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Judgment of the Court in Case C-131/24 | VIRUS and Others

The Court of Justice specifies the conditions that a road project must meet in order to guarantee the protection of birds

A number of environmental associations are challenging before the Austrian Federal Administrative Court the authorisation to construct a 1.69-kilometre dual carriageway to the south of St. Pölten (the 'Spange Wörth' project).

The associations take the view that that project is contrary to the Birds Directive, ¹ which seeks to protect all species of birds in the wild state in the European territory of the Member States. First, the breeding grounds of the skylark, grey partridge and corncrake are located within the perimeter of the works. Second, the noise caused by future traffic ² will also disturb many species of forest birds nearby, in particular the middle-spotted woodpecker.

The Federal Administrative Court asked the Court of Justice to clarify the scope of the **prohibition**, laid down by the directive, ³ **on deliberately disturbing birds in a significant manner**. It notes that the project at issue provides for various measures in order to limit the impact on wild bird populations present on or near the site. ⁴

The Court recalls that the prohibition at issue applies not only to human activities the purpose of which is to cause harm to birds, but also to those for which the possibility of such harm is accepted even though they do not manifestly have such a purpose. Consequently, **the road construction project at issue may, in principle, be caught by that prohibition**.

That said, the prohibition applies only to disturbances which have a significant effect on the level deemed sufficient for the populations of wild bird species, and not on specimens of those species. The situation is different only if the population of a given wild bird species is numerically reduced to such an extent that the disturbance of isolated specimens of that species is such as to jeopardise its conservation.

Moreover, there is no deliberate disturbance where accompanying measures make it possible to prevent any significant effect contrary to the objectives of maintaining or restoring to a sufficient level the population of the species concerned. The accompanying measures provided for in the context of the project must therefore be taken into consideration in assessing whether the prohibition at issue precludes it.

The effectiveness of the accompanying measures may be proved by the reasoned assessment of a court expert.

This assessment must be based on the most reliable scientific data available and on the most recent results of international research. However, proof of the effectiveness of those measures cannot be required in the form of scientific documentation attesting to the successful implementation of those measures.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ [Directive 2009/147/EC](#) of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, which codifies Council Directive 79/409/EEC of 2 April 1979 with the same subject matter.

² The planned road should, according to estimates, carry approximately 12 000 vehicles per day.

³ In Article 5(d).

⁴ In particular, the works may be carried out only during certain months of the year and old trees must be kept at a distance of at least 300 metres from the road and over an area of 6.6 hectares.