

JUDGMENT OF THE COURT (Grand Chamber)

11 September 2012 (\*)

(Reference for a preliminary ruling – Directives 85/337/EEC, 92/43/EEC, 2000/60/EC and 2001/42/EC – Community action in the field of water policy – Diversion of the course of a river – Meaning of the time-limit for production of river basin management plans)

In Case C-43/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Simvoulio tis Epikratias (Greece), made by decision of 9 October 2009, received at the Court on 25 January 2010, in the proceedings

**Nomarchiaki Aftodioikisi Aitoloakarnanias,**

**Dimos Agriniou,**

**Dimos Iniadon,**

**Emporiko kai Viomikhaniko Epimelitirio Aitoloakarnanias,**

**Enosi Agrotikon Sinetairismon Agriniou,**

**Aitoliki Etairia Prostasias Topiou kai Perivallontos,**

**Elliniki Ornithologiki Etairia,**

**Elliniki Etairia gia tin Prostasia tou Perivallontos kai tis Politistikis Klironomias,**

**Dimos Mesolongiou,**

**Dimos Aitolikou,**

**Dimos Inakhou,**

**Topiki Enosi Dimon kai Kinotiton Nomou Aitoloakarnanias,**

**Pagkosmio Tamio gia ti Fisi WWF Ellas**

v

**Ipourgos Perivallontos, Khorotaxias kai Dimosion Ergon,**

**Ipourgos Esoterikon, Dimosias Diikisis kai Apokentrosis,**

**Ipourgos Ikonomias kai Ikonomikon,**

**Ipourgos Anaptixis,**

**Ipourgos Agrotikis Anaptixis kai Trofimon,**

**Ipourgos Politismou,**

intervening parties:

**Nomarchiaki Aftodioikisi Trikalon,**

**Nomarchiaki Aftodioikisi Magnisias,**

**Dimosia Epikhirisi Ilektrismou AE (DEI),**

**Nomarchiaki Aftodioikisi Karditsas,**

**Nomarchiaki Aftodioikisi Larisis,**

**Topiki Enosi Dimon kai Kinotiton tou Nomou Trikalon,**

**Topiki Enosi Dimon kai Kinotiton tou Nomou Larisis,**

**Topiki Enosi Dimon kai Kinotiton tou Nomou Karditsas,**

**Tekhniko Epimelitirio Elladas – Periferiako Tmima Kentrikis kai Ditikis Thessalias,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot and U. Lõhmus, Presidents of Chambers, A. Rosas, E. Levits, A. Ó Caoimh, L. Bay Larsen (Rapporteur), T. von Danwitz, A. Arabadjiev and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 May 2011,

after considering the observations submitted on behalf of:

- Nomarchiaki Aftodioikisi Aitoloakarnanias, Dimos Agriniou, Dimos Iniadon, Emporiko kai Viomikhaniko Epimelitirio Aitoloakarnanias, Enosi Agrotikon Sinetairismon Agriniou, Aitoliki Etairia Prostasias Topiou kai Perivallontos, Elliniki Ornithologiki Etairia, Elliniki Etairia gia tin Prostasia tou Perivallontos kai tis Politistikis Klironomias, Dimos Mesolongiou, Dimos Aitolikou, Dimos Inakhou, Topiki Enosi Dimon kai Kinotiton Nomou Aitoloakarnanias and Pagkosmio Tamio gia ti Fisi WWF Ellas, by C. Rokofillos, G. Khristoforidis, V. Dorovinis, N. Alevizatos, M. Asimakopoulou, E. Kiousopoulou and N. Khatzis, dikigoroi,
- Nomarchiaki Aftodioikisi Trikalon, by A. Tigkas, dikigoros,

- Nomarchiaki Aftodioikisi Magnisias, by X. Kontiadis, dikigoros,
- Dimosia Epikhirisi Ilektrismou AE (DEI), by C. Sinodinos and F.-A. Mouratian, dikigori,
- Nomarchiaki Aftodioikisi Karditsas, by A. Kormalis, dikigoros,
- Nomarchiaki Aftodioikisi Larisas, Topiki Enosi Dimon kai Kinotiton tou Nomou Trikalon, Topiki Enosi Dimon kai Kinotiton tou Nomou Larisis, Topiki Enosi Dimon kai Kinotiton tou Nomou Karditsas, Tekhniko Epimelitirio Elladas – Periferiako Tmima Kentrikis kai Ditikis Thessalias, by S. Flogaitis, A. Sinis and G. Siouti, dikigori,
- the Greek Government, by G. Karipsiadis, C. Mitkidis and K. Kardakastanis, acting as Agents,
- the Norwegian Government, by K. Moe Winther and I. Thue, acting as Agents,
- the European Commission, by D. Recchia, S. Petrova, I. Chatzigiannis and P. Oliver, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 September 2011,  
gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1), of 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 Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17) ('Directive 85/337'), 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 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).
- 2 The reference has been made in legal proceedings brought by the Nomarchiaki Aftodioikisi Aitoloakarnanias (Prefectural Authority of Aitoloakarnania) and other legal persons against the Ipourgos Perivallontos, Khorotaxias kai Dimosion Ergon (Minister for the Environment, Regional Planning and Public Works) and other ministers, seeking the annulment of measures relating to the project for the partial diversion of the upper waters of the river Acheloos (Western Greece) to the river Pinios, in Thessaly.

### **Legal context**

*European Union law*

Directive 2000/60

3 Recitals 19, 20, 25 and 32 in the preamble to Directive 2000/60 are worded as follows:

‘(19) This Directive aims at maintaining and improving the aquatic environment in the Community. This purpose is primarily concerned with the quality of the waters concerned. Control of quantity is an ancillary element in securing good water quality and therefore measures on quantity, serving the objective of ensuring good quality, should also be established.

(20) The quantitative status of a body of groundwater may have an impact on the ecological quality of surface waters and terrestrial ecosystems associated with that groundwater body.

...

(25) Common definitions of the status of water in terms of quality and, where relevant for the purpose of the environmental protection, quantity should be established. Environmental objectives should be set to ensure that good status of surface water and groundwater is achieved throughout the Community and that deterioration in the status of waters is prevented at Community level.

...

(32) There may be grounds for exemptions from the requirement to prevent further deterioration or to achieve good status under specific conditions, if the failure is the result of unforeseen or exceptional circumstances, in particular floods and droughts, or, for reasons of overriding public interest, of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, provided that all practicable steps are taken to mitigate the adverse impact on the status of the body of water.’

4 Article 2 of that directive provides the following definitions:

‘ ...

(10) “Body of surface water” means a discrete and significant element of surface water such as a lake, a reservoir, a stream, river or canal, part of a stream, river or canal, a transitional water or a stretch of coastal water.

...

(13) “River basin” means the area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta.

(14) “Sub-basin” means the area of land from which all surface run-off flows through a series of streams, rivers and, possibly, lakes to a particular point in a water course (normally a lake or a river confluence).

(15) “River basin district” means the area of land and sea, made up of one or more neighbouring river basins together with their associated groundwaters and coastal waters, which is identified under Article 3(1) as the main unit for management of river basins.

...

(17) “Surface water status” is the general expression of the status of a body of surface water, determined by the poorer of its ecological status and its chemical status.

(18) “Good surface water status” means the status achieved by a surface water body when both its ecological status and its chemical status are at least “good”.

(19) “Groundwater status” is the general expression of the status of a body of groundwater, determined by the poorer of its quantitative status and its chemical status.

(20) “Good groundwater status” means the status achieved by a groundwater body when both its quantitative status and its chemical status are at least “good”.

(21) “Ecological status” is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, classified in accordance with Annex V.

(22) “Good ecological status” is the status of a body of surface water, so classified in accordance with Annex V.

...

(24) “Good surface water chemical status” means the chemical status required to meet the environmental objectives for surface waters established in Article 4(1)(a), that is the chemical status achieved by a body of surface water in which concentrations of pollutants do not exceed the environmental quality standards established in Annex IX and under Article 16(7), and under other relevant Community legislation setting environmental quality standards at Community level.

(25) “Good groundwater chemical status” is the chemical status of a body of groundwater, which meets all the conditions set out in table 2.3.2 of Annex V.

(26) “Quantitative status” is an expression of the degree to which a body of groundwater is affected by direct and indirect abstractions.

...

(28) “Good quantitative status” is the status defined in table 2.1.2 of Annex V.

...?

