

Parties to the main proceedings

Applicant: Bayerische Motoren Werke AG

Defendant: Acacia Srl

Operative part of the judgment

- 1) Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted to the effect that a challenge to the jurisdiction of the court seised, raised in the defendant's first submission in the alternative to other objections of procedure raised in the same submission, cannot be considered to be acceptance of the jurisdiction of the court seised, and therefore does not lead to prorogation of jurisdiction pursuant to that article.
- 2) Article 82 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs must be interpreted to the effect that actions for a declaration of non-infringement under Article 81(b) of that regulation must, when the defendant is domiciled in an EU Member State, be brought before the Community design courts of that Member State, except where there is prorogation of jurisdiction within the meaning of Article 23 or Article 24 of Regulation No 44/2001, and with the exception of the cases of *litis pendens* and related actions referred to in those regulations.
- 3) The rule on jurisdiction in Article 5(3) of Regulation No 44/2001 does not apply to actions for a declaration of non-infringement under Article 81(b) of Regulation No 6/2002.
- 4) The rule on jurisdiction set out in Article 5(3) of Regulation No 44/2001 does not apply to actions for a declaration of abuse of a dominant position and of unfair competition that are connected to actions for declaration of non-infringement of a Community design, in so far as granting those applications presupposes that the action for a declaration of non-infringement is allowed.

⁽¹⁾ OJ C 410, 7.11.2016.

**Appeal brought on 3 May 2017 by Vatsева against the order of the General Court (Fifth Chamber)
delivered on 7 April 2017 in Case T-920/16: Vatsева v European Court of Human Rights**

(Case C-231/17 P)

(2017/C 293/16)

Language of the case: English

Parties

Appellant: Vatsева (represented by: K. Mladenova, advokat)

Other party to the proceedings: European Court of Human Rights

By order of 6 July 2017 the Court of Justice (Eight Chamber) held that the appeal was inadmissible.

**Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 22 May 2017 —
Coöperatie Mobilisation for the Environment UA, Vereniging Leefmilieu v College van gedeputeerde
staten van Limburg, College van gedeputeerde staten van Gelderland**

(Case C-293/17)

(2017/C 293/17)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: Coöperatie Mobilisation for the Environment UA, Vereniging Leefmilieu

Defendants: College van gedeputeerde staten van Limburg, College van gedeputeerde staten van Gelderland

Questions referred

1. Can an activity which is not covered by the concept of 'project' as referred to in Article 1(2)(a) of Directive 2011/92/EU ⁽¹⁾ 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 ... because it is not a physical intervention in the natural surroundings be a project as referred to in Article 6(3) of Council Directive 92/43/EEC ⁽²⁾ of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ... because the activity may have a significant effect on a Natura 2000 site?
2. If it is assumed that the application of fertilisers on the surface of land or below its surface is a project, and in the event that it was carried out lawfully before Article 6(3) of ... Directive 92/43/EEC ... became applicable to a Natura 2000 site, and that it is still being carried out, must it then be assessed to be one and the same project, even if the fertilising did not always take place on the same tracts of land, in the same quantities and using the same techniques?

Is it relevant, for the purposes of the assessment of whether this constitutes one and the same project, that the nitrogen deposition caused by the application of fertilisers on the surface of land or below its surface did not increase after Article 6(3) of ... Directive 92/43/EEC ... became applicable to the Natura 2000 site?

