



# Reports of Cases

## JUDGMENT OF THE COURT (Second Chamber)

29 June 2023\*

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\* Language of the case: English.

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(Failure of a Member State to fulfil obligations – Environment – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Special areas of conservation – Atlantic biogeographical region – Article 4(4) and Article 6(1) – Failure to designate special areas of conservation and to set conservation objectives – Absence or insufficiency of conservation measures)

In Case C-444/21,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 16 July 2021,

**European Commission**, represented by C. Hermes and M. Noll-Ehlers, acting as Agents,

applicant,

v

**Ireland**, represented by M. Browne, A. Joyce, M. Lane and J. Quaney, acting as Agents, and by E. Barrington, Senior Counsel, A. Carroll, Barrister-at-Law, and M. Gray, Senior Counsel,

defendant,

supported by:

**Federal Republic of Germany**, represented by J. Möller and A. Hoesch, acting as Agents,

intervener,

THE COURT (Second Chamber),

composed of A. Prechal, President of the Chamber, M.L. Arastey Sahún (Rapporteur), F. Biltgen, N. Wahl and J. Passer, Judges,

Advocate General: T. Ćapeta,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 9 November 2022,

after hearing the Opinion of the Advocate General at the sitting on 9 February 2023,  
gives the following

### **Judgment**

- 1 By its action, the European Commission requests the Court to declare that:
  - by failing to designate as special areas of conservation, as soon as possible and within six years at most, 217 of the 423 sites of Community importance for the Atlantic biogeographical region which were included on the list established by Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region (OJ 2004 L 387, p. 1), updated by Commission Decision 2008/23/EC of 12 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Atlantic biogeographical region (OJ 2008 L 12, p. 1), and by Commission Decision 2009/96/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Atlantic biogeographical region (OJ 2009 L 43, p. 466) ('the sites of Community importance at issue');
  - by failing to define detailed site-specific conservation objectives for 140 of the 423 sites of Community importance at issue; and
  - by failing to adopt the necessary conservation measures which correspond to the ecological requirements of the natural habitat types referred to in Annex I and the species referred to in Annex II to 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), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Habitats Directive'), present on the 423 sites of Community importance at issue,

Ireland has failed to fulfil its obligations under Article 4(4) and Article 6(1) of the Habitats Directive.

### **I. Legal context**

- 2 The third and eighth recitals of the Habitats Directive state:

'Whereas, 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; whereas the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities;

...

Whereas it is appropriate, in each area designated, to implement the necessary measures having regard to the conservation objectives pursued'.

3 Article 1(l) of that directive provides:

‘For the purpose of this Directive:

...

(l) special area of conservation means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated’.

4 Under Article 2(2) of that directive:

‘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.’

5 Article 3(1) and (2) of the same directive provides:

‘1. 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 classified by the Member States pursuant to Directive 79/409/EEC.

2. Each Member State shall contribute to the creation of Natura 2000 in proportion to the representation within its territory of the natural habitat types and the habitats of species referred to in paragraph 1. To that effect each Member State shall designate, in accordance with Article 4, sites as special areas of conservation taking account of the objectives set out in paragraph 1.’

6 Article 4 of the Habitats Directive provides:

‘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. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction. For aquatic species which range over wide areas, such sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction. Where appropriate, Member States shall propose adaptation of the list in the light of the results of the surveillance referred to in Article 11.

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 nine 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 drawn from the Member States' lists identifying those which host one or more priority natural habitat types or priority species.

Member States whose sites hosting one or more priority natural habitat types and priority species represent more than 5% of their national territory may, in agreement with the Commission, request that the criteria listed in Annex III (Stage 2) be applied more flexibly in selecting all the sites of Community importance in their territory.

The list of sites selected as sites of Community importance, 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 site of Community importance 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).'

7 Under Article 6 of that directive:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

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. ...

...'