5 Article 3(1) and (4) of that directive provide:

‘1. Member States shall identify the individual river basins lying within their national territory and, for the purposes of this Directive, shall assign them to individual river basin districts. Small river basins may be combined with larger river basins or joined with neighbouring small basins to form individual river basin districts where appropriate. Where groundwaters do not fully follow a particular river basin, they shall be identified and assigned to the nearest or most appropriate river basin district. Coastal waters shall be identified and assigned to the nearest or most appropriate river basin district or districts.

...

4. Member States shall ensure that the requirements of this Directive for the achievement of the environmental objectives established under Article 4, and in particular all programmes of measures are coordinated for the whole of the river basin district. ...’

6 Article 4 of Directive 2000/60 is worded as follows:

‘1. In making operational the programmes of measures specified in the river basin management plans:

(a) for surface waters

- (i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;
- (ii) Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;

...

(b) for groundwater

- (i) Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);
- (ii) Member States shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application

of paragraphs 5, 6 and 7 without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);

...

...

4. The deadlines established under paragraph 1 may be extended for the purposes of phased achievement of the objectives for bodies of water, provided that no further deterioration occurs in the status of the affected body of water when all of the following conditions are met:

(a) Member States determine that all necessary improvements in the status of bodies of water cannot reasonably be achieved within the timescales set out in that paragraph for at least one of the following reasons:

(i) the scale of improvements required can only be achieved in phases exceeding the timescale, for reasons of technical feasibility;

(ii) completing the improvements within the timescale would be disproportionately expensive;

(iii) natural conditions do not allow timely improvement in the status of the body of water.

(b) Extension of the deadline, and the reasons for it, are specifically set out and explained in the river basin management plan required under Article 13.

(c) Extensions shall be limited to a maximum of two further updates of the river basin management plan except in cases where the natural conditions are such that the objectives cannot be achieved within this period.

(d) A summary of the measures required under Article 11 which are envisaged as necessary to bring the bodies of water progressively to the required status by the extended deadline, the reasons for any significant delay in making these measures operational, and the expected timetable for their implementation are set out in the river basin management plan. A review of the implementation of these measures and a summary of any additional measures shall be included in updates of the river basin management plan.

5. Member States may aim to achieve less stringent environmental objectives than those required under paragraph 1 for specific bodies of water when they are so affected by human activity, as determined in accordance with Article 5(1), or their natural condition is such that the achievement of these objectives would be infeasible or disproportionately expensive, and all the following conditions are met:

(a) the environmental and socioeconomic needs served by such human activity cannot be achieved by other means, which are a significantly better environmental option not entailing disproportionate costs;

(b) Member States ensure:

- for surface water, the highest ecological and chemical status possible is achieved, given impacts that could not reasonably have been avoided due to the nature of the human activity or pollution,
  - for groundwater, the least possible changes to good groundwater status, given impacts that could not reasonably have been avoided due to the nature of the human activity or pollution;
- (c) no further deterioration occurs in the status of the affected body of water;
- (d) the establishment of less stringent environmental objectives, and the reasons for it, are specifically mentioned in the river basin management plan required under Article 13 and those objectives are reviewed every six years.

6. Temporary deterioration in the status of bodies of water shall not be in breach of the requirements of this Directive if this is the result of circumstances of natural cause or *force majeure* which are exceptional or could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, or the result of circumstances due to accidents which could not reasonably have been foreseen, when all of the following conditions have been met:

- (a) all practicable steps are taken to prevent further deterioration in status and in order not to compromise the achievement of the objectives of this Directive in other bodies of water not affected by those circumstances;
- (b) the conditions under which circumstances that are exceptional or that could not reasonably have been foreseen may be declared, including the adoption of the appropriate indicators, are stated in the river basin management plan;
- (c) the measures to be taken under such exceptional circumstances are included in the programme of measures and will not compromise the recovery of the quality of the body of water once the circumstances are over;
- (d) the effects of the circumstances that are exceptional or that could not reasonably have been foreseen are reviewed annually and, subject to the reasons set out in paragraph 4(a), all practicable measures are taken with the aim of restoring the body of water to its status prior to the effects of those circumstances as soon as reasonably practicable, and
- (e) a summary of the effects of the circumstances and of such measures taken or to be taken in accordance with paragraphs (a) and (d) are included in the next update of the river basin management plan.

7. Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or

- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means which are a significantly better environmental option.

8. When applying paragraphs 3, 4, 5, 6 and 7, a Member State shall ensure that the application does not permanently exclude or compromise the achievement of the objectives of this Directive in other bodies of water within the same river basin district and is consistent with the implementation of other Community environmental legislation.

9. Steps must be taken to ensure that the application of the new provisions, including the application of paragraphs 3, 4, 5, 6 and 7, guarantees at least the same level of protection as the existing Community legislation.’

7 Article 5(1) of Directive 2000/60 provides:

‘Each Member State shall ensure that for each river basin district or for the portion of an international river basin district falling within its territory:

- an analysis of its characteristics,
- a review of the impact of human activity on the status of surface waters and on groundwater, and
- an economic analysis of water use

is undertaken according to the technical specifications set out in Annexes II and III and that it is completed at the latest four years after the date of entry into force of this Directive.’

8 Article 6(1) of that directive states:

‘Member States shall ensure the establishment of a register or registers of all areas lying within each river basin district which have been designated as requiring special protection under specific Community legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water. They shall ensure that the register is completed at the latest four years after the date of entry into force of this Directive.’

9 Under the first subparagraph of Article 9(1) of that directive:

‘Member States shall take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III, and in accordance in particular with the polluter pays principle.’

10 Article 11(7) of Directive 2000/60 is worded as follows:

‘The programmes of measures shall be established at the latest nine years after the date of entry into force of this Directive and all the measures shall be made operational at the latest 12 years after that date.’

11 Article 13 of that directive provides:

‘1. Member States shall ensure that a river basin management plan is produced for each river basin district lying entirely within their territory.

...

4. The river basin management plan shall include the information detailed in Annex VII.

5. River basin management plans may be supplemented by the production of more detailed programmes and management plans for sub-basin, sector, issue, or water type, to deal with particular aspects of water management. Implementation of these measures shall not exempt Member States from any of their obligations under the rest of this Directive.

6. River basin management plans shall be published at the latest nine years after the date of entry into force of this Directive.

7. River basin management plans shall be reviewed and updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter.’

12 Article 14 of that directive is worded as follows:

‘1. Member States shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comments to the public, including users:

- (a) a timetable and work programme for the production of the plan, including a statement of the consultation measures to be taken, at least three years before the beginning of the period to which the plan refers;
- (b) an interim overview of the significant water management issues identified in the river basin, at least two years before the beginning of the period to which the plan refers;
- (c) draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers.

On request, access shall be given to background documents and information used for the development of the draft river basin management plan.

2. Member States shall allow at least six months to comment in writing on those documents in order to allow active involvement and consultation.

3. Paragraphs 1 and 2 shall apply equally to updated river basin management plans.’

13 Article 15 of the directive states:

‘1. Member States shall send copies of the river basin management plans and all subsequent updates to the Commission and to any other Member State concerned within three months of their publication:

- (a) for river basin districts falling entirely within the territory of a Member State, all river management plans covering that national territory and published pursuant to Article 13;
- (b) for international river basin districts, at least the part of the river basin management plans covering the territory of the Member State.

2. Member States shall submit summary reports of:

- the analyses required under Article 5, and
- the monitoring programmes designed under Article 8,

undertaken for the purposes of the first river basin management plan within three months of their completion.

3. Member States shall, within three years of the publication of each river basin management plan or update under Article 13, submit an interim report describing progress in the implementation of the planned programme of measures.’

14 Under the first subparagraph of Article 24(1) of Directive 2000/60, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive at the latest by 22 December 2003 and forthwith to inform the Commission thereof.

Directive 85/337

15 Article 1 of Directive 85/337 is worded as follows:

‘1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive:

“project” means:

- the execution of construction works or of other installations or schemes,
- other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

“developer” means:

the applicant for authorisation for a private project or the public authority which initiates a project;

“development consent” means:

the decision of the competent authority or authorities which entitles the developer to proceed with the project.

“public” means:

one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

“public concerned” means:

the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

...

5. This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.’

16 Article 2(1) of that directive provides:

‘Member States shall adopt all measures necessary to ensure that, before 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. ...’

17 Article 5(3) of that directive provides:

‘The information to be provided by the developer in accordance with paragraph 1 shall include at least:

- a description of the project comprising information on the site, design and size of the project,
- a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
- the data required to identify and assess the main effects which the project is likely to have on the environment,
- an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects,
- a non-technical summary of the information mentioned in the previous indents.’

