent of the information available on such effects, which the project is likely to have on the environment. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.
- 35 Second, the competent authority is to make its determination on the basis of the information thus provided by the developer, taking into account the relevant selection criteria set out in Annex III to Directive 2011/92.
- 36 In that context, account is also to be taken, where relevant, on the one hand, by the developer, of the available results of other relevant assessments of the effects of the project in question on the environment carried out pursuant to EU legislation other than Directive 2011/92 and, on the other hand, by the competent authority, of the results of the preliminary verifications or assessments of the effects on the environment carried out pursuant to such legislation.
- 37 Third, the determination is to be made available to the public and indicate, *inter alia*, the main reasons for the decision to require or not to require an EIA with reference to the relevant criteria listed in Annex III to Directive 2011/92.
- 38 By contrast, Directive 2011/92 does not expressly lay down an obligation to consult the public during that screening procedure. Recital 29 of Directive 2014/52, which explains the objective pursued by Article 4(4) to (6) of Directive 2011/92, states that ‘taking into account unsolicited comments that might have been received from other sources, such as members of the public or public authorities ... constitutes good administrative practice’, while also stating that ‘no formal consultation is required at the screening stage’.
- 39 Similarly, Directive 2011/92 does not specify the situations in which the competent authority may or should require the developer to provide additional information.
- 40 Consequently, Directive 2011/92 does not expressly lay down an obligation on the competent authority, after observations concerning possible significant effects of the project concerned on the environment have been submitted to it by a third party, to ask the developer for additional information or to obtain that information itself.
- 41 However, according to the case-law of the Court, it follows from Article 2(1) of Directive 2011/92 that an EIA must be carried out when there is a probability or a risk that the project in question will have significant effects on the environment. Taking into account the precautionary principle,

which is one of the foundations of the policy of protection of a high standard pursued by the European Union in the field of the environment, in the light of which Directive 2011/92 is to be interpreted, it is considered that such a risk exists if it cannot be excluded on the basis of objective evidence that the project is likely to have significant effects on the environment (see, to that effect, judgment of 31 May 2018, *Commission v Poland*, C-526/16, EU:C:2018:356, paragraphs 66 and 67 and the case-law cited).

- 42 It follows that, in the context of the screening procedure, which seeks to determine whether an EIA is necessary, it is for the competent authority to take into account all the relevant information available to it, including information submitted to it spontaneously by a third party, where that information contains objective evidence enabling it to assess whether there is a risk that the project will have significant effects on the environment.
- 43 Furthermore, if, on the basis of the information made available to it by a third party, the competent authority considers that it cannot be ruled out that the project concerned is likely to have significant effects on the environment, it must enable the developer to provide it with additional information before deciding whether or not an EIA is necessary for that project. Indeed, as is apparent from the wording of Article 4(4) and (5) of Directive 2011/92, the developer has a prominent role in providing the information enabling the competent authority to make its determination. To that end and, in particular, with a view to limiting the obligation to carry out an environmental impact assessment solely to projects likely to have significant effects on the environment, that authority must have at its disposal the most comprehensive information possible.
- 44 In addition, the competent authority cannot conclude that there is a risk that the project will have significant effects on the environment on the ground that the information provided by the developer is incomplete without having first asked the developer to provide additional information.
- 45 However, where, despite the information submitted by a third party, the competent authority is able to rule out, on the basis of objective evidence, the possibility that the project in question is likely to have significant effects on the environment, that authority may decide that an EIA is not necessary, without being required to ask the developer to provide it with additional information.
- 46 It should be added, first, that, in accordance with the case-law of the Court, a project is considered to be likely to have significant effects on the environment where, by reason of its nature, there is a risk that it will cause a substantial or irreversible change in environmental factors, such as fauna and flora, soil or water, irrespective of its size (judgment of 31 May 2018, *Commission v Poland*, C-526/16, EU:C:2018:356, paragraph 65 and the case-law cited).
- 47 Second, as the Court has held, the wording of Article 2(1) of Directive 2011/92 is in essence similar to that of Article 6(3) of Directive 92/43 (see, to that effect, judgment of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, paragraph 42).
- 48 In that regard, according to the case-law of the Court, the condition laid down in Article 6(3) of Directive 92/43 means that, in the event of doubt as to the absence of significant effects, such an assessment must be carried out (see, to that effect, judgment of 26 May 2011, *Commission v Belgium*, C-538/09, EU:C:2011:349, paragraph 41 and the case-law cited). However, the Court has also held that Article 6(3) of Directive 92/43 must be interpreted as meaning that, where a competent authority decides to authorise a plan or project likely to have a significant effect on a

site protected under that directive without requiring an appropriate assessment within the meaning of that provision, that authority must state to the requisite standard the reasons why it was able, prior to the granting of such authorisation, to achieve certainty, notwithstanding any opinions to the contrary and any reasonable doubts expressed therein, that there was no reasonable scientific doubt as to the possibility that that project would significantly affect that site (judgment of 15 June 2023, *Eco Advocacy*, C-721/21, EU:C:2023:477, paragraph 43).

- 49 It can be deduced from this that, in the context of a screening procedure carried out under Directive 2011/92, two conditions must be met in order for the competent authority, in the light of observations submitted to it by a third party, to be obliged to ask the developer to provide additional information. First, those observations must relate to potential ‘significant’ effects of the project in question on the environment. Second, those observations must in fact be of such a nature as to preclude the conclusion that there can be no reasonable scientific doubt as to the possibility of the project having significant effects on the environment.
- 50 It will be for the referring court to determine whether, in the light of the information available to the Board at the time the decision of 16 September 2020 was adopted, including the information that was submitted to it by the applicant in the main proceedings in its observations of 7 July 2020, the Board could with certainty, despite the information contained in those observations, rule out all reasonable scientific doubt as to the possibility that the project at issue in the main proceedings would have significant effects on the environment, in particular on species protected under Directive 92/43.
- 51 In the light of all the foregoing considerations, the answer to the questions referred is that Article 4(4) to (6) of Directive 2011/92 must be interpreted as meaning that, where, in the context of a screening procedure carried out under that provision, a third party has provided the competent authority with objective evidence as regards the potential significant effects of that project on the environment, in particular on a species protected under Directive 92/43, that authority must ask the developer to provide it with additional information and take that information into account before deciding whether or not an EIA is necessary for that project. However, where, despite the observations submitted to that authority by a third party, the competent authority is able to rule out, on the basis of objective evidence, the possibility that the project in question is likely to have significant effects on the environment, that authority may decide that an EIA is not necessary, without being required to ask the developer to provide it with additional information.

Costs

- 52 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 (Tenth Chamber) hereby rules:

Article 4(4) to (6) of 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, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014,

must be interpreted as meaning that where, in the context of a screening procedure carried out under that provision, a third party has provided the competent authority with objective evidence as regards the potential significant effects of that project on the environment, in particular on a species protected under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2013/17/EU of 13 May 2013, that authority must ask the developer to provide it with additional information and take that information into account before deciding whether or not an environmental impact assessment is necessary for that project. However, where, despite the observations submitted to that authority by a third party, the competent authority is able to rule out, on the basis of objective evidence, the possibility that the project in question is likely to have significant effects on the environment, that authority may decide that an environmental impact assessment is not necessary, without being required to ask the developer to provide it with additional information.

Gratsias

Passer

Smulders

Delivered in open court in Luxembourg on 6 March 2025.

A. Calot Escobar
Registrar

D. Gratsias
President of the Chamber