To the President and Members of the Court of Justice of the European Union

Case C-300/20

Between:

BUND NATURSCHUTZ IN BAYERN E. V.

Applicant

-and-

LANDKREIS ROSENHEIM (GERMANY)

Respondent

WRITTEN OBSERVATIONS OF IRELAND

Submitted by Maria Browne, Chief State Solicitor, Osmond House, Little Ship Street, Dublin 8 acting as Agent, accepting service via e-Curia with an address for service at the Embassy of Ireland, 28 route d'Arlon, Luxembourg, assisted by Suzanne Kingston SC and Aoife Carroll BL both of the Bar of Ireland

Pursuant to Article 23 of the Protocol on the Statute of the Court of Justice of the European Union, Ireland has the honour to submit written observations in these proceedings, the subject of a reference for preliminary ruling from the Bundesverwaltungsgericht (Germany) made on 7 July 2020.

I. Introduction

1. The within observations are made on behalf of Ireland in respect of the request for a preliminary ruling lodged with the Court of Justice of the European Union (*'the Court'*) on 7 July 2020 by the Bundesverwaltungsgericht (Germany) (*'the Referring Court'*) in the context of proceedings brought by Bund Naturschutz in Bayern e.V challenging the lawfulness of a national regulation establishing an area of outstanding natural beauty, the AONB Regulation.

2. The Order for Reference includes three questions relating to the interpretation 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 (*'the SEA Directive'*). In particular, the Referring Court seeks guidance on the circumstances in which the framework for future development consents will be set within the meaning of Article 3(2)(a) and the circumstances in which the obligations contained in Article 3(4) will be engaged. In essence, the Referring Court asks whether the AONB Regulation can be described a plan or programme which sets the framework for future development consent of either projects listed in Annex I or II of the EIA Directive or projects more generally, with the consequence that it must be subject to an assessment to determine whether it is likely to have significant environmental effects.

3. In Ireland's submission, this question should be answered in the negative. For a measure to constitute a "*plan or programme*" that sets the framework for future development consent of projects within the meaning of Article 3 of the SEA Directive, it is not sufficient for a measure to contain general prohibitions or principles in relation to land use in a particular area. A measure of this nature does not, as confirmed by Case C-43/18 *CFE*, set "*a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment*", within the meaning of the Court's case-law. Further, it lacks the required connection with specific projects to come within the scope of Article 3 of the SEA Directive. Accordingly, it does not constitute a plan or programme requiring an environmental assessment pursuant to that Directive.

II. The AONB Regulation

4. The AONB Regulation was issued by the Landkreis Rosenhem to take effect on 27 April 2013. As appears from the Order of Reference it establishes an area of outstanding natural beauty, protecting an area measuring 4021 hectares. The Order for Reference records that *'all acts within the area of outstanding natural beauty that alter the character of the area or undermine the protective purpose of the area of outstanding natural beauty are prohibited"*.

5. The most detailed description of the AONB Regulation is found at paragraph 15 of the Order for Reference:

> 15. Although it establishes a series of general prohibitions and compulsory permits for numerous projects and uses, Paragraph 4 of the AONB Regulation prohibits all acts within the area of outstanding natural beauty that alter the character of the area or undermine its protective purpose. Paragraph 5(1) and (2) of the AONB Regulation provide for permits authorising various measures prohibited under Paragraph 4 of the AONB Regulation. Lastly, Paragraph 6 of the AONB Regulation provides for exceptions from the restrictions established in the regulation and Paragraph 7 of the AONB Regulation provides for exemptions.

6. It is also noted that the Referring Court describes the AONB Regulation as having a *'protective purpose'* (see paragraph 18), which does not contain specific rules for the authorisation of projects within the meaning of Annex I and II of the EIA Directive. Finally, the Referring Court states that the AONB *'does not influence the authorisation of projects'*. Instead, its purpose is to either prevent projects or to ensure they are ecologically sound.

7. From the description provided by the Referring Court, it appears that the AONB Regulation is not a measure which contains detailed rules or procedures by which development consent may be granted (or refused) in respect of specific projects. Instead, it appears to be a more generalised measure which is aimed at protecting the landscape and ensuring nature conservation.