18 Under Article 6 of Directive 85/337:

‘1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To this end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.

2. The public shall be informed, whether by public notices or other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

- (a) the request for development consent;
- (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
- (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions or, where there is one, the draft decision;
- (e) an indication of the availability of the information gathered pursuant to Article 5;
- (f) an indication of the times and places where and means by which the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. Member States shall ensure that, within reasonable time-frames, the following is made available to the public concerned:

- (a) any information gathered pursuant to Article 5;
- (b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;
- (c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information [(OJ 2003 L 41, p. 26)], information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

...?

19 Article 8 of that directive states:

‘The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 must be taken into consideration in the development consent procedure.’

20 Article 9(1) of that directive is worded as follows:

‘When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

- the content of the decision and any conditions attached thereto,
- having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process,
- a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.’

Directive 2001/42

21 Article 2 of Directive 2001/42 provides:

‘For the purposes of this Directive:

- (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;

...’

22 Article 3(2) of that directive provides:

‘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/EEC, 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 Directive 92/43/EEC.’

Directive 92/43

23 According to the third recital in the preamble to Directive 92/43, ‘the main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, this Directive makes a contribution to the general objective of sustainable development; ... the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities’.

24 Article 2(3) of that directive provides:

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

25 Article 3(1) of that directive is worded as follows:

‘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 [“SPAs”] 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)].’

26 Article 4 of Directive 92/43 states:

‘1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural

habitat types in Annex I and which species in Annex II that are native to its territory the sites host. ...

The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site. That information shall include a map of the site, its name, location, extent and the data resulting from application of the criteria specified in Annex III (Stage 1) provided in a format established by the Commission in accordance with the procedure laid down in Article 21.

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the five biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory referred to in Article 2(1), the Commission shall establish, in agreement with each Member State, a draft list of sites of Community importance ["SCIs"] drawn from the Member States' lists identifying those which host one or more priority natural habitat types or priority species.

...

The list of sites selected as [SCIs], identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.

3. The list referred to in paragraph 2 shall be established within six years of the notification of this Directive.

4. Once a [SCI] has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.

5. As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).'

27 Under Article 6(2) to (4) of that directive:

'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.’

28 Article 7 of that directive is worded 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 79/409

29 Under Article 4(1) and (2) of Directive 79/409:

‘1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

...

Member States shall classify in particular the most suitable territories in number and size as [SPAs] for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.’

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

30 The dispute in the main proceedings concerns a project for the partial diversion of the upper waters of the river Acheloos to Thessaly (‘the project at issue in the main

proceedings'). That major project, intended to serve not only the irrigation needs of the region of Thessaly and electricity production but also the supply of water to towns and cities in that region, has long been the subject of litigation. A number of actions, seeking the annulment of the ministerial decrees approving successive versions of that project, have been brought by environmental organisations, international non-governmental organisations and local authorities concerned.

- 31 The environmental parameters in respect of certain individual technical works forming part of that project were initially approved by two decisions of 9 October 1991 and 21 April 1992 of the competent ministers. They concerned a tunnel of 18.5 kilometres channelling the waters of the river Acheloos to Thessaly and dams and reservoirs, together with works associated with that project.
- 32 Both those ministerial decisions were annulled, by judgments No 2759/1994 and No 760/1994 respectively of the *Simvoulío tis Epikratias* (Council of State), on the ground that they were not based on a comprehensive study of the environmental impact of the project at issue in the main proceedings. That court held that the diversion of a proportion of the waters of the river Acheloos to the plain of Thessaly constituted a technically complex and large-scale project whose overall effect on the environment of the areas concerned was not confined to the sum of the strictly local consequences of each of the works considered in isolation. Consequently, it was not sufficient, in order to measure and assess the consequences of that project, to identify the environmental effects of each of the works taken separately, but it was on the contrary necessary to prepare an overall study in which the various distinct consequences and the subsequent environmental impact of that project would be considered and assessed together, in accordance with an appropriate scientific method.
- 33 Following those judgments, a single assessment was drawn up which related to all the works to be carried out as part of the project at issue in the main proceedings. Consequently, by joint decision of 15 December 1995, the competent ministers approved the environmental parameters relating to the partial diversion to Thessaly of the upper waters of the river Acheloos and the construction and operation of the works associated with that diversion, which included, *inter alia*, hydroelectric power stations. Further, by another ministerial decision, the maximum volume of water which could be diverted was reduced from 1 100 million to 600 million cubic metres per annum.
- 34 A further action for the annulment of those decisions was upheld by judgment No 3478/2000 of the *Simvoulío tis Epikratias*. The court held that, taking into account the findings and evaluations contained in the environmental impact assessment ('the EIA'), it was apparent that the assessment contained a thorough and informed evaluation which balanced the impact of those works against the needs which they were to meet and, in particular, the maintenance and strengthening of productivity in the plain of Thessaly. However, the court also held that that assessment did not consider any alternative solution capable of avoiding the destruction of most of the important monuments in the region concerned. Consequently, those decisions were annulled in their entirety.
- 35 After the *Simvoulío tis Epikratias* delivered that judgment, the Minister of the Environment and Public Works decided to commission a 'supplementary environmental impact assessment on the partial diversion to Thessaly of the waters of the river

Acheloos'. It is apparent from that assessment, produced in 2002, that its aim was, in particular, to explore projects which were full alternatives to that diversion, to present new environmental data which had in the interim become available on the areas affected by the works and to clarify the environmental impact and the remedial measures, taking into account the specific technical studies carried out in those affected areas since completion of the environmental impact assessment produced in 1995. That supplementary assessment was approved by a decision of the Minister of Culture of 13 March 2003.

- 36 Thereafter, the competent ministers issued their joint decision of 19 March 2003 which approved the environmental parameters applicable to the construction and operation of the works partially to divert the upper waters of the Acheloos to Thessaly.
- 37 That decision was annulled by judgment No 1688/2005 of the Simvoulio tis Epikratias. In that judgment, the court held that, taking into account the provisions then in force of Law 1739/1987 (FEK A' 201/20.11.1987) and in the light both of Directive 2000/60 and of the principle of sustainable water management, the execution of works exploiting water resources was permitted only if such works were part of a programme of sustainable development of those resources. The work relating to the project at issue in the main proceedings had never been incorporated into such a programme, which, moreover, had never been implemented. As a consequence of that decision to annul, the Simvoulio tis Epikratias also annulled, by judgment No 1186/2006, a decision of 18 March 2005, whereby the Minister of the Environment approved the award of the contract for the 'completion of the Sikia dam'.
- 38 On 2 August 2006, Law 3481/2006 (FEK A' 162/2.8.2006) was adopted; Articles 9 and 13 thereof, approving the project at issue in the main proceedings, were submitted to the Greek Parliament, in the form of an amendment, on 6 July 2006. Article 9 of that law provided that, until the ratification of the national programme for management and protection of the water resources of the country and the regional management plans, it was possible to approve management plans for the waters of specific river basins and to transfer water to other basins, and that projects relating to such plans had to be approved by legislation where they were large-scale projects or projects of national importance. Under Article 13 of that law, the works associated with the project at issue in the main proceedings were defined as large-scale works and works in the public interest and the management plan for the Acheloos and Pinios river basins was approved, as were the environmental specifications applicable to the construction and operation of the works associated with that project.
- 39 Article 13(4) of Law 3481/2006 provided that it was possible, in accordance with the management plan and the environmental parameters ratified in Article 13(3), to bring into service or complete construction of the public works and the works of Dimosia Epikhirisi Ilektrismou (DEI (the Public Power Corporation of Greece)) relating to the diversion of the upper waters of the river Acheloos to Thessaly or the production of electrical energy which had been subject to a public procurement procedure and which were constructed or under construction. On the basis of that provision the company awarded the contract was instructed to continue the work which it had suspended following the judgment which annulled the award of the contract.

40 The applicants in the main proceedings seek the annulment of the project at issue in the main proceedings in its entirety. The actions are directed against both Article 13 of Law 3481/2006 and the related administrative measures. The Simvoulio tis Epikratias states that both the measures approving the environmental parameters and the measures pursuant to which the works associated with that project were to be carried out had previously been annulled by judgments of that court delivered prior to the entry into force of Law 3481/2006. In the opinion of the referring court, there is therefore an attempt to adopt those measures anew by means of the abovementioned management plan, which was approved on the basis of Article 9 of that law. The main question at issue in the main proceedings is the compatibility of the provisions of Articles 9 and 13 of that law with European Union law.