## II. Pre-litigation procedure and procedure before the Court

- 8 By Decision 2004/813, the Commission adopted a list of sites of Community importance for the Atlantic biogeographical region, 413 of which are situated within the territory of Ireland. The six-year period for designating those sites as special areas of conservation, provided for in Article 4(4) of the Habitats Directive, expired on 7 December 2010. That list was updated by Decisions 2008/23 and 2009/96, merging, in respect of Ireland, 2 sites and adding 11, thus bringing the total number of sites located in the territory of that Member State to 423.
- 9 By letter of 23 April 2013, the Commission asked Ireland to provide it with information on the measures taken to comply with the provisions of Article 4(4) and of Article 6(1) of the Habitats Directive and, in particular, on the progress of the designation as special areas of conservation of the sites of Community importance at issue, as well as on the state of preparation of conservation objectives and measures.
- 10 In the light of Ireland's reply of 11 September 2013, the Commission took the view that that Member State had failed to fulfil its obligations under the abovementioned provisions and sent it a letter of formal notice on 27 February 2015.
- 11 After having examined the reply provided by Ireland by letter of 5 May 2015 and the progress reports submitted by that Member State, the Commission issued, on 29 April 2016, a reasoned opinion, pursuant to the first paragraph of Article 258 TFEU, alleging that that Member State had failed to fulfil:
  - the obligation to designate as special areas of conservation, in accordance with the requirements of Article 4(4) of the Habitats Directive, as soon as possible and within six years at most, 401 of the sites of Community importance at issue;
  - the obligation to set, in accordance with that provision, conservation objectives for 335 of those sites of Community importance;
  - the obligation to adopt, in accordance with Article 6(1) of that directive, the necessary conservation measures in respect of all of those sites of Community importance.
- 12 In its reply of 27 June 2016, Ireland, in relation to the obligations arising under Article 4(4) of the Habitats Directive, highlighted the complexity of the process of designating sites of Community importance as special areas of conservation. That Member State thus planned to complete the designation of special areas of conservation during 2017. It considered, however, that the sites at issue were already protected by Irish law as 'candidate Special Areas of Conservation' ('the candidate sites').

- 13 By letter of 9 November 2018, received by Ireland on the same day, the Commission sent that Member State an additional reasoned opinion. It invited the Irish authorities to comply with that opinion within two months of its receipt. It now considered that that Member State's failures to fulfil its obligations concerned:
- 255 sites of Community importance, for not designating sites of Community importance as special areas of conservation;
  - 198 sites of Community importance, for not setting detailed conservation objectives;
  - all of the 423 sites of Community importance at issue, for not establishing conservation measures.
- 14 By letter of 11 January 2019, Ireland indicated that it planned to designate the remaining sites as special areas of conservation and to set conservation objectives for those sites by the end of 2020 at the latest and that they were already protected as candidate sites. It also referred to a programme for delivering conservation measures.
- 15 By emails of 26 April, 2 May, 11 October and 12 December 2019 and of 14 January and 14 April 2020, Ireland informed the Commission of the progress of the procedures for designating the sites of Community importance at issue as special areas of conservation and setting the conservation objectives.
- 16 Taking the view that Ireland had thus failed to take the necessary measures to comply with its obligations under Article 4(4) and Article 6(1) of the Habitats Directive, the Commission brought, on 16 July 2021, the present action.
- 17 By decision of the President of the Court of 6 December 2021, the Federal Republic of Germany was admitted to intervene in support of Ireland.

### **III. The action**

- 18 In support of its action, the Commission relies on three complaints, the first two alleging infringement of Article 4(4) of the Habitats Directive, with the third alleging infringement of Article 6(1) of that directive. It alleges, first, that 217 of the sites of Community importance at issue were not designated as special areas of conservation, second, that no conservation objectives were set for 140 of the sites of Community importance at issue and, third, that no sufficient conservation measures were established for the sites of Community importance at issue.
- 19 Ireland contends that the action for failure to fulfil obligations should be dismissed. The Federal Republic of Germany, which is intervening in support of it, takes a position only on the third complaint, however.

