

JUDGMENT OF THE COURT (Second Chamber)

10 October 2019 (*)

(Reference for a preliminary ruling — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 12(1) — System of strict protection of animal species — Annex IV — *Canis lupus* (wolf) — Article 16(1)(e) — Derogation allowing the taking of certain specimens in limited numbers — Hunting for population management purposes — Evaluation of the conservation status of populations of the species concerned)

In Case C-674/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), made by decision of 28 November 2017, received at the Court on 1 December 2017, in the proceedings brought by

Luonnonsuojeluyhdistys Tapiola Pohjois-Savo — Kainuu ry

Other interested parties:

Risto Mustonen,

Kai Ruhanen,

Suomen riistakeskus,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Second Chamber, and C. Vajda, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 9 January 2019,

after considering the observations submitted on behalf of:

– Luonnonsuojeluyhdistys Tapiola Pohjois-Savo — Kainuu ry, by

S. Kantinkoski and L. Iivonen,

- K. Ruhanen, by P. Baarman, asianajaja,
- Suomen riistakeskus, by S. Härkönen, acting as Agent,
- the Finnish Government, by J. Heliskoski, acting as Agent,
- the Danish Government, by J. Nymann-Lindegren, M. Wolff and P. Ngo, acting as Agents,
- the Swedish Government, by A. Falk, C. Meyer-Seitz, H. Shev, J. Lundberg and H. Eklinder, acting as Agents,
- the European Commission, by M. Huttunen and C. Hermes, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; ‘the Habitats Directive’).

2 The request has been made in proceedings brought by Luonnonsuojeluyhdistys Tapiola Pohjois-Savo — Kainuu ry (‘Tapiola’) concerning the lawfulness of decisions by which Suomen riistakeskus (Finnish Wildlife Agency; ‘the Agency’) granted derogation permits to hunt wolves.

Legal context

European Union law

3 Article 1 of the Habitats Directive, entitled ‘Definitions’, is worded as follows:

‘For the purpose of this Directive:

...

(i) conservation status of a species means the sum of the influences acting

on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2;

The conservation status will be taken as “favourable” when:

– population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats,

and

– the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future,

and

– there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

...’

4 Article 2 of that directive provides:

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

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

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

5 Article 12(1) of that directive reads as follows:

‘Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

(a) all forms of deliberate capture or killing of specimens of these species in the wild;

(b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;

- (c) deliberate destruction or taking of eggs from the wild;
- (d) deterioration or destruction of breeding sites or resting places.’

6 Article 16(1) of the Habitats Directive provides:

‘Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15(a) and (b):

- (a) in the interest of protecting wild fauna and flora and conserving natural habitats;
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
- (c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants;
- (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.’

7 The list of animal species ‘of Community interest in need of strict protection’, which is laid down in Annex IV(a) to that directive, includes, inter alia, ‘*Canis lupus* [wolf] (except ... Finnish populations within the reindeer management area as defined in paragraph 2 of the Finnish Act No 848/90 of 14 September 1990 on reindeer management)’.

Finnish law

8 In accordance with the third subparagraph of Paragraph 37 of Metsästyslaki 615/1993 (Law on hunting No 615/1993; ‘the Law on hunting’) of 28 June 1993, as amended by Law No 159/2011 of 18 February 2011, wolves are subject to an ongoing protection regime.

9 Under the first subparagraph of Paragraph 41 of that law, the Agency may authorise derogations from the protection provided for in Paragraph 37 of that law, subject to satisfying the conditions provided for in Paragraphs 41a to 41c

of that law. The fourth subparagraph of Paragraph 41 of that law states that a government regulation may lay down specific rules as regards the procedure to be followed when granting derogation permits, the provisions that must accompany the derogation permits, the declaration that specimens have been taken on the basis of the derogation permit, the time limit of the derogation and the assessment of the conditions for the grant of the derogation permit, and provide the dates on which it is possible to derogate from the protection provided for in Paragraph 37. According to the fifth subparagraph of Paragraph 41 of the Law on hunting, the maximum number of animals that may be taken annually on the basis of derogation permits may be capped. A regulation of the Ministry of Agriculture and Forestry may lay down specific rules, in particular as regards the maximum number of specimens authorised to be taken.

10 The third subparagraph of Paragraph 41a of the Law on hunting, which transposes Article 16(1)(e) of the Habitats Directive into Finnish law, provides:

‘A derogation permit in relation to wolves, bears, otters and lynx may likewise be granted to capture or kill certain specimens, on a selective and limited basis and under strictly supervised conditions.’