41 In those circumstances, the Simvoulio tis Epikratias decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

1. Does Article 13(6) of Directive 2000/60/EC ... merely set an ultimate temporal limit (22 December 2009) for the drawing up of management plans for water resources or does it lay down, up until that date, a special time-limit for transposition of the relevant provisions of Articles 3, 4, 5, 6, 9, 13 and 15 of that directive?

2. Should the Court of Justice hold that the foregoing provision of that directive merely sets an ultimate temporal limit (22 December 2009) for the drawing up of management plans for water resources:

Is national legislation that permits the transfer of water from a particular river basin to another river basin, without the plans having yet been drawn up for the river basin districts within which the river basins from and towards which water will be transferred are located, consistent with Articles 2, 3, 4, 5, 6, 9, 13 and 15 of Directive 2000/60, given that, under Article 2(15) of that directive, the main unit for management of a river basin is the river basin district to which it belongs?

3. Should the preceding question be answered in the affirmative:

For the purpose of Articles 2, 3, 5, 6, 9, 13 and 15 of Directive 2000/60, is the transfer of water from a river basin district to a neighbouring river basin district permitted? Should the answer be in the affirmative, can the purpose of that transfer be only to meet water-supply needs or can irrigation and power generation also be served? Is it in any event a requirement, for the purpose of those provisions of that directive, that the administrative authorities have decided, stating reasons and on the basis of the necessary scientific study, that the receiving river basin district cannot meet with its own water resources the needs which it has in respect of water supply, irrigation and so forth?

4. Should the Court of Justice hold, as regards Question 1, that Article 13(6) of Directive 2000/60 does not merely set an ultimate temporal limit (22 December 2009) for the drawing up of management plans for water resources, but lays down a special time-limit for transposition of the relevant provisions of Articles 3, 4, 5, 6, 9, 13 and 15 of that directive:

Does national legislation, enacted within that special time-limit for transposition, that permits the transfer of water from a particular river basin to another river basin, without the plans having yet been drawn up for the river basin districts within which the river basins from and towards which water will be transferred are located, place, without more, the practical effect of that directive at risk, or is it necessary, in order to assess whether the practical effect of the directive is placed at risk, to take account of criteria such as the scale of the interventions provided for and the objectives of the transfer of the water?

5. Is a legislative provision which is enacted by a national parliament and which approves river basin management plans without the relevant national rules providing for a public consultation stage in the procedure before the national parliament, and without it being apparent from the case-file that the consultation procedure before the administrative authorities that is provided for in Directive 2000/60 was observed, compatible with Articles 13, 14 and 15 of that directive which concern the procedures for informing and consulting the public and for public participation?
6. For the purpose of ... Directive 85/337/EEC ..., does an [EIA] which relates to the construction of dams and the transfer of water and which was placed for approval before the national parliament after the annulment by a judicial decision of the measure by which it had previously been approved and in respect of which the publicity procedure had previously been observed, without that procedure being observed anew, meet the requirements of Articles 1, 2, 5, 6, 8 and 9 of that directive regarding informing the public and public participation?
7. Does a project to divert a river fall within the field of application of Directive 2001/42/EC ... where that plan:
  - (a) concerns the construction of dams and the transfer of water from one river basin district to another (from those of western mainland Greece and Epirus to those of Thessaly),
  - (b) falls within the field of application of Directive 2000/60 ...,
  - (c) concerns works under ... Directive 85/337 ...,
  - (d) may have environmental effects on areas covered by ... Directive 92/43/EEC ...?
8. Should the preceding question be answered in the affirmative:

For the purpose of Article 13(1) of Directive 2001/42, can acts which concerned the project at issue and which have been annulled with retroactive effect by judicial decisions be considered to be formal preparatory acts which were issued before 21 July 2004 so that there is no obligation to prepare a strategic environmental report?

9. Should the preceding question be answered in the negative:

For the purpose of Article 11(2) of Directive 2001/42, if a plan simultaneously falls within the field of application of that directive and within that of Directives

2000/60 and 85/337 which also require the environmental effects of that scheme to be assessed, are the assessments which have been drawn up on the basis of the provisions of Directives 2000/60 and 85/337 sufficient for observance of the requirements of Directive 2001/42, or will an autonomous strategic environmental report have to be prepared?

10. For the purpose of Articles 3, 4 and 6 of ... Directive 92/43 ..., were the areas which were included in the national lists of [SCIs] and, ultimately, were included in the Community list of SCIs covered by the protection afforded by Directive 92/43 before the publication of Commission Decision 2006/613/EC of 19 July 2006 adopting [, pursuant to Council Directive 92/43,] the list of sites of Community importance for the Mediterranean biogeographical region [(OJ 2006 L 259, p. 1)]?
11. Is it possible, for the purpose of Articles 3, 4 and 6 of Directive 92/43, for the competent national authorities to grant consent authorising the carrying out of a project for the diversion of waters which is not directly connected with or necessary to the conservation of a district included within a special protection area when all the studies that are contained in the file for that project record a complete lack of information or an absence of reliable and updated data regarding the birds in that district?
12. For the purpose of Articles 3, 4 and 6 of Directive 92/43, can reasons for which a project to divert waters is undertaken that relate principally to irrigation and secondarily to water supply constitute the imperative public interest which that directive requires in order for that scheme to be permitted to be carried out notwithstanding its adverse effects on areas protected by that directive?
13. Should the preceding question be answered in the affirmative:  
  
In determining the sufficiency of the compensatory measures which are necessary to ensure that the overall coherence of the Natura 2000 network, where that is harmed by a project to divert waters, is protected, for the purpose of Articles 3, 4 and 6 of Directive 92/43 should criteria such as the scale of that diversion and the extent of the works which the diversion entails be taken into account?
14. For the purpose of Articles 3, 4 and 6 of Directive 92/43, interpreted in the light of the principle of sustainable development as enshrined in Article 6 of the EC Treaty, may the competent national authorities grant consent for the carrying out of a project to divert waters within a Natura 2000 area that is not directly connected with or necessary to the preservation of the coherence of that area, when it is apparent from the [EIA] for that project that the project will result in the conversion of a natural fluvial ecosystem into a man-made fluvial and lacustrine ecosystem?

## **Consideration of the questions referred for a preliminary ruling**

### *The first question*

- 42 By its first question, the referring court seeks, in essence, to ascertain whether Article 13(6) of Directive 2000/60 fixes solely a time-limit for the production of river basin management plans or whether it also establishes a special transposition time-limit in respect of certain provisions of Articles 3 to 6, 9, 13 and 15 of that directive.
- 43 Under the first subparagraph of Article 24(1) of Directive 2000/60, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive at the latest by 22 December 2003.
- 44 The fact that Article 13(6) of Directive 2000/60 states that river basin management plans must be published at the latest nine years after the date of entry into force of that directive, in other words by 22 December 2009, cannot call into question the time-limit laid down for the transposition of that directive in Article 24(1) thereof.
- 45 Article 13(6) of Directive 2000/60 does not concern the time-limit for the transposition of the directive, but merely fixes a final date for the implementation of one of the measures which the Member States must take pursuant to that directive after its transposition.
- 46 The Court has indeed already ruled that, by excluding from national legislation in force in September 2004 the definitions of the terms in Article 2 of Directive 2000/60 and the timescales within which the standards of water quality are to be met, as set out in Articles 4 to 6 and 8 of that directive, the obligations under Article 2, read in conjunction with those latter provisions, were not implemented with the binding force required (see, to that effect, Case C-32/05 *Commission v Luxembourg* [2006] ECR I-11323, paragraphs 16, 17 and 65).
- 47 In the light of the foregoing, the answer to the first question is that Articles 13(6) and 24(1) of Directive 2000/60 must be interpreted as respectively fixing 22 December 2009 as the date of expiry of the period allowed to Member States for the publication of river basin management plans and 22 December 2003 as the date of expiry of the maximum period available to the Member States for the transposition of that directive, in particular Articles 3 to 6, 9, 13 and 15 thereof.

*The second, third and fourth questions*

- 48 By its second, third and fourth questions, which should be examined together, the referring court seeks first to ascertain whether Directive 2000/60 must be interpreted as precluding a provision of national law whereby consent is given, prior to 22 December 2009, to a transfer of water from one river basin to another or from one river basin district to another where the river basin management plans concerned were not yet adopted by the competent national authorities. If the answer is in the negative, the referring court then asks whether such a transfer can take place solely to meet the objective of supplying drinking water or also for purposes of irrigation and energy production. Lastly, the referring court asks whether the compatibility of such a transfer with that directive is dependent on whether it is impossible for the receiving river basin or river basin district to meet from its own water resources its needs in respect of the supply of drinking water, electricity production or irrigation.

