ECLI:EU:C:2016:978

JUDGMENT OF THE COURT (Third Chamber)

21 December 2016 (*)

(Reference for a preliminary ruling — Environment — Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Article 3(3) — Plans and programmes which require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects — Validity in the light of the TFEU and the Charter of Fundamental Rights of the European Union — Meaning of use of 'small areas at local level' — National legislation referring to the size of the areas concerned)

In Case C-444/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Veneto (Regional Administrative Court for Veneto, Italy), made by decision of 16 July 2015, received at the Court on 17 August 2015, in the proceedings

Associazione Italia Nostra Onlus

v

Comune di Venezia,

Ministero per i beni e le attività culturali,

Regione Veneto,

Ministero delle Infrastrutture e dei Trasporti,

Ministero della Difesa — Capitaneria di Porto di Venezia,

Agenzia del Demanio,

intervening party:

Società Ca' Roman Srl,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan (Rapporteur) and D. Šváby, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Associazione Italia Nostra Onlus, by F. Mantovan, P. Mantovan and P. Piva, avvocati,

– the Comune di Venezia, by A. Iannotta, M. Ballarin and N. Ongaro, avvocati,

– Società Ca' Roman Srl, by G. Zago, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, assisted by P. Grasso, avvocato dello Stato,

– the European Parliament, by A. Tamás and M. Menegatti, acting as Agents,

– the Council of the European Union, by M. Simm and S. Barbagallo, acting as Agents,

– the European Commission, by L. Pignataro and C. Hermes, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity of Articles 3(3) 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) and the interpretation of Article 3(2) and (3) of that directive.

2 The request has been made in proceedings between the Associazione Italia Nostra Onlus (Italy), on the one hand, and the Comune di Venezia (Municipality of Venice, Italy), the Ministero per i Beni e le Attività Culturali (Ministry of Cultural Assets and Activities, Italy), the Regione Veneto (Veneto Region, Italy), the Ministero delle Infrastrutture e dei Trasporti (Ministry for Infrastructure and Transport, Italy), the Ministero della Difesa — Capitaneria di Porto di Venezia (Ministry of Defence — Venice Harbour Office, Italy) and the Agenzia del Demanio (Public Property Agency, Italy), concerning the requirement to carry out an environmental assessment under Directive 2001/42 in the case of a construction project planned for an island in the Venetian Lagoon.

Legal context

EU law

Directive 92/43/EEC

3 Article 1(k) and (l) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7, 'the Habitats Directive') contains the following definitions:

'(k) site of Community importance means a site which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000 referred to in Article 3, and/or contributes significantly to the maintenance of biological diversity within the biogeographic region or regions concerned.

...

(i) special area of conservation means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated'.

4 According to Article 2 of that directive:

'1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.'

5 Article 3(1) of that directive provides:

'A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to [Council] Directive 79/409/EEC [of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)].'

6 Article 6 of the Habitats Directive provides:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

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

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

7 Article 7 of that directive reads as follows:

'Obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later.'

Directive 2001/42

8 Recitals 9 and 10 of Directive 2001/42 state:

'(9) This Directive is of a procedural nature, and its requirements should either be integrated into existing procedures in Member States or incorporated in specifically established procedures. With a view to avoiding duplication of the assessment, Member States should take account, where appropriate, of the fact that assessments will be carried out at different levels of a hierarchy of plans and programmes.

(10) All plans and programmes which are prepared for a number of sectors and which set a 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 Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5)], and all plans and programmes which have been determined to require assessment pursuant to [the Habitats Directive] are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment. When they determine the use of small areas at local level or are minor modifications to the above plans or programmes, they should be assessed only where Member States determine that they are likely to have significant effects on the environment.'

9 Under Article 1 of Directive 2001/42, entitled 'Objectives':

'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.'

10 Article 2(a) and (b) of that directive sets out the following definitions:

‘For the purpose of this Directive the following definitions shall apply:

(a) “plans and programmes” shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

– which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and

– which are required by legislative, regulatory or administrative provisions;

(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’.

11 Article 3 of that directive, entitled ‘Scope’, provides as follows:

‘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 Directive [85/337], or

(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of [the Habitats Directive].

3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.

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.

...'

12 Article 4 of Directive 2001/42, headed 'General obligations', provides:

'1. The environmental assessment referred to in Article 3 shall be carried out during the preparation of a plan or programme and before its adoption or submission to the legislative procedure.