8. Notwithstanding its environmental purpose, as noted by the Referring Court, its classification as a plan or programme for the purpose of the Directive would result it in

being invalidated as it was not subject to an environmental assessment prior to adoption. The consequence, therefore, of the Court ruling in favour of a measure of this nature being classified as a plan or programme within the meaning of the Directive is that national measures which are for the purpose of generally protecting the environment, rather than being directed at the circumstances in which development consent for projects may be granted or refused are at risk of being invalidated.

9. In the view of Ireland, that is not something which is justified by either the literal terms of the SEA Directive nor the purpose for which it was enacted.

III. Directive 2001/42/EC

10. The purpose of the SEA Directive is to provide for a high level of environmental protection and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes. This is achieved by requiring an environmental assessment to be carried out of *'certain plans and programmes which are likely to have significant effects on the environment'*.

11. The Directive seeks to achieve this objective by establishing a requirement that certain plans and programmes be subject to an assessment of their environmental impacts. It must be emphasised that this objective does not extend to *all* plans and programmes, rather it is limited to those plans and programmes which come within the scope of Article 3. As discussed further below, the type of measures at which the Directive is aimed are those plans and projects which are directed towards establishing the framework in which development consent is granted for projects. In that regard, the Directive is focused on the circumstances in which projects may be granted or refused development consent.

12. The scope of the Directive as being limited to measures which set the framework for future development consent of certain projects is clear from both the Recitals of the Directive and the specific language contained in Article 3 itself. Recital (10) notes a presumption that plans and programmes for these sectors which set the framework for development consents are likely to have significant effects on the environment which ought to be subject to assessment. This presumption is also evident from Recital (11), which confirms that other plans and programmes are not presumed to have significant effects on the

environment and therefore should only be subject to an assessment where *"Member States determine that they are likely to have such effects'*.

13. That general approach is confirmed by Article 3, which defines the scope of the Directive. Article 3(1) states that an environmental assessment will only be required for *'plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects'*. Article 3(2) – (5) states:

> 2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes:
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> > (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country panning 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
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> > (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
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> 3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.
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> 4. Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.
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> 5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans

and programmes with likely significant effects on the environment are covered by this Directive.

14. Annex II contains the criteria for determining the likely significance of effects referred to in Article 3(5).

15. Recital (11) indicates that the scope of the obligation extends beyond plans and programmes for the specific sectors in some circumstances but only where Member States determine that the plans and programmes are likely to have significant effects on the environment.

16. The Directive is framed so as to focus the obligation to carry out an environmental assessment on plans or programmes which are prepared in respect of specific sectors, where those plans or programmes set the framework for future development of projects listed in Annex I and II of the EIA Directive. The obligation may extend to other plans and programmes, where they set the framework for future development consent of projects, when a Member State determines that those plans and programmes are likely to have significant environmental effects. The framing of the Directive in this manner is significant as it shows the intention of the Legislature to confine the obligation to carry out an environmental assessment to certain circumstances, and not to introduce a wide ranging obligation in respect of every plan or programme that may be introduced by a Member State.

17. It is acknowledged that the Court has held that the definitions of the measures envisaged by the Directive should be interpreted *'broadly'* (see, Case C-671/16 *Inter-Environment Bruxelles and Others* at paragraph 32 – 34 and Case C-43/18 *CFE*, at paragraph 36). However, as developed further below, it is respectfully submitted that permitting a broad interpretation of certain concepts cannot include the extension of the scope of the Directive beyond that which was intended by the Legislature.

IV. The First and Second Questions

(i) Is Article 3(2)(a) of Directive 2001/41/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) to be interpreted as meaning that a framework for future development consent of projects listed in Annex I and II to Directive 2011/92/EU ('the EIA Directive) is set where a regulation on nature conservation and landscape management provides for general prohibitions (with possible exemptions) and compulsory permits which do not specifically relate to projects listed in the annexes to the EIA Directive?