- 49 It must first be recalled that the project at issue in the main proceedings, in so far as it concerns the transfer of water from one river basin to another or from one river basin district to another, is liable, as observed by the Advocate General in points 66 and 67 of her Opinion, to be incompatible with the environmental objectives stated in Article 4(1) of Directive 2000/60.
- 50 It must next be recalled that the project at issue in the main proceedings was adopted by the Greek legislature on 2 August 2006.
- 51 As regards whether the Member State concerned was already bound to comply with the environmental objectives stated in Article 4(1) of Directive 2000/60 at the time when that project was adopted, it must be observed that Article 4(1) provides that, in respect of surface waters and groundwater, Member States are to adopt appropriate measures of conservation in making operational the programmes of measures specified in river basin management plans.
- 52 Article 4(1) of Directive 2000/60 thereby establishes a link between the appropriate measures of conservation which the Member States are bound to adopt under that provision and the prior existence of a management plan for the river basin district concerned.
- 53 Consequently, Directive 2000/60 does not prohibit a priori the transfer of water from one river basin to another or from one river basin district to another before the publication of management plans for the river basin districts concerned, that publication being however required, in accordance with Article 13(6) of that directive, by no later than 22 December 2009.
- 54 It is common ground that, at the time when the project at issue in the main proceedings was adopted, the river basin management plans for the river basins affected by that project did not exist (see judgment of 19 April 2012 in Case C-297/11 *Commission v Greece*, paragraph 17).
- 55 Thus, on the date when the project at issue in the main proceedings was adopted, the Hellenic Republic was not obliged to have produced the management plans for the river basin districts affected by that project. Even though the time-limit for the transposition of Directive 2000/60, as fixed in the first subparagraph of Article 24(1) thereof, had expired, the time-limit laid down in Article 13(6) of the directive for the publication of river basin management plans had not yet been reached.
- 56 Consequently, the project at issue in the main proceedings, as adopted by the Greek legislature on 2 August 2006, without prior production of river basin management plans for the river basins affected by that project, was not subject to Article 4 of Directive 2000/60.
- 57 However, it must be recalled that, in accordance with the Court's settled case-law, during the period prescribed for transposition of a directive, the Member States to which it is addressed must refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by that directive. Such an obligation to refrain owed by all the national authorities must be understood as referring to the adoption of any measure, general or specific, liable to produce such a compromising effect (see Case

C-129/96 *Inter-Environment Wallonie* [1997] ECR I-7411, paragraph 45, and Joined Cases C-165/09 to C-167/09 *Stichting Natuur en Milieu and Others* [2011] ECR I-0000, paragraph 78 and the case-law cited).

- 58 That obligation to refrain from taking measures is also owed by the Member States, by virtue of the application of the second paragraph of Article 10 EC in conjunction with the third paragraph of Article 249 EC, during a transitional period in which they are authorised to continue to apply their national systems, even though those systems do not comply with the directive in question (see, to that effect, *Stichting Natuur en Milieu and Others*, paragraph 79 and the case-law cited).
- 59 The same holds true where a directive such as Directive 2000/60 establishes a transitional period within which the Member States are not required to adopt all the measures prescribed by the directive.
- 60 Accordingly, even before 22 December 2009, the date on which the period imposed on the Member States, under Article 13(6) of Directive 2000/60, for the publication of river basin management plans expired, the Member States had to refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by Article 4 of that directive.
- 61 In particular, as regards the environmental objectives set by Article 4 of Directive 2000/60, it should be noted that, under Article 4(1)(a)(ii), Member States are to ‘protect, enhance and restore all bodies of surface water, ... with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8’.
- 62 The realisation of such an objective cannot, subject to certain qualifications, be jeopardised by a national measure, even where that measure was adopted before 22 December 2009.
- 63 In the absence, in the documents submitted to the Court, of any factor indicative of the situations provided for in Article 4(4) to (6) of Directive 2000/60, it must be observed that, under Article 4(7):

‘Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status ... or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or
- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;

- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means which are a significantly better environmental option.’

64 While it is true that, as stated in paragraph 56 of this judgment, Article 4(7) is not applicable, as such, to a works project adopted on 2 August 2006, without prior production of river basin management plans for the river basins affected by that project, the conditions governing the project cannot be more rigorous than those pertaining if it had been adopted subsequent to Article 4 of Directive 2000/60 having become applicable to it.

65 In the case of such a project, the criteria and conditions laid down in Article 4(7) of Directive 2000/60 may, in essence, be applied by analogy and, where necessary, *mutatis mutandis*, as setting the upper limit for restrictions on the project.

66 As stated in recital 15 of the preamble to that directive, the supply of water is a service of general interest. As regards the production of electricity and irrigation, it is clear from Article 4(3)(a)(iii) of the directive that they also in principle serve a general interest.

67 Consequently, consent was capable of being given to a project such as that at issue in the main proceedings, which is not subject to Article 4 of Directive 2000/60 and which would have been liable to have adverse effects on water of the kind stated in Article 4(7), at the very least if:

- all practicable steps were taken to mitigate the adverse impact of the project on the status of the body of water;
- the reasons why that project had to be carried out were specifically set out and explained;
- that project served a general interest which might consist in, inter alia, the supply of water, electricity production or irrigation, and/or the benefits to the environment and society linked to the achievement of the objectives set out in Article 4(1) were outweighed by the benefits to human health, to the maintenance of human safety or to sustainable development resulting from that project, and
- lastly, the beneficial objectives pursued by that project could not for reasons of technical feasibility or disproportionate cost be achieved by other means which would have been a significantly better environmental option.

68 While the fact that it is impossible for a river basin or river basin district to meet from its own water resources its needs in terms of drinking water, electricity production or irrigation may indeed be capable of justifying, in the light of Directive 2000/60, a transfer of water such as that in the project at issue in the main proceedings, it is not the case that such a transfer can be justified only by reason of such an impossibility. It cannot be ruled out that, even where there is no such impossibility, the transfer of water may be regarded as satisfying the conditions mentioned in the preceding paragraph and, in particular, (i) the condition that it serves a general interest and/or the benefits to the environment and society linked to the achievement of the objectives set out in Article 4(1) of that directive are outweighed by the benefits to human health, to the maintenance of human safety or to sustainable development resulting from the transfer of water and (ii) the condition that the beneficial objectives pursued by that transfer cannot, for reasons of technical feasibility or disproportionate cost, be achieved by other means which would be a significantly better environmental option.

69 In the light of the foregoing, the answer to the second, third and fourth questions is that Directive 2000/60 must be interpreted as meaning that:

- it does not preclude, in principle, a provision of national law whereby consent is given, prior to 22 December 2009, to a transfer of water from one river basin to another or from one river basin district to another where the management plans for the river basin districts concerned were not yet adopted by the competent national authorities;
- such a transfer must not be such as seriously to jeopardise the realisation of the objectives laid down by that directive;
- however, to the extent that that transfer is liable to have adverse effects on water of the kind stated in Article 4(7) of that directive, consent may be given to it, at the very least if the conditions set out in Article 4(7)(a) to (d) are satisfied, and
- the fact that it is impossible for the receiving river basin or river basin district to meet from its own water resources its needs in terms of drinking water, electricity production or irrigation is not a *sine qua non* for such a transfer of water to be compatible with that directive provided that the conditions listed above are satisfied.

*The fifth question*

70 By its fifth question, the referring court asks whether Articles 13 to 15 of Directive 2000/60 must be interpreted as precluding the approval by a national parliament of management plans for river basins, such as the plans at issue in the main proceedings, where no procedure for public information, consultation or participation has been implemented.

71 Since Articles 13 and 15 of Directive 2000/60 do not lay down any obligation relating to public information, consultation or participation when river basin management plans are produced, this question must be examined solely in the light of Article 14 of that directive, which does lay down such obligations.