2. The requirements of this Directive shall either be integrated into existing procedures in Member States for the adoption of plans and programmes or incorporated in procedures established to comply with this Directive.

3. Where plans and programmes form part of a hierarchy, Member States shall, with a view to avoiding duplication of the assessment, take into account the fact that the assessment will be carried out, in accordance with this Directive, at different levels of the hierarchy. For the purpose of, inter alia, avoiding duplication of assessment, Member States shall apply Article 5(2) and (3).'

13 Article 5 of that directive, entitled 'Environmental report' is worded as follows in paragraphs 1 and 2:

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

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

14 Annex II to Directive 2001/42 sets out the criteria for determining the likely significance of environmental effects as referred to in Article 3(5) of that directive.

Italian law

15 Directive 2001/42 was transposed into Italian law by decreto legislativo no. 152 — Norme in materia ambientale (Legislative Decree No 152/2006 on environmental standards) of 3 April 2006 (Ordinary Supplement to GURI No 88, of 14 April 2006).

16 Article 6 of that decree, in the version in force at the material time, provides:

'1. The strategic environmental assessment concerns plans and programmes likely to have significant effects on the environment and cultural heritage.

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

(a) which are prepared for the assessment and management of ambient air quality, for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the reference framework for the approval, authorisation, location or completion of the projects listed in Annexes II, III and IV to this decree;

(b) for which, given the effects that they are likely to have on the conservation objectives of sites designated as special protection areas for the conservation of wild birds and sites classified as Sites of Community Importance for the conservation of natural habitats and of wild fauna and flora, it is deemed necessary to carry out an implications assessment pursuant to Article 5 of DPR (Presidential Decree) No 357 of 8 September 1997, and its subsequent amendments.

3. The plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 require environmental assessment only if the competent authority considers that they have significant effects on the environment, in accordance with the provisions of Article 12.

3a The competent authority shall assess, in accordance with the provisions of Article 12, 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 effects on the environment.

...'

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

17 In the Venetian Lagoon, at the southern tip of the island of Pellestrina, lies an island known as 'Ca' Roman', which comes under the Comune di Venezia. In view of the importance of its natural environment, the Ca' Roman biotope is listed, inter alia, in the NATURA 2000 network.

18 That biotope makes up the southernmost part of the Site of Community Importance ('SCI') and the Special Protection Area ('SPA'), listed under the name 'Venice Lido: coastal biotope' (IT code 3250023), and it is contiguous with the SCI and SPA listed under the name 'Venetian Lagoon' (IT code 3250046) and the SCI listed under the name 'mid-lower Venetian Lagoon' (code IT 3250030). According to the referring court, on Ca' Roman, there is an area adjacent to those SCIs and SPAs containing buildings which are currently derelict.

19 The applicable planning regulations in the territory of the Comune di Venezia allows for regeneration interventions, through the demolition and reconstruction of buildings lacking any value, the use of which will be modified following the preparation of an implementation plan which defines the urban organisation for the locality's infrastructure and architecture.

20 Società Ca' Roman drew up such an implementation plan for the derelict buildings referred to in paragraph 18 above. It plans to build, on their site, 84 housing units in 42 buildings grouped together in five groups of buildings over a total area of 29 195 m².

21 By decision of 31 May 2012, the Municipal Council of the Comune di Venezia approved the plan in question, which was subjected to an environmental assessment, pursuant to the Habitats Directive. That assessment was favourable, but the plan was nevertheless subject to numerous requirements designed to protect the SCIs and SPAs concerned.

22 On the other hand, it was not subjected to an environmental assessment for the purposes of Directive 2001/42. In its opinion of 4 June 2013, the competent regional authority considered that the plan in question concerned only the use of small areas at local level, and that plans relating to such areas did not require an environmental assessment where they have no significant effects on the environment.

23 By decision of 2 October 2014, adopted within the limits of the Municipal Council's competence, the commissario straordinario (special commissioner) of the Comune di Venezia, after checking whether it was appropriate to carry out an environmental assessment under Directive 2001/42, approved the plan in question, without making any modification to the version of that plan which had received the previous approval.

24 The Associazione Italia Nostra, whose aim is to support the protection and promotion of Italy's historical, artistic and cultural heritage, brought an action before the Tribunale amministrativo regionale per il Veneto (Regional Administrative Court for Venice, Italy) against the decision approving the plan and against other measures, in particular, by challenging, in essence, the validity of Article 3(3) of Directive 2001/42 in the light of EU law.