(ii) Is Article 3(2)(a) of Directive 2001/42/EC to be interpreted as meaning that plans and programmes were prepared for agriculture, forestry, land use, etc if their objective was to establish a reference framework for one or more of those areas? Or does it suffice if, for the purpose of nature conservation and landscape management, general prohibitions and permit requirements are regulated which have to be assessed in the permit procedure for a variety of projects and uses and which may indirectly impact ('by default') one or more of those areas?

18. The first and second questions require a consideration of the scope of Article 3(2)(a) of the Directive and whether the AONB Regulation falls within it. For this reason, it is appropriate to consider them together. These questions require a consideration of the constituent elements of Article 3(2)(a) for the purpose of determining in what circumstances a plan or programme will come within its scope.

Principles

19. In order to fall within Article 3(2)(a), a national measure must first constitute a "*plan or programme*" within the meaning of the Court's case-law, including Case C-43/10 *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, Case C-290/15 *D'Oultremont and Others* and Case C-567/10 *Inter-Environnement Bruxelles and Others*.

20. In addition, in order to fall within Article 3(2)(a) a plan or programme must:

(i) Be "*prepared for*" agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country panning or land use; and

(ii) "*Set the framework for future development consent of projects listed in Annexes I and II*" to Directive 85/337/EEC.

21. Article 3(2)(a) is framed in a specific manner so as to encompass plans and programmes which are directed towards a particular type of project (i.e., those listed in Annex I and II to the EIA Directive) *and* where the plan or programme has been prepared for one of the listed sectors.

22. As a matter of principle therefore, the plan or programme is defined by reference to the type of project in respect of which development consent may be granted. Further, the Directive only includes within the scope of Article 3(2)(a) those plans or programmes which were *'prepared for'* specific sectors. The language used suggests a requirement of a direct link between the plan or programme and the specific sector. This is also consistent with the underlying assumption, which is evident from the Recitals, that plans or programmes which are prepared *'for'* these sectors and which set the framework for development consent are likely to have significant effects on the environment and therefore should, as a rule, be subject to environmental assessment.

23. The combination of these factors suggest that the language used in Article 3(2)(a) is intended to include within the scope of the Directive only those plans and programmes which are targeted at the specific sectors listed in that Article, and which set the framework for development consent. It is not sufficient for a plan or programme to have an incidental or potential indirect consequence on one or more of those sectors, in the absence of being directed or targeted at a particular sector.

24. This is consistent with the manner in which the Court has defined the concept of a plan or programme. A plan or programme is, as the Court has held, a measure *'which establishes, by defining rules and procedures, a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment'* (judgments of Case C-290/15 *D'Oultremont and Others* at paragraph 49 and Case C-43/18 *CFE* at paragraph 61).

25. This requires a level of specificity in the contents of the plans or programmes which suggests that those detailed rules must be *'for'* one of the sectors listed in Article 3(2)(a). For these reasons, it is not sufficient for a plan or programme to indirectly impact one of the sectors listed in Article 3(2)(a). Instead, the plan or programme must have been prepared for one of those sectors, meaning that there is a direct link between the plan or programme and the sector or sectors concerned.

26. This interpretation is also consistent with Article 5 of the Directive, which requires a report to be prepared "*in which the likely significant effects on the environment of implementing the plan or programme"* are identified, described and evaluated. This, again, suggests a concrete link between the plan or programme and a specific sector rather than a more general plan whereby areas are designated to have a particular status for the purpose of nature conservation and landscape management.

27. Further, it is not sufficient for the plan or programme to have been prepared for one of the sectors listed. It must also set the framework for future development consent of projects listed in Annex I and II of the EIA Directive. Again, this is a concept which is linked to the type of project in respect of which development consent is sought, which can be seen from the manner in which the concept was considered by the Court in Case C-290/15 *D'Oultremont and Others*. It can be seen from paragraphs 49 and 50 of *D'Oultremont* that the concept of plans and programmes is linked to both the standards for a particular sector and the criteria and rules for the *'grant and implementation'* of a project:

> 49 Having regard to that objective, it should be noted that the notion of 'plans and programmes' relates to any measure which establishes, by defining rules and procedures for scrutiny applicable to the sector concerned, a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment (see, to that effect, judgment of 11 September 2012, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, C-43/10, EU:C:2012:560, paragraph 95 and the case-law cited).
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> 50 In the present case, it should be noted that the order of 13 February 2014 concerns, in particular, technical standards, operating conditions (particularly shadow flicker), the prevention of accidents and fires (*inter alia*, the stopping of the

> wind turbine), noise level standards, restoration and financial collateral for wind turbines. Such standards have a sufficiently significant importance and scope in the determination of the conditions applicable to the sector concerned and the choices, in particular related to the environment, available under those standards must determine the conditions under which actual projects for the installation and operation of wind turbine sites may be authorised in the future.

28. The starting point therefore must be the manner in which projects listed in Annex I and II of the EIA Directive in the identified sectors are granted consent and whether the measure in issue contains the rules by which those projects could be granted consent. It is then necessary to examine the *'content and purpose'* of the measure concerned, taking account of the scope of the environmental assessment of projects as provided by the EIA Directive (see Case C-671/18 *Inter-Environnement Bruxelles ASBL,* at paragraph 46). In that regard, the concept of a '*significant body of criteria and detailed rules*' is to be construed qualitatively and not quantitatively (see paragraph 55).

29. Further, in the case of plans/programmes falling under Art 3(2)(a), the obligation to make a particular plan or programme subject to an environmental assessment is (Case C-473/14 *Dimos Kropias Attikis*, paragraph 47),

> "conditional on the plan or programme being likely to have significant environmental effects or, in other words, to have a significant effect on the site concerned. The examination to be carried out in order to determine whether that condition is satisfied is necessarily limited to the question of whether it can be excluded, on the basis of objective information, that that plan or project will have a significant effect on the site concerned."

30. In Case C-43/18 *CFE*, the Court held that a decree passed by the Government of the Brussels-Capital Region designating a Natura 2000 site, making provision as to conservation objectives and imposing certain prohibitions, was not among the "*plans and programmes*" in respect of which an environmental impact assessment was required. In so holding, the Court reasoned that:

a. Where a measure contains prohibitions which apply only to projects not requiring consent, it could not be held that the measure constitutes a plan or programme setting the framework for future development consent of other projects within the meaning of Article 3 (see paragraph 65 - 67).

b. The decree at issue should be distinguished from the action programme adopted pursuant to Article 5(1) of the Nitrates Directive in Joined Cases C-105/09 and C-110/09 *Terre wallonne*, which the Court held constituted a plan or programme requiring an environmental assessment under the SEA Directive, as in that case "*an overall analysis had demonstrated, first, that the specific nature of the action programmes concerned lay in the fact that they embodied a comprehensive and coherent approach, providing practical and coordinated arrangements. Second, as regards the content of the action programmes, it is apparent from Article 5 of the Nitrates Directive, amongst other provisions, that those programmes contained specific, mandatory measures*" (paragraph 69).

c. A measure does not fall within the meaning of "*plans and programmes if it is part of a hierarchy of measures which have themselves been the subject of an assessment of their environmental effects and it may reasonably be considered that the interests which the SEA Directive is designed to protect have been taken into account sufficiently within that framework*" (paragraph 73).

31. Accordingly, *CFE* makes clear that national measures designating sites for nature protection purposes, whether pursuant to the Habitats Directive or pursuant to national designations, do not in themselves constitute plans or programmes requiring an environmental assessment pursuant to Article 3 of the SEA Directive. In particular, they do not satisfy the *D'Oultremont* test of setting "*a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment*".

32. As the Court explained, unlike the Nitrates action programme at issue in Joined Cases C-105/09 and C-110/09 *Terre wallonne*, such designations do not in themselves provide "*practical and coordinated arrangements*" or contain "*specific, mandatory measures*" for particular projects or types of project. Unlike the order concerning development consents for wind turbines at issue in *D'Oultremont*, such measures do not in themselves set "*standards [with] a*

sufficiently significant importance and scope in the determination of the conditions applicable to the sector concerned" (*D'Oultremont*, paragraph 50).