- 72 In that regard, it must be recalled that Article 14(1) of Directive 2000/60 provides that ‘Member States shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comments to the public, including users ... draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers’.
- 73 Further, the Court declared in Case C-297/11 *Commission v Greece*, paragraph 17, that the Hellenic Republic, by not having produced, by 22 December 2009, river basin management plans, both for those river basin districts falling wholly within its territory and for international river basin districts, had failed to fulfil its obligations under Article 13(1) to (3) and (6) and Article 15(1) of Directive 2000/60. In the course of those infringement proceedings, the Hellenic Republic did not maintain that it had, by that date, produced a river basin management plan within the meaning of Directive 2000/60. In particular, it made no mention of the law at issue in the main proceedings.
- 74 Accordingly, the management plans for river basins, such as the plans at issue in the main proceedings, adopted on 2 August 2006, cannot be regarded as management plans falling within Articles 13 to 15 of Directive 2000/60. The obligation stemming from Article 14(1) of that directive therefore does not apply to such plans.
- 75 Consequently, the answer to the fifth question is that the fact that a national parliament approves management plans for river basins, such as the plans at issue in the main proceedings, where no procedure for public information, consultation or participation has been implemented does not fall within the scope of Article 14 of Directive 2000/60, and in particular the scope of Article 14(1) thereof.

*The sixth question*

- 76 By its sixth question, the referring court asks, in essence, whether Directive 85/337 must be interpreted as precluding legislation such as Law 3481/2006, adopted by the Greek Parliament on 2 August 2006, which approves a project for the partial diversion of the waters of a river such as that at issue in the main proceedings on the basis of an EIA for that project which had served as the basis of an administrative decision adopted at the conclusion of a procedure which complied with the obligations in terms of public information and participation laid down by that directive, even though that decision was annulled by a court order.
- 77 Article 1(5) of Directive 85/337 provides that that directive ‘shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process’.
- 78 It follows from that provision that, where the objectives of Directive 85/337, including that of supplying information, are achieved through a legislative process, that directive does not apply to the project in question (see Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 51; Joined Cases C-128/09 to C-131/09, C-134/09 and C-135/09 *Boxus and Others* [2011] ECR I-0000, paragraph 36; and Case C-182/10 *Solvay and Others* [2012] ECR I-0000, paragraph 30).

- 79 That provision lays down two conditions for the exclusion of a project from the scope of Directive 85/337. The first requires the details of the project to be adopted by a specific legislative act. Under the second, the objectives of the directive, including that of supplying information, must be achieved through the legislative process (see Case C-435/97 *WWF and Others* [1999] ECR I-5613, paragraph 57; *Boxus and Others*, paragraph 37; and *Solvay and Others*, paragraph 31).
- 80 The first condition entails, first of all, adoption of the project by a specific legislative act. It should be pointed out in this regard that the terms ‘project’ and ‘development consent’ are defined in Article 1(2) of Directive 85/337. Thus, a legislative act adopting a project must, if it is to come within the scope of Article 1(5) of the directive, be specific and display the same characteristics as a development consent of that kind. It must in particular grant the developer the right to carry out the project (see *WWF and Others*, paragraph 58; *Boxus and Others*, paragraph 38; and *Solvay and Others*, paragraph 32).
- 81 The project must also be adopted in detail, that is to say, in a sufficiently precise and definitive manner, so that the legislative act adopting the project must include, like a development consent, following their consideration by the legislature, all the elements of the project relevant to the environmental impact assessment (see *WWF and Others*, paragraph 59; *Boxus and Others*, paragraph 39; and *Solvay and Others*, paragraph 33). The legislative act must therefore demonstrate that the objectives of Directive 85/337 have been achieved as regards the project in question (see *Linster*, paragraph 56; *Boxus and Others*, paragraph 39; and *Solvay and Others*, paragraph 33).
- 82 It follows that the details of a project cannot be considered to be adopted by a legislative act, for the purposes of Article 1(5) of Directive 85/337, if that act does not include the elements necessary to assess the environmental impact of the project or if the adoption of other measures is needed in order for the developer to be entitled to proceed with the project (see *WWF and Others*, paragraph 62; *Linster*, paragraph 57; *Boxus and Others*, paragraph 40; and *Solvay and Others*, paragraph 34).
- 83 As regards the second condition, it is clear from Article 2(1) of Directive 85/337 that the fundamental objective of the directive is to ensure that projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to an assessment with regard to their environmental effects before consent is given (see *Linster*, paragraph 52; *Boxus and Others*, paragraph 41; and *Solvay and Others*, paragraph 35).
- 84 In addition, the sixth recital in the preamble to Directive 85/337 states that the assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question (see *WWF and Others*, paragraph 61; *Linster*, paragraph 53; *Boxus and Others*, paragraph 42; and *Solvay and Others*, paragraph 36).
- 85 Consequently, the national legislature must have sufficient information at its disposal at the time when the project is adopted. In accordance with Article 5(3) of Directive 85/337 and Annex IV thereto, the minimum information to be supplied by the developer is to include a description of the project comprising information on the site, design and

size of the project, a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects, and the data required to identify and assess the main effects which the project is likely to have on the environment (see *Boxus and Others*, paragraph 43, and *Solvay and Others*, paragraph 37).

- 86 There is however nothing to prevent the national legislature, when adopting a project, from using information gathered as part of an earlier administrative procedure and the EIA produced in that connection, provided that the EIA is based on information and knowledge that are not out of date. The EIA, which must be carried out before the decision-making process, involves an examination of the substance of the information gathered as well as a consideration of the expediency of supplementing it, if appropriate, with additional data (see Case C-50/09 *Commission v Ireland* [2011] ECR I-0000, paragraph 40).
- 87 In that regard, the fact that the EIA was produced as part of an administrative procedure which led to the adoption of a decision which was ultimately annulled by court order is, as such, of no relevance.
- 88 However, a legislative act which does no more than simply ‘ratify’ a pre-existing administrative act, by merely referring to overriding reasons in the public interest, without the prior initiation of a substantive legislative process enabling the conditions stated in paragraph 79 of this judgment to be fulfilled, cannot be regarded as a specific legislative act within the meaning of Article 1(5) of Directive 85/337 and is not therefore sufficient to exclude a project from the scope of that directive (see *Boxus and Others*, paragraph 45, and *Solvay and Others*, paragraph 39).
- 89 In particular, a legislative act adopted without the members of the legislative body having had available to them the information mentioned in paragraph 85 of this judgment cannot fall within the scope of Article 1(5) of Directive 85/337 (see *Boxus and Others*, paragraph 46, and *Solvay and Others*, paragraph 40).
- 90 It is for the national court to determine whether those conditions have been satisfied. For that purpose, it must take account of both the content of the legislative act adopted and the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates (see *Boxus and Others*, paragraph 47, and *Solvay and Others*, paragraph 41).
- 91 The answer to the sixth question therefore is that Directive 85/337, and in particular Article 1(5) thereof, must be interpreted as not precluding legislation such as Law 3481/2006, adopted by the Greek Parliament on 2 August 2006, which approves a project for the partial diversion of the waters of a river such as that at issue in the main proceedings on the basis of an EIA for that project which had served as the basis for an administrative decision adopted on the conclusion of a procedure which complied with the obligations in terms of public information and participation laid down by that directive, even where that decision was annulled by court order, provided that that legislation constitutes a specific legislative act, so that the objectives of that directive can be achieved through the legislative process. It is for the national court to determine whether those two conditions have been complied with.

*The seventh question*

- 92 By its seventh question, the referring court seeks, in essence, to ascertain whether a project for the partial diversion of the waters of a river, such as that at issue in the main proceedings, must be regarded as a plan or programme falling within the scope of Directive 2001/42.
- 93 In that regard, it must be observed that, in order to establish whether a project falls within the scope of Directive 2001/42, it is necessary to consider whether that project is a plan or a programme within the meaning of Article 2(a) of that directive.
- 94 Under the second indent of Article 2(a) of Directive 2001/42, only plans and programmes required by legislative, regulatory or administrative provisions are to be regarded as ‘plans and programmes’ within the meaning of that directive.
- 95 It is not evident that the project concerned constitutes a measure which defines criteria and detailed rules for the development of land and which subjects implementation of one or more projects to rules and procedures for scrutiny (see, to that effect, Case C-567/10 *Inter-Environment Bruxelles and Others* [2012] ECR I-0000, paragraph 30).
- 96 Consequently, the answer to the seventh question is that a project for the partial diversion of the waters of a river, such as that at issue in the main proceedings, is not to be regarded as a plan or programme falling within the scope of Directive 2001/42.

*The eighth and ninth questions*

- 97 Having regard to the answer given to the seventh question, there is no need to answer the eighth and ninth questions of the referring court.