11 Government regulation No 452/2013, adopted on the basis of the fourth subparagraph of Paragraph 41 and the fourth subparagraph of Paragraph 41a of the Law on hunting, provides, in Paragraph 3(1)(1) thereof, that a derogation permit such as that referred to in the third subparagraph of Paragraph 41a of that law may be granted for the capture or killing of wolves between 1 October and 31 March in the reindeer management area and between 1 November and 31 March in the rest of the country, and, in the third subparagraph of Paragraph 4, that such a derogation permit must only be granted for hunting in areas where the species in question is present in large numbers.

12 Regulation No 1488/2015 of the Ministry of Agriculture and Forestry, adopted for the 2015-2016 hunting year on the basis of the fifth subparagraph of Paragraph 41 of the Law on hunting, set the maximum number of specimens authorised to be taken outside the reindeer herding area as 46, pursuant to the derogations provided for in the third subparagraph of Paragraph 41a of that law. Regulation No 1335/2016 of that ministry, adopted for the 2016-2018 hunting years, set, for each of those 2 years, the maximum number of wolves authorised to be taken outside the reindeer management area as 53, on the basis of the derogations provided for in the first subparagraph of Paragraph 41 of the Law on hunting.

13 On 22 January 2015, the Ministry of Agriculture and Forestry adopted a new management plan for the wolf population in Finland, based on the results of an assessment of the development of the national policy on large carnivores (‘the wolf management plan’). According to that plan, the objective of which is to

establish and maintain the wolf population at a favourable conservation status, the minimum size of a viable wolf population is 25 breeding pairs. That plan also notes that the management of the wolf population in Finland is destined for failure if the needs of the people living and working in the territories of the wolf packs are not taken into account, in particular in view of the growing social acceptance of illegal wolf hunting in certain circumstances. Therefore, the objective of the derogation permits is to ensure the existence of a local pack while promoting the coexistence of wolves and humans. With that in mind, it is intended for action to be taken against individual animals causing nuisance, thereby preventing the illegal killing of wolves.

14 The wolf management plan is based on the principle of local management of the wolf population, on a pack-by-pack basis. Thus, in order to ensure the viability of a wolf pack, the derogation permit granted by the Agency under the third subparagraph of Paragraph 41a of the Law on hunting must be accompanied by selection of the individual animals to be hunted. The target of the hunt must be a young specimen in the pack, so that the likely effects on the viability of the pack are as low as possible. The specimen selected should be the individual animal causing damage or nuisance to the people living in the wolves' territory or to their property.

15 Finally, the derogation permits must relate to areas where the species is present in large numbers and must not exceed the maximum number of animals that can be taken as laid down in the regulation of the Ministry of Agriculture and Forestry.

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

16 By two decisions of 18 December 2015, the Agency granted derogation permits under Paragraph 41 and Paragraph 41a(3) of the Law on hunting to Mr Risto Mustonen and Mr Kai Ruhanen, respectively, to kill a total of seven wolves in the region of Pohjois-Savo (Finland) during the period between 23 January and 21 February 2016. The first decision authorised the killing of two wolves in the pack territory of Juudinsalo (Finland) and of a further two wolves in the territory between Sukeva (Finland) and Laakajärvi (Finland), and the second decision authorised the killing of one wolf in the pack territory of Vieremä-Kajaani-Sonkajärvi (Finland) and of two wolves in the pack territory of Kiuruvesi-Vieremä (Finland).

17 In stating its reasons for those decisions, the Agency referred to the applicable legal provisions and the management plan, described the composition of the packs in question and noted the harm wolves had caused to dogs and the concern of the local population. It noted that strict protection based on the grant of 'damage-prevention' derogations had not made it possible to achieve

the objectives described in the previous management plan. Thus, according to the Agency, the objective of the derogation permits issued for the management of the wolf population was to implement a legal approach to the management of that population, allowing for action to be taken against individual animals causing nuisance, while at the same time preventing unlawful killings.

18 The Agency maintained that, in the areas in question, there was no more satisfactory alternative to the granting of those derogation permits and that the selective and restricted nature of the hunting was reflected in the geographical and quantitative limitations set in the decisions and in the need to comply with the hunting method prescribed therein.

19 The Agency also noted that killing an alpha male or a tagged individual was to be avoided. It recommended that permit holders target young specimens or individuals causing nuisance, and noted that, if, after the adoption of those decisions and prior to the start of the authorised hunting, the packs and individual animals were affected by mortality confirmed by the authorities, that circumstance was to be taken into account so that the scope of the authorisation would be reduced in terms of numbers.