33. In sum, it is submitted that the SEA Directive, interpreted in the light of the above case-law, means that, first, a measure designating a site for nature conservation purposes, whether under the Habitats Directive or as a national designation, does not constitute a plan or programme requiring an environmental assessment pursuant to Article 3 of the SEA Directive, as it does not satisfy the *D'Oultremont* test as applied in *CFE*.

34. Second, in order to fall within Article 3(2)(a) of the SEA Directive, a plan or programme must:

    a) Be prepared specifically for one or more of the sectors listed therein. Ireland submits that it is not enough for this purpose that a national measure indirectly impacts a listed sector or sector(s); and

    b) Set the framework for development consent of specific projects listed in Annexes I and II to the EIA Directive. Again, Ireland submits that it is not enough for this purpose that a national measure constitutes a general measure that may potentially impact future hypothetical projects listed in Annexes I/II of the EIA Directive, amongst many other projects. The scope of Article 3(2)(a) ought only be considered to encompass those measures which are directed at particular projects or classes of projects, rather than any measure which has been introduced for general environmental purposes and which may have some impacts on the development of land. The fact that a measure may set certain general principles in respect of development in particular areas, even where that measure would have legal effects on the consideration of applications for development on the site in question, is not sufficient to bring it within the meaning of Article 3(2)(a). A measure of that nature could not be described as having the level of specificity required to meet the threshold that has previously been established by the Court.

Application in the instant case

35. While it is for the Referring Court to determine whether the specific measure in question meets the criteria in Article 3(2)(a), an examination of some of the aspects of the AONB

Regulation to which reference has been made in the Order for Reference demonstrates the limits of Article 3(2)(a).

36. First, there is nothing to suggest that it was *'prepared for'* one of the sectors listed in Article 3(2)(a). Indeed, the Referring Court notes that it was prepared for the purpose of nature conservation and landscape management, matters which are not listed in Article 3(2)(a). There is nothing in the Order for Reference which suggests that it has a direct link to any of the sectors listed in Article 3(2)(a) and, for that reason, it is likely to fall outside its scope. The existence of this specific link is a condition precedent to the application of Article 3(2)(a) and in the absence of that link, no obligation to carry out an environmental assessment could arise.

37. Second, it does not appear that the AONB Regulation can be described as setting a framework for the development consent of projects listed in Annex I and II of the EIA Directive. While the AONB Regulation contains *'general prohibitions and compulsory permits for numerous projects and uses'* and a general prohibition on *'all acts within the area of outstanding natural beauty that alter the character of the area or undermine its protective purpose'*, it does not appear to contain both a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment. In that regard, it is implied in the Order for Reference, at paragraph 17, that the AONB Regulation does not contain the type of technical standards or detailed requirements which were contained in the measure in issue in Case C-290/15 *D'Oultremont*.

38. Third, the Order for Reference suggests that it is a measure that has the purpose of preventing or restricting the development of projects, rather than establishing a framework for the development consent of specific projects, by providing the conditions for the "*the grant and implementation of one or more projects*" (*D'Oultrement*, paragraph 49). It does not contain any specific rules for the authorisation of projects listed in Annex I and II of the EIA Directive. The publication of a measure which contains general prohibitions of this nature and does not contains the rules by which projects listed in Annex I and II of the EIA Directive are authorised could not be said to fall within the scope of Article 3(2)(a). In this regard, a comparison may be drawn with the conclusion reached in Case C-321/18 *Terre Wallone*, where a measure which set conservation objectives with an indicative value was not a plan or programme within the meaning of the Directive. As the AONB Regulation

does not contain the rules by which projects listed in Annex I and II of the EIA Directive are granted authorisation, it does not appear to fall within Article 3(2)(a).

V. Third Question

Is Article 3(4) of Directive 2001/42/EC to be interpreted as meaning that a framework for future development consent of projects is set if a regulation adopted for the purpose of nature conservation and landscape management lays down prohibitions and permit requirements for a variety of projects and measures in the protected area which are described in abstract terms, where there are no actual foreseeable or envisaged projects which it is adopted and therefore it is does specifically relate to actual projects?