25 According to the referring court, that provision is invalid in the light of Article 191 TFEU and Article 37 of the Charter of Fundamental Rights of the European Union ('the

Charter') in that it provides that plans and programmes which require an environmental assessment pursuant to Articles 6 and 7 of the Habitats Directive are not subject to a mandatory environmental assessment under Directive 2001/42.

26 A simple verification of the requirement to subject a plan or programme to such an environmental assessment, unlike a mandatory systematic environmental assessment, would be an opportunity for national administrations to circumvent the objectives of protection of the environment pursued by the Habitats Directive and by Directive 2001/42.

27 In addition, Article 3(3) of Directive 2001/42 infringes the 'principle of reasonableness', given the inappropriate and insufficient level of protection which that provision provides in view of the objectives pursued by the Habitats Directive and by the, purely quantitative, reference criterion of the size of the area concerned by the plans or programmes coming under that provision.

28 In that regard, the referring court maintains that the sites listed in the Natura 2000 network, in view of their characteristics, are sensitive to the slightest changes resulting from interferences with the fauna, flora, soil and water. Therefore, the effects of changes to such sites, the purpose of which may also include protecting rare or endangered species, is unrelated to the size of the area concerned by a plan or programme. That effect concerns solely qualitative aspects, such as the nature or location of the planned interference and whether or not it is appropriate.

29 The national court refers to the case-law of the Court of Justice according to which a Member State which establishes criteria and/or thresholds taking account only of the size of projects, without also taking their nature and location into consideration, exceeds the limits of its discretion (see, in relation to Directive 85/337, judgments of 21 September 1999, *Commission* v *Ireland*, C-392/96, EU:C:1999:431, paragraphs 64 to 67, and of 16 March 2006, *Commission* v *Spain*, C-332/04, not published, EU:C:2006:180, paragraphs 76 to 81).

30 Therefore, there can be no justification for exempting from a mandatory systematic environmental assessment the plans and programmes covered by Directive 2001/42 on the basis of a purely quantitative criterion, such as that of the use of 'small areas at local level', for the purposes of Article 3(3) of that directive.

31 The referring court adds that, if the Court holds that that provision is not invalid in the light of the TFEU or the Charter, the question then arises whether that notion of 'small areas at local level' may be defined by national legislation solely in quantitative terms, as is the case in Italy.

32 The Italian legislature did not define the term 'small areas at local level', and Italian case-law took as a reference, inter alia, the following factors: for new and expansion-related development projects in urban areas, those covering up to forty hectares, and for urban-area regeneration or development projects in existing urban areas,

those covering up to ten hectares. Those, purely quantitative, factors represent very high thresholds, which poses a problem as regards Directive 2001/42.

33 In those circumstances the Tribunale amministrativo regionale per il Veneto (Regional Administrative Court for Veneto) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 3(3) of Directive 2001/42, in so far as it also concerns the situation referred to in Article 3(2)(b), valid, in the light of the environmental rules laid down in the TFEU and in the Charter, to the extent that it removes the systematic requirement to perform a Strategic Environmental Assessment in respect of plans and programmes which were deemed to require an implications assessment pursuant to Articles 6 and 7 of the Habitats Directive?

(2) Must Article 3(2) and (3) of Directive 2001/42, read in conjunction with recital 10 of that directive, which states that "all plans and programmes which have been determined to require assessment pursuant to [the Habitats Directive] are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment", be interpreted as precluding legislation, such as the national legislation in question, which, in defining 'small areas at local level' in Article 3(3) of Directive 2001/42, only refers to quantitative criteria?

(3) Must Article 3(2) and (3) of Directive 2001/42/EC, read in conjunction with recital 10 of that Directive, which states that "all plans and programmes which have been determined to require assessment pursuant to [the Habitats Directive] are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment", be interpreted as precluding legislation, such as the national legislation in question, which removes the automatic and compulsory requirement for all new and expansion-related development projects in urban areas covering up to forty hectares or urban-area regeneration or development projects in existing urban areas covering up to ten hectares to undergo the Strategic Environmental Assessment procedure, even where, in view of the potential effects on the sites, they had formerly been deemed to require an implications assessment pursuant to Articles 6 and 7 of [the Habitats Directive]?'