20 Tapiola, a Finnish association for nature conservation, brought actions against those two Agency decisions before the Itä-Suomen hallinto-oikeus (Administrative Court, Eastern Finland, Finland). By judgments of 11 February 2016, that court held that those actions were inadmissible on the ground that Tapiola did not have *locus standi* to bring proceedings.

21 By orders of 29 May 2017, the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) set aside the judgments of the Itä-Suomen hallinto oikeus (Administrative Court, Eastern Finland) and examined the actions brought by Tapiola.

22 The referring court notes that the wolf is a species that is critically endangered in Finland. It states that reportedly, the number of wolves has varied considerably in recent years, possibly due to poaching. In so far as the derogation permits for the killing of wolves by way of hunting for 'population management purposes' are granted for a specific area, the referring court wishes to know, in particular, whether, for the purpose of granting such a derogation under Article 16(1)(e) of the Habitats Directive, the conservation status of a species must be assessed by reference to that area or to the territory of the Member State as a whole. It also wishes to know to what extent such derogations may be justified by a reduction in poaching and, in that regard, how significant it is that they form part of a national management plan and national legislation setting a maximum number of specimens that can be taken annually within the national territory. The referring court further seeks clarification on the impact of the difficulties associated with monitoring poaching, in the context of assessing whether there is a satisfactory alternative

to killing wolves. Finally, it seeks to ascertain whether the desire to prevent harm to dogs and to increase the general feeling of safety of the people living in the territories in question falls within the grounds capable of justifying the application of that derogation.

23 In those circumstances, the Korkein hallinto-oikeus (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Can regionally restricted derogation permits based on applications from individual hunters be granted for hunting for “population management purposes” under Article 16(1)(e) of the [Habitats Directive], having regard to the wording of that provision?

– In considering that question, is it relevant that the discretion exercised when deciding on derogation permits is governed by a national population management plan and by the maximum number of individual animals killed laid down in a regulation, under which derogation permits may be granted annually for the territory of the Member State?

– As part of that consideration, may account be taken of other factors, such as the objective of preventing harm to dogs and increasing the general feeling of security?

(2) Can derogation permits be granted for hunting for population management purposes, as described in the first question, on the basis that there is no satisfactory alternative within the meaning of Article 16(1) of the [Habitats Directive] to prevent poaching?

– In such circumstances, may account be taken of the practical difficulties associated with the monitoring of illegal poaching?

– In considering whether a satisfactory alternative exists, is the objective of preventing harm to dogs and increasing the general feeling of security also potentially a relevant factor?

(3) How is the requirement laid down in Article 16(1) of the [Habitats Directive] concerning the conservation status of species’ populations to be assessed when regionally restricted derogation permits are granted?

– Is the conservation status of [populations of a species] to be assessed by reference both to a particular area and to the territory of the Member State as a whole or by reference to an even wider range of the species in question?

– Is it possible to satisfy the requirements for granting a derogation

permit laid down in Article 16(1) of the Habitats Directive even though the conservation status of [populations of a species] cannot be regarded as favourable within the meaning of the directive on the basis of a proper assessment?

- If the previous question is answered in the affirmative, in which circumstances could that be possible?

Consideration of the questions referred

24 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 16(1)(e) of the Habitats Directive must be interpreted as precluding the adoption of decisions granting derogations from the prohibition on the deliberate killing of wolves laid down in Article 12(1)(a), read in conjunction with Annex IV(a) to that directive, by way of hunting for population management purposes, the objective of which is to combat poaching.

25 As a preliminary point, it must be noted that the aim of the Habitats Directive, pursuant to Article 2(1) thereof, is to contribute towards ensuring biodiversity through the conservation of natural habitats and wild fauna and flora in the European territory of the Member States. Further, under Article 2(2) and (3) of that directive, the measures taken pursuant thereto are to be designed to maintain or restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of interest for the European Union, and are to take account of economic, social and cultural requirements and local characteristics.

26 Article 12(1)(a) and (d) of the Habitats Directive requires the Member States to take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) to that directive in their natural range, prohibiting all forms of deliberate capture or killing of specimens of these species in the wild and deterioration or destruction of breeding sites or resting places (judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 230).

27 In order to comply with that provision, the Member States must not only adopt a comprehensive legislative framework but also implement concrete and specific protection measures. Similarly, the system of strict protection presupposes the adoption of coherent and coordinated measures of a preventive nature. Such a system of strict protection must therefore enable the actual avoidance of deliberate capture or killing in the wild, and of deterioration or destruction of breeding sites or resting places, of the animal species listed in Annex IV(a) to the Habitats Directive (judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255,

paragraph 231 and the case-law cited).

