

Case C-127/02

**Landelijke Vereniging tot Behoud van de Waddenzee and
Nederlandse Vereniging tot Bescherming van Vogels**

v

Staatssecretaris van Landbouw, Natuurbeheer en Visserij

(Reference for a preliminary ruling from the Raad van State)

(Directive 92/43/EEC — Conservation of natural habitats and of wild flora and fauna
— Concept of ‘plan’ or ‘project’ — Assessment of the implications of certain plans
or projects for the protected site)

Opinion of Advocate General Kokott delivered on 29 January 2004 I - 7409
Judgment of the Court (Grand Chamber), 7 September 2004 I - 7448

Summary of the Judgment

1. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Concept of ‘plan’ or ‘project’ on the protected site — Mechanical cockle fishing — Included — Conditions*
(Council Directive 92/43, Art. 6(3))
2. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Provisions laying down the procedure for authorisation of a plan or project on the protected site and a duty of general protection — Concomitant application — Not permissible*
(Council Directive 92/43, Art. 6(2) and (3))
3. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Authorisation of a plan or project on the protected site — Conditions — Appropriate assessment of its implications — Identification of aspects which can affect the site’s conservation objectives*
(Council Directive 92/43, Art. 6(3), first sentence)
4. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Failure to transpose — Determination by the national court of the lawfulness of an authorisation for a plan or project on the protected site — Whether permissible*
(Council Directive 92/43, Art. 6(3))

1. An activity such as mechanical cockle fishing which has been carried on for many years but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may be carried on, falls within the concept of ‘plan’ or ‘project’ within the meaning of Article 6(3) of Council Directive 92/43 on the conservation of

natural habitats and of wild fauna and flora.

(see para. 29, operative part 1)

2. Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora establishes, for protected sites, a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the protected site but likely to have a significant effect on it is authorised by the national authorities only to the extent that it will not adversely affect the integrity of that site, while Article 6(2) of that directive establishes an obligation of general protection consisting in avoiding deterioration and disturbances which could have significant effects in the light of the directive's objectives, and cannot be applicable concomitantly with Article 6(3).

(see para. 38, operative part 2)

in the light of the characteristics and environmental conditions of that site, that it will have a significant effect on that site, either individually or in combination with other plans or projects. Such an assessment of the implications implies that, prior to the approval of the plan or project, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field.

The competent national authorities, taking account of the appropriate assessment of the implications of the plan or project on the site concerned in the light of the site's conservation objectives, are to authorise that plan or project only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.

3. The first sentence of Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the protected site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information and, in particular,

(see paras 45, 49, 61, operative part 3-4)

4. Where a national court is called on to ascertain the lawfulness of an authorisa-

tion for a plan or project within the meaning of Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, it can determine whether the limits on the discretion of the competent national authorities set by that provision have been complied with, even though it has not been transposed into the legal order of the Member State concerned despite the expiry of the time-limit laid down for

that purpose. The effectiveness of Directive 92/43 would be weakened if, in such a case, individuals were prevented from relying on it before their national courts, and if the latter were prevented from taking it into consideration.

(see paras 66, 70, operative part 5)