3. Does Article 6(3) of ... Directive 92/43/EEC ... preclude legislation which provides that an activity which is inextricably linked to a project and which must therefore also be assessed to be a project, such as the grazing of cattle by a dairy farm, is exempted from the permit requirement, with the result that no individual authorisation is required for that activity, it being assumed that the effects of the activity which has been permitted without authorisation were appropriately assessed before that legislation was adopted?
 - 3(a) Does Article 6(3) of ... Directive 92/43/EEC ... preclude legislation which provides that a certain category of projects, such as the application of fertilisers on the surface of land or below its surface, is exempted from the permit requirement and is thus permitted without individual authorisation, it being assumed that the effects of the activity which has been permitted without authorisation were appropriately assessed before that legislation was adopted?
4. Does the appropriate assessment which formed the basis of the exemption from the permit requirement for the grazing of cattle and the application of fertilisers on the surface of land or below its surface, which was based on the actual and expected extent and intensity of those activities, and the outcome of which is that on average an increase in nitrogen deposition by those activities can be ruled out, meet the requirements which Article 6(3) of ... Directive 92/43/EEC ... lays down in that regard?
 - 4(a) Is it important in this regard that there is a connection between the exemption from the permit requirement and the Programma Aanpak Stikstof 2015-2021 (Integrated Approach to Nitrogen 2015-2021; 'the PAS') which is premised on a decrease in the total nitrogen deposition in respect of nitrogen-sensitive ecological features in the Natura 2000 sites, and that deposition development in the Natura 2000 sites is monitored annually in the context of the PAS, and that, if the decrease is less favourable than had been assumed in the appropriate assessment, any necessary adjustments are made?
5. May the appropriate assessment as referred to in Article 6(3) of ... Directive 92/43/EEC ..., which was made for a programme such as the PAS, take account of the positive effects of conservation measures and appropriate steps for existing areas of habitat types and habitats, which are taken in connection with the obligations arising from Article 6(1) and (2) of ... Directive 92/43/EEC ...?
 - 5(a) If Question 5 is answered in the affirmative: Can the positive effects of conservation measures and appropriate steps be taken into account in an appropriate assessment for a programme if, at the time of the appropriate assessment, those measures have not yet been implemented and their positive effect has not yet been achieved?

Assuming that the appropriate assessment contains definitive findings on the effects of those measures based on the best available scientific knowledge in that regard, is it important that the implementation and the outcomes of those measures be monitored and, if it transpires that the effects are less favourable than had been assumed in the appropriate assessment, that adjustments, if required, be made?

6. May the positive effects of the autonomous decrease in the nitrogen deposition which might become apparent during the period in which the PAS applies be taken into account in the appropriate assessment as referred to in Article 6(3) of ... Directive 92/43/EEC ...?

Assuming that the appropriate assessment contains definitive findings on the effects of those developments based on the best available scientific knowledge in that regard, is it important that the autonomous decrease in the nitrogen deposition be monitored and, if it transpires that the decrease is less favourable than had been assumed in the appropriate assessment, that adjustments, if required, be made?

7. May restoration measures taken in the context of a programme such as the PAS and aimed at preventing a particular harmful ecological factor, such as nitrogen deposition, from having adverse effects for existing areas of habitat types or habitats be regarded as protective measures as referred to in paragraph 28 of the judgment of the Court of Justice of 15 May 2014, *Briels and Others*, C-521/12, EU:C:2014:330, which may be taken into account in an appropriate assessment as referred to in Article 6(3) of ... Directive 92/43/EEC ...?

- 7(a) If Question 7 is answered in the affirmative: Can the positive effects of protective measures which may be taken into account in the appropriate assessment be taken into account if, at the time of the appropriate assessment, they had not yet been implemented and their positive effect had not yet been achieved?

Is it important in that respect, assuming that the appropriate assessment contains definitive findings on the effects of those measures based on the best scientific knowledge in that regard, that the implementation and the results of the measures be monitored, and, if this indicates that the results are less favourable than assumed in the appropriate assessment, that adjustments take place if necessary?

8. Is the power to impose obligations referred to in Article 2.4 of the *Wet natuurbescherming* (Netherlands Law on Nature Conservation), which the competent authority must apply if, having regard to the conservation objectives, a Natura 2000 site so requires, an adequate preventive instrument in order to be able to implement Article 6(2) of ... Directive 92/43/EEC ... in respect of the grazing of cattle and the application of fertilisers on the surface of land or below its surface?

⁽¹⁾ OJ 2012 L 26, p. 1.

⁽²⁾ OJ 1992 L 206, p. 7.

**Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 22 May 2017 —
Stichting Werkgroep Behoud de Peel v College van gedeputeerde staten van Noord-Brabant**

(Case C-294/17)

(2017/C 293/18)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Stichting Werkgroep Behoud de Peel

Defendant: College van gedeputeerde staten van Noord-Brabant