28 Even though Article 16(1) of the Habitats Directive allows Member States to derogate from the provisions of Articles 12 to 14 and Article 15(a) and (b) thereof, a derogation adopted on that basis, in so far as it allows those Member States to sidestep the obligations under the system of strict protection of natural species, is subject to the conditions that there is no satisfactory alternative and that that derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

29 It must be noted that those conditions relate to all situations covered by Article 16(1) of that directive.

30 It must also be noted that Article 16(1) of the Habitats Directive, which defines in a precise and exhaustive manner the circumstances in which Member States may derogate from Articles 12 to 14 and Article 15(a) and (b) thereof, constitutes an exception to the system of protection provided for by that directive, which must be interpreted restrictively (see, to that effect, judgments of 20 October 2005, *Commission v United Kingdom*, C-6/04, EU:C:2005:626, paragraph 111 and of 10 May 2007, *Commission v Austria*, C-508/04, EU:C:2007:274, paragraphs 110 and 128) and which imposes on the authority taking the decision the burden of proving that those conditions are present for each derogation (see, by analogy, judgment of 8 June 2006, *WWF Italia and Others*, C-60/05, EU:C:2006:378, paragraph 34).

31 Moreover, it must be noted that the species *Canis lupus*, commonly known as wolf, is an animal species ‘of Community interest in need of strict protection’ listed in Annex IV(a) to the Habitats Directive, with the exception of, inter alia, the ‘Finnish populations within the reindeer management area’.

32 Finally, as the Advocate General observed in point 40 of his Opinion, the concept of ‘taking’ within the meaning of Article 16(1) of the Habitats Directive must be understood as including both the capture and killing of specimens of the species concerned so that that provision can, in principle, serve as basis for granting derogations to, inter alia, kill specimens of the species referred to in Annex IV(a) to that directive, subject to compliance with the specific conditions laid down therein.

33 It is in the light of those preliminary observations that the questions raised by the referring court must be examined.

34 As regards, in the first place, the objective of a derogation granted under Article 16(1) of the Habitats Directive, it must be noted that, whereas subparagraphs (a) to (d) of that provision set out the objectives of each derogation provided therein, that is to say the interest of protecting wild fauna

and flora and conserving natural habitats (point (a)), the prevention of serious damage (point (b)), the interest of public health and public safety and the overriding public interest (point (c)), research and education, repopulating and re-introducing species (point (d)), that is not the case as regards subparagraph (e) of that provision, which does not set out an objective pursued by the corresponding derogation.

35 Moreover, derogations based on Article 16(1)(e) of the Habitats Directive, as compared with those referred to in Article 16(1)(a) to (d) of that directive, must satisfy additional conditions. They allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV to that directive in limited and specified numbers.

36 Therefore, Article 16(1)(e) of the Habitats Directive cannot serve as a general legal basis for granting derogations from Article 12(1) of that directive, without depriving the other situations covered by Article 16(1) thereof as well as the system of strict protection of their effectiveness.

37 Consequently, the objective of a derogation based on Article 16(1)(e) of the Habitats Directive cannot, in principle, be confused with the objectives of the derogations based on Article 16(1)(a) to (d) of that directive, with the result that the former provision can only serve as a basis for the grant of a derogation in cases where the latter provisions are not relevant.

38 In any event, derogations granted under Article 16(1) of that directive must not, taken as a whole, produce effects that are contrary to the objectives pursued by that directive, as set out in paragraph 25 of the present judgment.

39 In the present case, it is apparent from the request for a preliminary ruling that the derogation permits at issue in the main proceedings, like the wolf management plan of which they formed part, pursued the objective of reducing poaching. Preventing harm to dogs and increasing the general feeling of safety of the people living near the areas occupied by wolves were presented as relevant factors in that regard and as being closely linked to that objective, in so far as, according to the Agency, achieving them would contribute to increased ‘social tolerance’ of wolves among the local human populations and, as a result, to a reduction in illegal hunting.

40 In addition, it is clear from a question put by the Court at the hearing that the wolf management plan which was approved in 2015 included measures and proposed measures with a view to achieving a favourable conservation status of that species and that the authorisation of hunting wolves for population management purposes had the objective of strengthening the inhabitants’ benevolence towards wolves and as a result reducing poaching.