39. Article 3(4) requires Member States to determine whether plans and programmes, other than those referenced in Article 3(4), which set the framework for future development consent of projects, are likely to have significant environmental effects. The concept of setting the framework for future development consents of projects is to be given the same meaning under both Article 3(2)(a) and Article 3(4) (see, Case C-43/18 *CFE* at paragraph 59 and 60).

40. The principles by which the concept of *'setting the framework for future development consents'* are to be considered have been explained above. While Article 3(4) extends beyond those projects listed in Annex I and II to the EIA Directive to *'projects'*, it remains a requirement that the plan or programme in issue set the framework for future development consent of those projects. As set out above, this means the measure in issue must contain the rules by which it is determined whether or not future development of projects may occur. Those rules must be sufficiently precise and detailed and be for the purpose of determining the grant and implementation of projects to meet the requirements of Case C-290/15 *D'Oultremont and Others.*

41. For the reasons set out above, Ireland submits that it is not sufficient for a measure to contain general prohibitions or principles in relation to land use in a particular area. A measure of this nature does not set "*a significant body of criteria and detailed rules for the grant and implementation of one or more projects likely to have significant effects on the environment*", and lacks

the required connection with a project to come within the scope of Article 3(4). Accordingly, it does not constitute a plan or programme requiring an environmental assessment pursuant to Article 3 of the SEA Directive, within the meaning of *D'Oultremont* and as confirmed by *CFE*.

VI. Potential consequences of the answers to be provided by the Court

42. Finally, the potential consequences of the answers to the questions posed must be emphasised. As raised by the referring court, if the AONB Regulation is a plan or programme within the meaning of Article 3(2)(a) (or indeed Article 3(4)), then it must be invalidated.

43. This highlights, in Ireland's submission, the very considerable danger of requiring measures of this nature to be assessed for the purpose of the Directive. Such a conclusion could lead to designation measures which have been introduced for the purpose of ensuring general environmental protection, and which are vital for the effectiveness of EU and national nature conservation rules, being invalidated. Instead of advancing the purpose of the Directive (i.e. to ensure a high level of protection for the environment), this would fundamentally undermine that purpose.

44. The Court should be slow to interpret the Directive in a manner that would result in national measures that are essential to ensure nature conservation and proper landscape management being invalidated. Instead, Ireland respectfully submits that it should maintain the position previously adopted in *CFE*.

VII. Conclusion and Proposed Answers

45. For the foregoing reasons, Ireland suggests that the Court reply to the questions referred by the Referring Court in the following manner:

(i) Article 3(2)(a) of Directive 2001/41/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) is to be interpreted as meaning that a framework for future development consent of projects listed in Annex I and II to Directive 2011/92/EU is not set where a regulation on nature conservation and landscape management provides for general prohibitions (with possible exemptions) and compulsory permits which do not specifically relate to projects listed in the annexes to the EIA Directive.

(ii) Article 3(2)(a) of Directive 2001/42/EC is to be interpreted as meaning that plans and programmes were prepared for agriculture, forestry, land use, etc if their objective was to establish a reference framework specifically for one or more of those areas. It is not sufficient, if, for the purpose of nature conservation and landscape management, general prohibition and permit requirements are regulated which have to be assessed in the permit procedure for a variety of projects and uses which may indirectly impact ('by default') one or more of those areas.

(iii) Article 3(4) of Directive 2001/42/EC is to be interpreted as meaning that a framework for future development consent of projects is not set if a regulation adopted for the purpose of nature conservation and landscape management lays down prohibitions and permit requirements for a variety of projects and measures in the protected area which are described in abstract terms, where there are no actual foreseeable or envisaged projects when it is adopted and therefore it does not specifically relate to actual projects.

Dated this 19th day of November 2020

Signed: Juliana Quaney
On behalf of Maria Browne, Chief State Solicitor
Agent for Ireland

Signed: Tony Joyce
On behalf of Maria Browne, Chief State Solicitor
Agent for Ireland