*The tenth question*

- 98 By its tenth question, the referring court asks whether the areas which were listed in the national list of SCIs transmitted to the Commission pursuant to the second subparagraph of Article 4(1) of Directive 92/43 and were then included in the list of SCIs adopted by Decision 2006/613 were entitled to the protection of that directive before that decision was published.
- 99 Decision 2006/613, whereby the Commission adopted the list of SCIs for the Mediterranean biogeographical region, took effect, pursuant to Article 254(3) EC, upon its notification to the Member States.
- 100 As the Commission has stated, without being contradicted, that decision was in fact notified to the Hellenic Republic on 19 July 2006, in other words prior to the adoption, on 2 August 2006, of Law 3481/2006 approving the project for the partial diversion of the waters of the river Acheloos.
- 101 Under Article 4(5) of Directive 92/43, the protective measures prescribed in Article 6(2) to (4) of that directive are required only as regards sites which, in accordance with the third subparagraph of Article 4(2) thereof, are on the list of sites selected as SCIs which has been adopted by the Commission in accordance with the procedure laid down in Article 21 of that directive (see Case C-117/03 *Dragaggi and Others* [2005] ECR I-167, paragraph 25).

- 102 It follows that, after notification of Decision 2006/613 to the Member State concerned, it was obliged to take the protective measures laid down in Article 6(2) to (4) of Directive 92/43.
- 103 That conclusion cannot be called into question by the fact that, following the annulment, in 2005, of the administrative decisions giving consent to the project at issue in the main proceedings, the legislative provisions contained in Law 3481/2006 giving consent to that project were submitted to the Greek Parliament in the form of an amendment on 6 July 2006, while Decision 2006/613 was notified to the Hellenic Republic on 19 July of that year. In such circumstances, the application of Article 6(2) to (4) of Directive 92/43 relates, in any event, to a situation which cannot be regarded as already established.
- 104 That said, it must, in any event, be recalled that, even before the entry into force of Decision 2006/613, the Member States are to protect sites as soon as they propose them, under Article 4(1) of Directive 94/43, as sites eligible for identification as SCIs on the national list transmitted to the Commission (see, to that effect, *Dragaggi and Others*, paragraph 26). The Member States are required, under that directive, to take protective measures that are appropriate, having regard to the directive's conservation objective, for the purpose of safeguarding the relevant ecological interest which those sites have at national level (see *Dragaggi and Others*, paragraph 30) and cannot therefore consent to interventions which may create the risk of seriously compromising the ecological characteristics of those sites, for example interventions which create the risk of significantly reducing the surface area of a site, of leading to the disappearance of priority species present on that site, or, finally, of having as an outcome the destruction of the site or the eradication of its representative characteristics (see Case C-244/05 *Bund Naturschutz in Bayern and Others* [2006] ECR I-8445, paragraph 46, and Case C-340/10 *Commission v Cyprus* [2012] ECR I-0000, paragraph 44).
- 105 In the light of the foregoing, the answer to the tenth question is that the areas which were listed in the national list of SCIs transmitted to the Commission pursuant to the second subparagraph of Article 4(1) of Directive 92/43 and were then included in the list of SCIs adopted by Decision 2006/613 were entitled, after notification of Decision 2006/613 to the Member State concerned, to the protection of that directive before that decision was published. In particular, after that notification, the Member State concerned also had to take the protective measures laid down in Article 6(2) to (4) of the directive.

*The eleventh question*

- 106 By its eleventh question, the referring court seeks, in essence, to ascertain whether Directive 92/43 must be interpreted as precluding consent being given to a project for the diversion of water not directly connected with or necessary to the conservation of a SPA, but likely to have a significant effect on that SPA, in the absence of information or of reliable and updated data concerning the birds in that area.
- 107 According to the Court's settled case-law, under Article 4(1) and (2) of Directive 79/409 the Member States are required to classify as SPAs the territories meeting the ornithological criteria specified by those provisions (see, inter alia, Case C-418/04 *Commission v Ireland* [2007] ECR I-10947, paragraph 36).

- 108 It follows from Article 7 of Directive 92/43 that Article 6(2) to (4) of that directive replaces the first sentence of Article 4(4) of Directive 79/409 as from the date of implementation of Directive 92/43 or the date of classification by a Member State under Directive 79/409, where the latter date is later (see, in particular, Case C-418/04 *Commission v Ireland*, paragraph 173, and Case C-404/09 *Commission v Spain* [2011] ECR I-0000, paragraph 97).
- 109 It is clear from the order for reference and from the oral submissions of the Commission that the SPAs affected by the project at issue in the main proceedings had already been classified prior to the adoption of Law 3481/2006. Consequently, the obligations stemming from Article 6(2) to (4) of Directive 92/43 were applicable to those SPAs at the date when that project was approved.
- 110 In that regard, it must be recalled that Article 6(3) of Directive 92/43 provides for an assessment procedure intended to ensure, by means of a prior examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site (see Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging* [2004] ECR I-7405, paragraph 34, and Case C-304/05 *Commission v Italy* [2007] ECR I-7495, paragraph 56).
- 111 With regard to the concept of ‘appropriate assessment’ within the meaning of Article 6(3) of Directive 92/43, it should be noted that the directive does not define any particular method for the carrying out of such an assessment (*Commission v Italy*, paragraph 57).
- 112 The Court has, however, held that that assessment must be organised in such a manner that the competent national authorities can be certain that a plan or project will not have adverse effects on the integrity of the site concerned, given that, where doubt remains as to the absence of such effects, the competent authority will have to refuse development consent (see *Commission v Italy*, paragraph 58).
- 113 With regard to the factors on the basis of which the competent authorities may gain the necessary level of certainty, the Court has stated that it must be ensured that no reasonable scientific doubt remains, and those authorities must rely on the best scientific knowledge in the field (see *Waddenvereniging and Vogelbeschermingsvereniging*, paragraphs 59 and 61, and *Commission v Italy*, paragraph 59).
- 114 Furthermore, knowledge of the effects of a plan or a project in the light of the conservation objectives relating to a given site is an essential prerequisite for the application of Article 6(4) of Directive 92/43, since, in the absence thereof, no condition for application of that derogating provision can be assessed. The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration. In addition, in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified (see, to that effect, *Commission v Italy*, paragraph 83, and *Solvay and Others*, paragraph 74).
- 115 In the light of the foregoing, it cannot be held that an assessment is appropriate where information and reliable and updated data concerning the birds in that SPA are lacking.

- 116 That said, where the development consent given to a project is annulled or revoked because that assessment was not appropriate, it cannot be ruled out that the competent national authorities may gather *a posteriori* reliable and updated data on the birds in the SPA concerned and that they may appraise, on the basis of that data and an assessment thereby supplemented, whether the project for the diversion of water adversely affects the integrity of that SPA and, where necessary, what compensatory measures must be taken to ensure that the execution of the project will not jeopardise protection of the overall coherence of Natura 2000.
- 117 Consequently, the answer to the eleventh question is that Directive 92/43, and in particular Article 6(3) and (4) thereof, must be interpreted as precluding development consent being given to a project for the diversion of water which is not directly connected with or necessary to the conservation of a SPA, but likely to have a significant effect on that SPA, in the absence of information or of reliable and updated data concerning the birds in that area.

*The twelfth question*

- 118 By its twelfth question, the referring court seeks, in essence, to ascertain whether Directive 92/43 must be interpreted as meaning that grounds linked, on the one hand, to irrigation and, on the other, to the supply of drinking water, relied on in support of a project for the diversion of water, may constitute imperative reasons of overriding public interest capable of justifying the implementation of a project which adversely affects the integrity of the sites concerned.
- 119 Article 6(4) of Directive 92/43 provides that if, in spite of a negative assessment carried out in accordance with the first sentence of Article 6(3) thereof, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, and there are no alternative solutions, the Member State is to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected (see *Commission v Italy*, paragraph 81, and *Solvay and Others*, paragraph 72).
- 120 As is clear from paragraphs 100, 101, 107 and 108 of this judgment, such a provision applies both to SPAs and to SCIs in the list adopted by the Commission in accordance with the third subparagraph of Article 4(2) of Directive 92/43.
- 121 An interest capable of justifying, for the purposes of Article 6(4) of Directive 92/43, the implementation of a plan or project must be both ‘public’ and ‘overriding’, which means that it must be of such an importance that it can be weighed against that directive’s objective of the conservation of natural habitats and wild fauna, including birds, and flora (see, to that effect, *Solvay and Others*, paragraph 75).
- 122 Irrigation and the supply of drinking water meet, in principle, those conditions and are therefore capable of justifying the implementation of a project for the diversion of water in the absence of alternative solutions.
- 123 However, where the SCI concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised, under the second subparagraph of Article 6(4) of Directive 92/43, 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.