41 Therefore, it must be noted that a derogation decision must define the objectives relied upon in support of a derogation in a clear and precise manner and with supporting evidence. A derogation based on Article 16(1) of the Habitats Directive must be applied appropriately in order to deal with precise requirements and specific situations (see, by analogy, judgments of 8 June 2006, *WWF Italia and Others*, C-60/05, EU:C:2006:378, paragraph 34 and of 11 November 2010, *Commission v Italy*, C-164/09, not published, EU:C:2010:672, paragraph 25).

42 In that regard, it must be noted, first, that it is apparent from the content of the derogation decisions at issue in the main proceedings, and in particular from the management plan of which they formed part, that poaching represented, as regards the objective of the Habitats Directive, an important challenge to the conservation of endangered species. The referring court noted in that regard that the number of wolves in Finland has fluctuated considerably over the years and that it supposes that those variations are linked to poaching, which, in view of the wolf's endangered status, is a conservation issue. In addition, at the hearing, both the Agency and the Finnish Government confirmed that combating poaching had as its ultimate goal the conservation of the species in question.

43 Thus, combating poaching can be relied upon as a means of contributing to the maintenance or restoration of the species concerned at a favourable conservation status and, therefore, as an objective covered by Article 16(1)(e) of that directive.

44 Secondly, as regards the ability of the derogations granted under Article 16(1) (e) of that directive to attain the pursued objective, it must be noted that, in so far as the derogation permits at issue in the main proceedings were part of a trial intended to ascertain whether limited authorisation of legal hunting could help reduce poaching and ultimately improve the conservation status of the wolf population, their ability to attain those objectives, in the circumstances in which they were applied for, was surrounded by uncertainty from the moment they were granted by the Agency.

45 In such a situation, as the Advocate General observed in point 62 of his Opinion, it is for the national authority to support, on the basis of rigorous scientific data, including, where appropriate, comparative data on the effects of hunting for population management purposes on the conservation status of wolves, the proposition that hunting for population management purposes is actually capable of reducing illegal hunting to such an extent that it would have a net positive effect on the conservation status of the wolf population, whilst taking account of the number of derogation permits envisaged and the most recent estimates of the number of wolves taken illegally.

46 In the present case, the Agency argues that it has been demonstrated that

hunting for population management purposes can reduce poaching, which is disputed by Tapiola and the European Commission. For its part, the referring court notes that there is no scientific evidence that the legal hunting of a protected species reduces poaching to an extent that it would have an overall positive effect on the conservation status of wolves. It will therefore be for that court to definitively establish, in the light of the foregoing observations, the ability of the derogation permits issued for hunting for population management purposes to attain their objective of combating poaching in the interest of protecting the species as well as to establish the Agency's compliance with its obligations in that regard.

47 In the second place, a derogation may not be granted under Article 16(1) of the Habitats Directive where the objective pursued by that derogation can be achieved by means of a satisfactory alternative within the meaning of that provision. Thus, such a derogation may only be granted where there is no alternative measure that could achieve the objective pursued in a satisfactory manner, whilst complying with the prohibitions laid down in that directive.

48 In the present case, it must be considered that the mere existence of an illegal activity such as poaching or difficulties associated with its monitoring cannot be sufficient to exempt a Member State from its obligation to ensure the safeguarding of species protected under Annex IV to the Habitats Directive. On the contrary, in such a situation, that Member State must give priority to strict and effective monitoring of that illegal activity and implement methods that do not involve failure to observe the prohibitions laid down in Articles 12 to 14 and Article 15(a) and (b) of that directive.

49 Further, it must be noted that Article 16(1) of the Habitats Directive requires the Member States to provide a clear and sufficient statement of reasons as to the absence of a satisfactory alternative by means of which the objectives relied upon in support of a derogation could be achieved (see, to that effect, judgment of 14 June 2007, *Commission v Finland*, C-342/05, EU:C:2007:341, paragraph 31).

50 That obligation to provide a statement of reasons is not met when the derogation decision does not contain any reference to the absence of any other satisfactory solution or any reference to relevant technical, legal and scientific reports to that effect (see, by analogy, judgments of 16 October 2003, *Ligue pour la protection des oiseaux and Others*, C-182/02, EU:C:2003:558, paragraph 14 and of 21 June 2018, *Commission v Malta*, C-557/15, EU:C:2018:477, paragraphs 50 and 51).

51 In the light of the foregoing, it is for the competent national authorities, when authorising derogation permits such as those at issue in the main proceedings, to establish, taking account in particular of the best relevant scientific and technical evidence and in the light of the circumstances of the specific situation

in question, that there is no satisfactory alternative that can achieve the objective pursued, in compliance with the prohibitions laid down in the Habitats Directive.