Consideration of the questions referred

Admissibility of the request for a preliminary ruling

34 The Comune di Venezia and Società Ca' Roman submit that the request for a preliminary ruling is inadmissible.

35 They submit that the area concerned by the plan at issue in the main proceedings is located outside the SCIs and SPAs referred to in paragraph 18 above. Therefore, as regards that area, an environmental assessment under Articles 6 and 7 of the Habitats Directive is not required, and accordingly an environmental assessment under Directive

2001/42 is not necessary, provided the conditions laid down in Article 3(2)(b) of that directive are satisfied. In those circumstances, answering the questions asked by the referring court is irrelevant to the outcome of the dispute in the main proceedings.

36 In this respect, it should be noted that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgments of 13 March 2001, *PreussenElektra*, C-379/98, EU:C:2001:160, paragraph 39, and of 21 September 2016, *Radgen*, C-478/15, EU:C:2016:705, paragraph 27).

37 In the present case, as has been stated by the Advocate General in point 22 of her Opinion, it is not inconceivable that the plan at issue in the main proceedings, even in a situation where it directly concerns only an area located outside the SCIs and SPAs referred to in paragraph 18 above, should require an environmental assessment under Articles 6 and 7 of the Habitats Directive. It is possible that a plan or programme concerning an area outside an SCI and/or SPA may nevertheless, depending on the circumstances, affect that SCI and/or SPA.

38 It is apparent from the order for reference that, in the present case, the referring court, which states that the plan at issue in the main proceedings concerns an area adjacent to the SCIs and SPAs referred to in paragraph 18 above, considers that to be the case, and it is not for the Court of Justice verify that.

39 In those circumstances, it is not obvious that the interpretation of Directive 2001/42 that is requested is unrelated to the actual facts of the main action or its purpose.

The first question

40 By its first question, the referring court asks, in essence, whether Article 3(3) of Directive 2001/42 is valid in the light of the provisions of the TFEU and of the Charter.

41 It must be stated as a preliminary point that Directive 2001/42 is founded on Article 175(1) EC, concerning environmental actions to be taken by the European Union in order to achieve the objectives of Article 174 EC.

42 Article 191 TFEU, which corresponds to Article 174 EC and previously, in essence, to Article 130r of the EC Treaty, provides, in paragraph 2, that the European Union’s policy on the environment aims at a ‘high level of protection’ taking into account the diversity of situations in the various regions of the Union. Similarly, Article 3(3) TEU

provides that the European Union works in particular for a 'high level of protection and improvement of the quality of the environment'.

43 According to the case-law of the Court, Article 191(1) TFEU authorises the adoption of measures relating solely to certain specified aspects of the environment, provided that such measures contribute to the preservation, protection and improvement of the quality of the environment (see judgments of 14 July 1998, *Safety Hi-Tech*, C-284/95, EU:C:1998:352, paragraph 45, and of 14 July 1998, *Bettati*, C-341/95, EU:C:1998:353, paragraph 43).

44 Whilst it is undisputed that Article 191(2) TFEU requires EU policy in environmental matters to aim for a high level of protection, such a level of protection, to be compatible with that provision, does not necessarily have to be the highest that is technically possible. Article 193 TFEU authorises the Member States to maintain or introduce more stringent protective measures (see judgments of 14 July 1998, *Safety Hi-Tech*, C-284/95, EU:C:1998:352, paragraph 49, and of 14 July 1998, *Bettati*, C-341/95, EU:C:1998:353, paragraph 47).

45 Therefore, it is necessary to verify whether, in the light of that case-law, Article 3(3) of Directive 2001/42 is valid, in the light of Article 191 TFEU.

46 In that regard, it should be pointed out that, in view of the need to strike a balance between certain of the objectives and principles mentioned in Article 191 TFEU, and of the complexity of the implementation of those criteria, review by the Court must necessarily be limited to the question whether the European Parliament and the Council of the European Union, by adopting Article 3(3) of Directive 2001/42, committed a manifest error of appraisal (see, to that effect, judgments of 14 July 1998, *Safety Hi-Tech*, C-284/95, EU:C:1998:352, paragraph 37; of 14 July 1998, *Bettati*, C-341/95, EU:C:1998:353, paragraph 35; and of 15 December 2005, *Greece* v *Commission*, C-86/03, EU:C:2005:769, paragraph 88).