***A. First complaint: failure to designate special areas of conservation***

*1. Arguments of the parties*

- 20 By its first complaint, the Commission alleges that Ireland has failed to fulfil its obligations under Article 4(4) of the Habitats Directive by failing to designate 217 of the sites of Community importance at issue as special areas of conservation as soon as possible and within six years at most from the dates of adoption of Decisions 2004/813 and 2009/96.
- 21 That institution considers that the case-law of the Court, namely the judgments of 27 February 2003, *Commission v Belgium* (C-415/01, EU:C:2003:118, paragraphs 22 and 23), and of 14 October 2010, *Commission v Austria* (C-535/07, EU:C:2010:602, paragraph 64), relating to the special protection areas provided for in Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7), as amended by Directive 2013/17 ('the Birds Directive'), can be applied to the present case in view of the conservation objectives pursued by the Habitats and Birds Directives. By applying that case-law, the demarcation of those areas and protected species must therefore be published in order to have unquestionable binding force, in order to satisfy the requirement of legal certainty.
- 22 As is apparent from the Commission's note of 14 May 2012 on the designation of special areas of conservation, the name and location of the site, species and habitat types for which the special area of conservation is designated must be clearly indicated, as must the boundaries of that area, the purpose of the designation, and the protection provisions applicable to such an area.
- 23 Ireland informed the Commission that that designation would be done by means of secondary legislation. Without objecting to such a method of designation, it emphasises, however, that the designation concerned only 206 of the sites of Community importance at issue at the end of the period laid down by the additional reasoned opinion, the time from which the failure to fulfil obligations was to be assessed. Ireland acknowledged that it had designated only 212 sites, 6 of which – Hempton's Turbot Bank SAC, Porcupine Bank Canyon SAC, South-East Rockall Bank, Codling Fault Zone SAC, Blackwater Bank SAC and West Connacht Coast SAC – were not among the 423 sites of Community importance at issue. At the date on which the application was lodged, 154 sites were still awaiting designation.
- 24 The granting of protection to sites upon their inclusion in the list of sites of Community importance does not call into question the obligation to designate them as special areas of conservation under Article 4(4) of the Habitats Directive.
- 25 In its defence, Ireland recalls that the general objective pursued by Article 6 of the Habitats Directive is to impose upon the Member States a series of obligations aimed at maintaining, or restoring, at a favourable conservation status natural habitats and species of wild fauna and flora of interest for the European Union, in order to attain the directive's more general objective, which is to ensure a high level of environmental protection (judgments of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 106, and of 7 November 2018, *Holohan and Others*, C-461/17, EU:C:2018:883, paragraph 30 and the case-law cited).
- 26 That Member State submits, in the first place, that the measures referred to by the Commission and recalled in paragraph 22 of the present judgment were adopted for all the sites of Community importance at issue by the protection afforded by Irish law to all 'European sites', a



concept of Irish law which also includes candidate sites and, by the same token, sites of Community importance. The objective of achieving a high level of environmental protection and of contributing to the establishment of the Natura 2000 network was therefore fulfilled for all the sites of Community importance at issue.

- 27 Thus, a candidate site enjoys the same protection as special areas of conservation.
- 28 By way of illustration, Parts 4 and 5 of the European Communities (Birds and Natural Habitats) Regulations 2011 ('the implementing regulations') place certain obligations on the Minister for Housing, Local Government and Heritage ('the competent minister') with regard to activities, plans or projects which may affect European sites. They thus protect sites equally, whether or not they have been formally designated as special areas of conservation.
- 29 In that regard, Regulation 28 of the implementing regulations requires the competent minister, where he or she has reason to believe that an activity may have a significant effect on a European site, to prohibit, in principle, that activity. That regulation contains, to that end, a list of activities requiring consent. Public authorities are also required to take into account the list of activities requiring consent when considering an application for a consent under any legislative regime or where they are proposing to adopt their own plans or projects.
- 30 Moreover, Part 5 of those regulations establishes a procedure whereby a public authority carries out, where necessary, an appropriate assessment of a plan or project for which that public authority has received an application for consent or which it wishes to undertake.
- 31 Under Regulation 11 of those regulations, the identification of a site as a candidate for designation as a site of Community importance must be made available for consultation at the competent minister's office and on the internet and be notified to specified bodies, landowners and members of the public. The information thus made available includes, inter alia, a map marking the boundary of the site, its name, location and extent, and the rationale for the identification of the site as a candidate for designation as a site of Community importance.
- 32 In the second place, Ireland emphasises, without prejudice to the foregoing, the complexity of the process of formally designating the sites of Community importance at issue as special areas of conservation, which usually involves the obligation to inform the landowners concerned and to allow them to object to that designation, which is essential for guaranteeing them legal protection. Thus, the formal designation of the sites concerned involved the need to engage with 18 516 landowners individually and to deal with the 674 appeals lodged by those landowners.
- 33 In addition, of the sites not yet designated, 20 are raised bogs, the finalisation of the designation process for which is dependent on agreement being reached with the Commission on the overall network solution for the management of such raised bogs, which is the subject of detailed engagement with that institution.
- 34 In its reply, the Commission disputes that the process of designating those 20 raised bogs is dependent on the outcome of the discussions on how they should be managed, and observes that, with regard to the possible complexity of the process of formal designation under Irish law, for example the need to deal with appeals lodged by landowners, according to the settled case-law of the Court, Member States cannot plead provisions, practices or situations prevailing in its