52 In the present case, there is nothing in the order for reference to indicate that the Agency has demonstrated that the only way of achieving the objective relied upon in support of the derogation permits for population management purposes was to authorise, pursuant to Article 16(1)(e) of the Habitats Directive, a certain level of wolf hunting for population management purposes.

53 Therefore, it appears that the decisions authorising derogation permits such as those at issue in the main proceedings do not satisfy the requirement of providing a clear and sufficient statement of reasons as to the absence of a satisfactory alternative by means of which the objective relied upon could be achieved, referred to in paragraph 49 of the present judgment; that is a matter which is, however, for the referring court to confirm.

54 In the third place, it must be ensured that the derogation in question does not infringe the condition laid down in Article 16(1) of the Habitats Directive, according to which that derogation may not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

55 The favourable conservation status of those populations in their natural range is a necessary precondition in order for the derogations for which Article 16(1) provides to be granted (see, to that effect, judgment of 10 May 2007, *Commission v Austria*, C-508/04, EU:C:2007:274, paragraph 115).

56 In that regard, it must be noted that Article 1(i) of the Habitats Directive characterises a conservation status as favourable when, first, population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, secondly, the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and thirdly, there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

57 A derogation under Article 16(1) of the Habitats Directive must therefore be based on criteria defined in such a manner as to ensure the long-term preservation of the dynamics and social stability of the species in question.

58 Moreover, as the Advocate General observed, in essence, in points 79 to 82 of his Opinion, when assessing the grant of a derogation based on Article 16(1), it is for the competent national authority to determine, in particular at national level or, where applicable, at the level of the biogeographical region in question where the borders of that Member State straddle several biogeographical regions or if the natural range of the species so requires and, to

the extent possible, at a cross-border level, as a first step, the conservation status of the populations of the species in question and, in a second step, the geographical and demographic effects that the envisaged derogations are capable of having on those.

59 Moreover, as the Advocate General observed in point 83 of his Opinion, the assessment of the impact of a derogation at the level of the territory of a local population is generally necessary in order to determine its impact on the conservation status of the population concerned on a larger scale. In so far as such a derogation must, in accordance with the observations set out in paragraph 41 of the present judgment, deal with specific requirements and specific situations, the most direct effects of such a derogation are generally felt in the local area to which it relates. Moreover, as can be seen from the documents before the Court, the conservation status of a population at national or biogeographical level depends also on the cumulative impact of the various derogations affecting local areas.

60 By contrast, contrary to what the Agency argues, it cannot be accepted that, for the purpose of that assessment, account should be taken of the part of the natural range of the population in question extending to certain parts of the territory of a third country which is not bound by an obligation of strict protection of species of interest for the European Union.

61 Therefore, such a derogation cannot be granted without an assessment of the conservation status of the populations of the species concerned and the impact that the envisaged derogation is capable of having on it at both local level and the level of the territory of that Member State or, where applicable, at the level of the biogeographical region in question where the borders of that Member State straddle several biogeographical regions or if the natural range of the species so requires and, to the extent possible, at cross-border level.

62 As regards the questions put by the referring court, it should be added, first, that a management plan and a national law setting the maximum number of individual animals that may be killed for a given hunting year within the national territory can constitute relevant factors as to whether the requirement referred to in paragraph 54 of the present judgment is satisfied, since they could ensure that the annual cumulative effect of the individual derogations is without prejudice to the maintenance or restoration of the populations of the species in question at a favourable conservation status.

63 In that regard, it appears from the figures put forward by Tapiola and the Commission, the accuracy of which is for the referring court to ascertain, that in the 2015-2016 hunting year, out of a national population totalling between 275 and 310 specimens, 43 or 44 wolves were killed in Finland on the basis of derogation permits for hunting for population management purposes, authorised under the national law, half of that number being breeding

specimens. Thus, hunting for population management purposes involved the killing of almost 15% of the entire wolf population of Finland, including numerous breeding specimens. Moreover, the management plan estimated the annual number of wolves killed illegally at approximately 30 specimens.

64 Further, Tapiola and the Commission claim that hunting for population management purposes led to the killing of 13 or 14 additional specimens as compared with those which, according to the estimates, would have been killed as a result of poaching, thus resulting in a net negative effect on that population.