- 124 Since the Commission has not, in the present case, been asked to give an opinion, the Court must examine whether irrigation and the supply of drinking water may fall within the considerations stated in the preceding paragraph.
- 125 As regards irrigation, it is evident that it cannot in principle qualify as a consideration relating to human health or public safety. On the other hand, it appears more plausible that irrigation may, in some circumstances, have beneficial consequences of primary importance for the environment.
- 126 In contrast, the supply of drinking water is, in principle, to be included within considerations relating to human health.
- 127 In any event, it is for the referring court to assess whether the project at issue in the main proceedings does in fact adversely affect the integrity of one or more SCIs hosting a priority natural habitat type and/or a priority species.
- 128 In the light of the foregoing, the answer to the twelfth question is that Directive 92/43, and in particular Article 6(4) thereof, must be interpreted as meaning that grounds linked, on the one hand, to irrigation and, on the other, to the supply of drinking water, relied on in support of a project for the diversion of water, may constitute imperative reasons of overriding public interest capable of justifying the implementation of a project which adversely affects the integrity of the sites concerned. Where such a project adversely affects the integrity of a SCI hosting a priority natural habitat type and/or a priority species, its implementation may, in principle, be justified by grounds linked with the supply of drinking water. In some circumstances, it might be justified by reference to beneficial consequences of primary importance which irrigation has for the environment. On the other hand, irrigation cannot, in principle, qualify as a consideration relating to human health or public safety, justifying the implementation of a project such as that at issue in the main proceedings.

*The thirteenth question*

- 129 By its thirteenth question, the referring court seeks, in essence to ascertain whether, under Directive 92/43, for the purposes of determining the adequacy of compensatory measures account should be taken of the extent of the diversion of water and the scale of the works involved in that diversion.
- 130 The first sentence of the first subparagraph of Article 6(4) of Directive 92/43 provides that 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 is to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.

- 131 As stated in paragraph 114 of this judgment, in order to determine the nature of any compensatory measures, the adverse impact of the project on the site concerned must be precisely identified.
- 132 The extent of the diversion of water and the scale of the works involved in that diversion are factors which must necessarily be taken into account in order to identify with precision the adverse impact of the project on the site concerned and, therefore, to determine the nature of the necessary compensatory measures in order to ensure the protection of the overall coherence of Natura 2000.
- 133 Consequently, the answer to the thirteenth question is that, under Directive 92/43, and in particular the first sentence of the first subparagraph of Article 6(4) thereof, for the purposes of determining the adequacy of compensatory measures account should be taken of the extent of the diversion of water and the scale of the work involved in that diversion.

*The fourteenth question*

- 134 By its fourteenth question, the referring court seeks, in essence to ascertain whether Directive 92/43, interpreted in the light of the objective of sustainable development, as enshrined in Article 6 EC, permits, in relation to sites which are part of the Natura 2000 network, the conversion of a natural fluvial ecosystem into a largely man-made fluvial and lacustrine ecosystem.
- 135 Even if the conversion of a natural fluvial ecosystem into a largely man-made fluvial and lacustrine ecosystem were to have a negative impact on the integrity of sites which are part of the Natura 2000 network, it does not necessarily follow that consent may not be given to the project which causes that conversion.
- 136 As stated in paragraph 119 of this judgment, under Article 6(4) of Directive 92/43, which concerns sites which are part of the Natura 2000 network, consent might be given to that project provided that the conditions referred to in that provision are satisfied.
- 137 According to the third recital in the preamble to Directive 92/43, as the main aim of that directive is to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, the directive makes a contribution to the general objective of sustainable development. The maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities.
- 138 Accordingly, the first subparagraph of Article 6(4) of Directive 92/43, and in particular the condition that the Member State is to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected, must be applied in the light of the objective of sustainable development as referred to in the third recital in the preamble to that directive and enshrined in Article 6 EC.
- 139 Consequently, the answer to the fourteenth question is that Directive 92/43, and in particular the first subparagraph of Article 6(4) thereof, interpreted in the light of the objective of sustainable development, as enshrined in Article 6 EC, permits, in relation to sites which are part of the Natura 2000 network, the conversion of a natural fluvial

ecosystem into a largely man-made fluvial and lacustrine ecosystem provided that the conditions referred to in that provision of the directive are satisfied.

### **Costs**

140 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 (Grand Chamber) hereby rules:

- 1. Articles 13(6) and 24(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as respectively fixing 22 December 2009 as the date of expiry of the period allowed to Member States for the publication of river basin management plans and 22 December 2003 as the date of expiry of the maximum period available to the Member States for the transposition of that directive, in particular Articles 3 to 6, 9, 13 and 15 thereof.**
- 2. Directive 2000/60 must be interpreted as meaning that:**
  - **it does not preclude, in principle, a provision of national law whereby consent is given, prior to 22 December 2009, to a transfer of water from one river basin to another or from one river basin district to another where the managements plans for the river basin districts concerned were not yet adopted by the competent national authorities;**
  - **such a transfer must not be such as seriously to jeopardise the realisation of the objectives laid down by that directive;**
  - **however, to the extent that that transfer is liable to have adverse effects on water of the kind stated in Article 4(7) of that directive, consent may be given to it, at the very least if the conditions set out in Article 4(7)(a) to (d) are satisfied, and**
  - **the fact that it is impossible for the receiving river basin or river basin district to meet from its own water resources its needs in terms of drinking water, electricity production or irrigation is not a *sine qua non* for such a transfer of water to be compatible with that directive provided that the conditions listed above are satisfied.**
- 3. The fact that a national parliament approves management plans for river basins, such as the plans at issue in the main proceedings, where no procedure for public information, consultation or participation has been implemented does not fall within the scope of Article 14 of Directive 2000/60, and in particular the scope of Article 14(1) thereof.**
- 4. Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26**

May 2003, and in particular Article 1(5) thereof, must be interpreted as not precluding legislation such as Law 3481/2006, adopted by the Greek Parliament on 2 August 2006, which approves a project for the partial diversion of the waters of a river such as that at issue in the main proceedings on the basis of an environmental impact assessment for that project which had served as the basis for an administrative decision adopted on the conclusion of a procedure which complied with the obligations in terms of public information and participation laid down by that directive, even where that decision was annulled by court order, provided that that legislation constitutes a specific legislative act, so that the objectives of that directive can be achieved through the legislative process. It is for the national court to determine whether those two conditions have been complied with.

5. A project for the partial diversion of the waters of a river, such as that at issue in the main proceedings, is not to be regarded as a plan or programme falling within the scope 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.
6. The areas which were listed in the national list of sites of Community importance transmitted to the European Commission pursuant to the second subparagraph of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and were then included in the list of SCIs adopted by Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region were entitled, after notification of Decision 2006/613 to the Member State concerned, to the protection of that directive before that decision was published. In particular, after that notification, the Member State concerned also had to take the protective measures laid down in Article 6(2) to (4) of the directive.
7. Directive 92/43, and in particular Article 6(3) and (4) thereof, must be interpreted as precluding development consent being given to a project for the diversion of water which is not directly connected with or necessary to the conservation of a special protection area, but likely to have a significant effect on that special protection area, in the absence of information or of reliable and updated data concerning the birds in that area.
8. Directive 92/43, and in particular Article 6(4) thereof, must be interpreted as meaning that grounds linked, on the one hand, to irrigation and, on the other, to the supply of drinking water, relied on in support of a project for the diversion of water, may constitute imperative reasons of overriding public interest capable of justifying the implementation of a project which adversely affects the integrity of the sites concerned. Where such a project adversely affects the integrity of a site of Community importance hosting a priority natural habitat type and/or a priority species, its implementation may, in principle, be justified by grounds linked with the supply of drinking water. In some circumstances, it might be justified by reference to beneficial consequences of primary importance which irrigation has for the

**environment. On the other hand, irrigation cannot, in principle, qualify as a consideration relating to human health and public safety, justifying the implementation of a project such as that at issue in the main proceedings.**

- 9. Under Directive 92/43, and in particular the first sentence of the first subparagraph of Article 6(4) thereof, for the purposes of determining the adequacy of compensatory measures account should be taken of the extent of the diversion of water and the scale of the works involved in that diversion.**
- 10. Directive 92/43, and in particular the first subparagraph of Article 6(4) thereof, interpreted in the light of the objective of sustainable development, as enshrined in Article 6 EC, permits, in relation to sites which are part of the Natura 2000 network, the conversion of a natural fluvial ecosystem into a largely man-made fluvial and lacustrine ecosystem provided that the conditions referred to in that provision of the directive are satisfied.**

[Signatures]