47 As regards Directive 2001/42, it must be recalled that, under Article 1, the objective of that 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 that directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

48 It is apparent from Article 3(2)(b) of that directive that, subject to paragraph 3 of that article, an environmental assessment is to be carried out for all plans and programmes for which, in view of the effects which they are likely to have on sites, an environmental assessment is required pursuant to Article 6 or 7 of the Habitats Directive.

49 As regards Article 3(3) of Directive 2001/42, it provides that the plans and programmes which determine the use of small areas at local level and minor

modifications to plans and programmes are to require an environmental assessment only where the Member States determine that they are likely to have significant effects on the environment.

50 It follows from that provision, read in conjunction with recital 10 of Directive 2001/42, that, for plans and programmes which determine the use of small areas at local level, the competent authorities of the Member State concerned must carry out a prior examination of whether a particular plan or programme is likely to have significant effects on the environment and that those authorities must then require an environmental assessment of that plan or programme, pursuant to that directive, if they reach the conclusion that the plan or programme is likely to have such effects on the environment.

51 Under Article 3(5) of Directive 2001/42, determination of plans or programmes likely to have significant effects on the environment and, accordingly, requiring an environmental assessment pursuant to that directive, is to be carried out through case-by-case examination, or by specifying types of plans or programmes, or by combining both approaches. For this purpose Member States must in all cases take into account the relevant criteria set out in Annex II to that directive, in order to ensure that plans and programmes likely to have significant effects on the environment are covered by that directive.

52 The mechanisms for reviewing the plans and programmes referred to in Article 3(5) of Directive 2001/42 are designed to facilitate the specification of plans that require assessment because they are likely to have significant environmental effects (see judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 45).

53 The margin of discretion enjoyed by Member States pursuant to Article 3(5) of Directive 2001/42 to specify certain types of plans or programmes which are likely to have significant environmental effects is limited by the requirement under Article 3(3) of that directive, in conjunction with Article 3(2), to subject the plans or programmes likely to have significant effects on the environment to environmental assessment, in particular on account of their characteristics, their effects and the areas likely to be affected (see judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 46).

54 Article 3(2), (3) and (5) of Directive 2001/42 thus aims not to exempt any plan or programme likely to have significant effects on the environment from the requirement of environmental assessment (see judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 53).

55 It is appropriate therefore to distinguish that situation from one in which a purely quantitative threshold would lead, in practice, to an entire class of plans or programmes being exempted in advance from the requirement of environmental assessment under Directive 2001/42, even if those plans or programmes are likely to have significant

effects on the environment (see, to that effect, judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraph 47 and the case-law cited).

56 In the light of the foregoing, it must be held that Article 3(3) of Directive 2001/42, by not excluding any plan or programme likely to have significant effects on the environment from an environmental assessment under that directive, falls within the scope of the objective pursued by that directive of providing a high level of environmental protection.

57 The referring court, however, states that a simple verification of the requirement to subject a plan or programme to an environmental assessment, unlike a mandatory systematic environmental assessment, would be an opportunity for national administrations to circumvent the objectives of protection pursued by the Habitats Directive and by Directive 2001/42.

58 However, as is clear from Directive 2001/42, as interpreted by the Court, it is for the Member States to take, within the sphere of their competence, all the general or particular measures necessary to ensure that all plans or programmes likely to have significant environmental effects within the meaning of that directive are subject, before adoption, to an environmental assessment in accordance with the procedural requirements and the criteria laid down by that directive (see judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne*, C-41/11, EU:C:2012:103, paragraph 42 and the case-law cited).

59 In any event, the mere risk that the national authorities, through their conduct, could circumvent the application of Directive 2001/42, is not such as to render Article 3(3) of that directive invalid.

60 Accordingly, it does not appear in the present case that the Parliament and the Council, by adopting Article 3(3) of Directive 2001/42, committed a manifest error of assessment in the light of Article 191 TFEU. Therefore, that provision of Directive 2001/42, in the context of the present case, has revealed nothing which could affect its validity in the light of Article 191 TFEU.

61 Furthermore, as regards the question that Article 3(3) of Directive 2001/42 might be invalid in the light of Article 37 of the Charter, it must be recalled that, under the terms of that article, a ‘high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development’.

62 In that regard, it must be pointed out that Article 52(2) of the Charter provides that rights recognised by the Charter for which provision is made in the Treaties are to be exercised under the conditions and within the limits defined by those Treaties. Such is the case with Article 37 of the Charter. As is apparent from the explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) in connection with that provision, the ‘principles set out in [Article 37 of the Charter] have been based on Articles 2, 6 and

174 [EC], which have now been replaced by Article 3(3) [TEU] and Articles 11 and 191 [TFEU].'