domestic legal order to justify failure to observe obligations arising under EU law (judgment of 12 November 2019, *Commission v Ireland (Derrybrien Wind Farm)*, C-261/18, EU:C:2019:955, paragraph 89 and the case-law cited).

- 35 The Commission considers that it follows from the context of Article 4(4) of the Habitats Directive that there is an obligation to complete the process provided for in that article by designating a site as a special area of conservation. The contrary interpretation put forward by Ireland would make paragraph 4 of that article devoid of any purpose.
- 36 The obligation to protect sites before their designation as special areas of conservation is also laid down in Article 4(5) of the Habitats Directive.
- 37 Furthermore, the protection afforded to candidate sites under Irish law is less than that which must be afforded to special areas of conservation, which alone are concerned by the obligation to establish conservation measures pursuant to Article 6(1) of that directive.
- 38 That protection does not, moreover, meet the requirements of clarity and legal certainty. The list of candidate sites is liable to be modified following objections raised by the persons concerned.
- 39 In its rejoinder, Ireland emphasises that it is apparent from the Commission's note, referred to in paragraph 22 of the present judgment, that the procedure for the designation of special areas of conservation is a matter for the domestic law of the Member States. In accordance with its discretion, Ireland chose to designate the special areas of conservation by granting them, as European sites, all the required protections.
- 40 According to that Member State, the claim that the perimeters of sites can change prior to formal designation is not supported. Moreover, designating special areas of conservation does not make their borders definitive, as they may be altered following designation in the event of scientific error.
- 41 The interpretation put forward by Ireland does not render Article 4(4) of the Habitats Directive devoid of any purpose. Irish law meets the obligations arising from that paragraph and thus ensures that the relevant sites are protected by requiring the application of the precautionary principle and the undertaking of the assessments referred to in Article 6(3) of that directive.
- 42 The protection afforded to candidate sites by the Irish legislation goes beyond that afforded by Article 4(5) of the Habitats Directive, given that that legislation provides for publication of the particulars and the extent of the site concerned, the qualifying interests and a list of activities requiring consent before they can be undertaken.
- 43 At the date on which the rejoinder was lodged, Ireland states that it had completed the formal designation of 339 of the 423 sites of Community importance at issue.

## 2. Findings of the Court

- 44 As a preliminary point, it should be recalled that Article 3(2) of the Habitats Directive requires the Member States to contribute to the creation of the Natura 2000 network in proportion to the representation, within their respective territories, of the natural habitat types listed in Annex I to

that directive and the habitats of species listed in Annex II to that directive, and to designate, to that effect, in accordance with Article 4 of that directive and at the end of the procedure established by it, sites as special areas of conservation.