65 In the light of the foregoing, it is doubtful whether the management plan and the national law setting the maximum number of specimens which may be killed for a hunting year, of which the derogation permits at issue in the main proceedings form part, make it possible to satisfy the requirement set out in paragraph 54 of the present judgment; that is a matter which is, however, for the referring court to ascertain.

66 In that context, it must also be noted that, in accordance with the precautionary principle enshrined in Article 191(2) TFEU, if, after examining the best scientific data available, significant doubt remains as to whether or not a derogation will be detrimental to the maintenance or restoration of populations of an endangered species at a favourable conservation status, the Member State must refrain from granting or implementing that derogation.

67 It is therefore for the referring court to determine whether the Agency has established, on the basis of scientific data, that the territorial and quantitative limits in respect of the derogation permits at issue in the main proceedings are sufficient to ensure that those derogations will not be detrimental to the maintenance of the population of the concerned species at a favourable conservation status in its natural range.

68 Secondly, as regards the effect of an unfavourable conservation status of a species on the possibility of authorising derogations under Article 16(1) of the Habitats Directive, the Court has already held that the grant of such derogations remains possible by way of exception where it is duly established that they are not such as to worsen the unfavourable conservation status of those populations or to prevent their restoration at a favourable conservation status. According to the Court, it is possible that the killing of a limited number of specimens may have no effect on the objective envisaged in Article 16(1) of the Habitats Directive, which consists in maintaining the wolf population at a favourable conservation status in its natural range. Such a derogation would therefore be neutral for the species concerned (judgment of 14 June 2007, *Commission v Finland*, C-342/05, EU:C:2007:341, paragraph 29).

69 However, it must be noted that the grant of such derogations by way of

exception must be assessed also in the light of the precautionary principle, as referred to in paragraph 66 of the present judgment.

70 In the fourth place, Article 16(1)(e) of the Habitats Directive requires that conditions be satisfied in relation to (i) the limited and specified nature of the number of specimens of species which may be taken or kept, (ii) the selective basis and limited extent which apply to that taking or keeping, and (iii) the strict nature of the supervision to which compliance with those conditions must be subject.

71 As regards the condition relating to the limited and specified number of certain specimens of the species to be taken or kept, it must be noted that that number will depend, in each case, on the population level of the species, its conservation status and its biological characteristics. That number must also be determined on the basis of rigorous scientific data which relate to geographic, climatic, environmental and biological factors as well as those enabling an assessment of the situation regarding the species' reproduction and total annual mortality rate owing to natural causes (see, by analogy, judgments of 8 June 2006, *WWF Italia and Others*, C-60/05, EU:C:2006:378, paragraphs 25 and 29 and of 21 June 2018, *Commission v Malta*, C-557/15, EU:C:2018:477, paragraph 62).

72 In order to be deemed to satisfy that condition, the number of animals taken authorised under Article 16(1)(e) of the Habitats Directive must also form part of a measure such that that number does not entail the risk of significant negative impact on the structure of the population in question, even if it is not, in itself, detrimental to the maintenance of the populations of species concerned at a favourable conservation status in their natural range. That number must not only be strictly limited in the light of the criteria mentioned, but also clearly specified in the derogation decisions.

73 As regards the conditions relating to the selective and limited basis on which certain specimens of species are taken or kept, it should be noted that they require the derogation to cover a number of specimens determined in the narrowest, most specific and efficient way possible, taking into account the objective pursued by the derogation in question. It may also be necessary, in view of the level of the population of the species in question, its conservation status and its biological characteristics, for the derogation to be limited not only to the species concerned or to the types or groups of specimens thereof, but also to individually identified specimens.

74 Finally, the condition that derogations under Article 16(1)(e) of the Habitats Directive be implemented under strictly supervised conditions means, in particular, that those conditions and the manner in which compliance with them is ensured can guarantee that the specimens of the species concerned are taken or kept on a selective basis and in limited numbers. Thus, for each

derogation based on that provision, the competent national authority must ensure that the conditions laid down therein are satisfied before that derogation is granted and monitor its subsequent impact. The national legislation must ensure that the lawfulness of the decisions granting derogation permits under that provision and the manner in which those decisions are implemented, including as regards compliance with the accompanying conditions relating to, in particular, places, dates, numbers and types of specimens targeted, are subject to effective control in a timely manner (see, by analogy, judgment of 8 June 2006, *WWF Italia and Others*, C-60/05, EU:C:2006:378, paragraph 47).