63 Since, as has been established in paragraph 60 above, Article 3(3) of Directive 2001/42 has revealed nothing which could affect its validity in the light of Article 191 TFEU, it follows that that provision also reveals nothing which could affect its validity in the light of Article 37 of the Charter.

64 It follows from the foregoing considerations that the examination of the first question referred has disclosed no factor of such a kind as to affect the validity of Article 3(3) of Directive 2001/42 in the light of the provisions of the TFEU and the Charter.

The second and third questions

65 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 3(3) of Directive 2001/42, read in conjunction with recital 10 of that directive, must be interpreted to the effect that the term 'small areas at local level' in paragraph 3 may be defined with reference solely to the size of the area concerned.

66 As regards the term 'small areas at local level', for the purposes of Article 3(3) of Directive 2001/42, the need for a uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the purpose of the legislation in question (see, inter alia, judgments of 18 January 1984, *Ekro*, C-327/82, EU:C:1984:11, paragraph 11, and of 13 October 2016, *Mikołajczyk*, C-294/15, EU:C:2016:772, paragraph 44).

67 Since Article 3(3) of Directive 2001/42 does not make any express reference to the law of the Member States for the purpose of determining the meaning and scope of 'small areas at local level', that determination must be made in the light of the context of that provision and the objective of that directive.

68 In that regard, it must be pointed out that, according to the wording of that provision, a plan or programme must fulfil two cumulative conditions. First, that plan or programme must determine the use of a 'small area' and secondly, that area must be 'at local level'.

69 As regards, the term 'local level', it must be pointed out that the expression 'local level' is also used in the first indent of Article 2(a) of Directive 2001/42. Under that provision, 'plans and programmes' means 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.

70 Thus, as the Advocate General stated in point 56 of her Opinion, it is evident from the similarity of the terms used in the first indent of Article 2(a) and in Article 3(3) of Directive 2001/42, and from the broad logic of the directive that the expression 'local level' has the same meaning for both those provisions, that is to say, it refers to an administrative level within the Member State concerned.

71 Consequently, in order for a plan or programme to be qualified as a measure which determines the use of a small area 'at local level', for the purposes of Article 3(3) of Directive 2001/42, that plan or programme must be prepared and/or adopted by a local authority, as opposed to a regional or national authority.

72 As regards the term 'small area', the qualifier 'small', in accordance with its usual meaning in everyday language, refers to the size of the area. Thus, as the Advocate General stated in point 59 of her Opinion, that criterion of the size of the area may be understood only as referring to a purely quantitative factor, that is to say, the size of the area concerned by the plan or programme referred to in Article 3(3) of Directive 2001/42, irrespective of the effects on the environment.

73 In those circumstances, it must be held, that, through the use of the term 'small areas at local level', first, the EU legislature intended to take as a reference the territorial jurisdiction of the local authority which prepared and/or adopted the plan or programme concerned. Secondly, since the criterion of the use of 'small areas' must be met in addition to the criterion of determination at local level, the area concerned must be small in size relative to that territorial jurisdiction.

74 Having regard to the foregoing considerations, the answer to the second and third questions referred is that Article 3(3) of Directive 2001/42, read in conjunction with recital 10 of that directive, must be interpreted to the effect that the term 'small areas at local level' in paragraph 3 must be defined with reference to the size of the area concerned where the following conditions are fulfilled:

– the plan or programme is prepared and/or adopted by a local authority, as opposed to a regional or national authority, and

– that area inside the territorial jurisdiction of the local authority is small in size relative to that territorial jurisdiction.

Costs

75 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

1. **The examination of the first question referred has disclosed no factor of such a kind as to affect the validity of Article 3(3) 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, in the light of the provisions of the TFEU and the Charter of Fundamental Rights of the European Union.**

2. **Article 3(3) of Directive 2001/42, read in conjunction with recital 10 of that directive, must be interpreted to the effect that the term 'small areas at local level' in paragraph 3 must be defined with reference to the size of the area concerned where the following conditions are fulfilled:**

– **the plan or programme is prepared and/or adopted by a local authority, as opposed to a regional or national authority, and**

– **that area inside the territorial jurisdiction of the local authority is small in size relative to that territorial jurisdiction.**

[Signatures]

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* Language of the case: Italian.