75 In the present case, it is clear from the documents before the Court that, first, the derogations at issue in the main proceedings relate to the killing of a limited number of wolves, namely seven specimens. As noted by the Commission, for the purpose of assessing whether the conditions laid down in Article 16(1)(e) of the Habitats Directive are satisfied, that number must be understood in the broader context of authorised taking of animals as part of the hunting for population management purposes; that context, as set out in paragraphs 62 to 64 of the present judgment, raises doubts as to whether the requirements laid down in that provision are satisfied.

76 Secondly, it is true that the derogation decisions at issue in the main proceedings contain certain guidance as to the types of specimens targeted, in particular young individuals or those causing nuisance.

77 However, as is apparent from the order for reference and the clarifications made at the hearing, those derogation permits merely recommend that the permit holders target certain individuals and avoid others, but do not oblige them to do so. Thus, they do not ensure that, in the course of their implementation, breeding specimens are not targeted, whereas those are particularly important with a view to the objectives of the Habitats Directive, as set out in paragraph 25 of the present judgment.

78 Thirdly, it appears from the documents submitted before the Court that, despite those derogations containing guidance to the contrary, it seems that 20 alpha males were killed in the hunting year at issue in the main proceedings within the context of hunting for population management purposes, which allows doubt to be cast on the selective nature of the derogation permits granted, the effectiveness of the monitoring of their implementation and the limited nature of the taking of animals.

79 Thus, subject to the checks that are for the referring court to carry out, it is not apparent from the documents before the Court that the conditions under which the derogation permits at issue in the main proceedings were granted and the manner in which compliance with those conditions is monitored ensure that specimens of the species in question are taken on a selective basis and to a

limited extent within the meaning of Article 16(1)(e) of the Habitats Directive.

80 In the light of the foregoing considerations, the answer to the questions put by the referring court is that Article 16(1)(e) of the Habitats Directive must be interpreted as precluding the adoption of decisions granting derogations from the prohibition on the deliberate killing of wolves laid down in Article 12(1) (a), read in conjunction with Annex IV(a) to that directive, by way of hunting for population management purposes, the objective of which is to combat poaching, where:

- the objective pursued by such derogations is not stated in a clear and precise manner and where, in the light of rigorous scientific data, the national authority is unable to establish that the derogations are appropriate with a view to achieving that objective,
- it is not duly established that their objective cannot be attained by means of a satisfactory alternative, the mere existence of an illegal activity or difficulties associated with its monitoring not constituting sufficient evidence in that regard,
- it is not guaranteed that the derogations will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range,
- the derogations have not been subject to an assessment of the conservation status of the populations of the species concerned and of the impact that the envisaged derogation may have on it, at the level of the territory of that Member State or, where applicable, at the level of the biogeographical region in question where the borders of that Member State straddle several biogeographical regions or where the natural range of the species so requires and, to the extent possible, at cross-border level, and
- not all conditions are satisfied in relation to the taking, on a selective basis and to a limited extent, under strictly supervised conditions, in limited and specified numbers, of specimens of the species listed in Annex IV to that directive, compliance with which must be established in particular by reference to the population level, its conservation status and its biological characteristics.

It is for the national court to ascertain whether that is the case in the main proceedings.

Costs

81 Since these proceedings are, for the parties to the main proceedings, a step in

the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

Article 16(1)(e) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as precluding the adoption of decisions granting derogations from the prohibition on the deliberate killing of wolves laid down in Article 12(1)(a), read in conjunction with Annex IV(a) to that directive, by way of hunting for population management purposes, the objective of which is to combat poaching, where:

- the objective pursued by such derogations is not stated in a clear and precise manner and where, in the light of rigorous scientific data, the national authority is unable to establish that the derogations are appropriate with a view to achieving that objective,**
- it is not duly established that their objective cannot be attained by means of a satisfactory alternative, the mere existence of an illegal activity or difficulties associated with its monitoring not constituting sufficient evidence in that regard,**
- it is not guaranteed that the derogations will not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range,**
- the derogations have not been subject to an assessment of the conservation status of the populations of the species concerned and of the impact that the envisaged derogation may have on it, at the level of the territory of that Member State or, where applicable, at the level of the biogeographical region in question where the borders of that Member State straddle several biogeographical regions or where the natural range of the species so requires and, to the extent possible, at cross-border level, and**
- not all conditions are satisfied in relation to the taking, on a selective basis and to a limited extent, under strictly supervised conditions, in limited and specified numbers, of specimens of the species listed in Annex IV to that directive, compliance with which must be established in particular by reference to the population level, its conservation status and its biological characteristics, are satisfied.**

It is for the national court to ascertain whether that is the case in the main

proceedings.

[Signatures]

* Language of the case: Finnish.