- 45 The procedure governing the designation of sites as special areas of conservation, as provided for in Article 4 of the Habitats Directive, consists of four stages. Under Article 4(1) of that directive, each Member State proposes a list of sites indicating the natural habitat types and native species they host and that list is transmitted to the Commission (first stage). Under Article 4(2), the Commission establishes, in agreement with each Member State, a draft list of sites of Community importance drawn from the Member States' lists (second stage). On the basis of that draft list, the Commission adopts the list of selected sites (third stage). Under Article 4(4), once a site of Community importance has been adopted, the Member State concerned designates it 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 or species and for the coherence of Natura 2000 (fourth stage) (see, to that effect, judgment of 12 June 2019, *CFE*, C-43/18, EU:C:2019:483, paragraph 37).
- 46 Ireland does not dispute the fact that, at the date on which the time limit set in the additional reasoned opinion expired, not all of the 217 sites in question were formally designated as special areas of conservation. It cites, however, the fact that the protection which it affords to candidate sites is similar to the protection afforded to special areas of conservation, meaning that the objectives of the Habitats Directive are fulfilled.
- 47 In that regard, it should be recalled that, in an action for failure to fulfil obligations against the Portuguese Republic, that Member State had raised, as a defence, the argument that existing national conservation measures and programmes, legally binding on the public authorities, applies to the sites of Community importance at issue from the date of the communication to the Commission of the list established by the Portuguese Republic pursuant to Article 4(1) of the Habitats Directive (see, to that effect, judgment of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraph 31).
- 48 In response to that argument, first, the Court held that the provisions of a directive must be implemented with unquestionable binding force, and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (judgment of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraph 35).
- 49 Second, the Court considered that the Portuguese Republic, in arguing that the procedures for designating the sites of Community importance at issue as special areas of conservation were still to be completed from a formal point of view, did not dispute that, on the expiry of the period laid down in the reasoned opinion, it had not yet designated those sites as special areas of conservation (judgment of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraph 37).
- 50 Such reasoning applies also to the defence put forward by Ireland according to which the protection afforded by the Irish legislation in respect of sites of Community importance and candidate sites is sufficient to meet the obligations arising under Article 4(4) of the Habitats Directive.

- 51 In the present case, it must be held that the national legislation invoked by Ireland, in support of its response to the first complaint in the Commission's application, which, according to that Member State, affords sufficient protection to sites of Community importance at issue without designating them as special areas of conservation, is not such as to satisfy the specific obligation, laid down in Article 4(4) of the Habitats Directive, formally to designate sites of Community importance as special areas of conservation.
- 52 Such an obligation is a mandatory stage in the system of protection of habitats and species provided for by that directive.
- 53 That obligation is in addition to the obligations to determine the conservation objectives, in accordance with Article 4(4) of the Habitats Directive, and to establish conservation measures, in accordance with Article 6(1) of that directive (see, to that effect, judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, paragraph 50).
- 54 The latter obligation on Member States to adopt the necessary conservation measures in order to protect special areas of conservation, which is laid down in Article 6 of the Habitats Directive, is distinct from the formal obligation on Member States, laid down in Article 4(4) thereof, to designate sites of Community importance as special areas of conservation, in accordance with the case-law cited in paragraph 45 of the present judgment.
- 55 So far as concerns the complexity of the formal designation procedure highlighted by Ireland, which results in particular from the bringing of appeals by the owners of the sites concerned against such a designation, it should be recalled that Member States cannot plead provisions, practices or situations prevailing in its domestic legal order to justify failure to observe obligations arising under EU law (judgment of 12 November 2019, *Commission v Ireland (Derrybrien Wind Farm)*, C-261/18, EU:C:2019:955, paragraph 89 and the case-law cited).
- 56 In those circumstances, it must be held that, by failing to designate as special areas of conservation, as soon as possible and within six years at most, 217 of the 423 sites of Community importance at issue, Ireland has failed to fulfil its obligations under Article 4(4) of the Habitats Directive.
- 57 Accordingly, the first complaint must be upheld.

## ***B. Second complaint: failure to set conservation objectives***

### *1. Arguments of the parties*

- 58 By its second complaint, the Commission claims that Ireland has failed to fulfil its obligations under Article 4(4) of the Habitats Directive by failing to set detailed conservation objectives for 140 of the sites of Community importance at issue.
- 59 The Commission infers the obligation to set detailed conservation objectives for each site within six years at most from Article 4(4) of the Habitats Directive, as interpreted by the Court in the judgment of 17 December 2020, *Commission v Greece* (C-849/19, EU:C:2020:1047, paragraphs 46 to 52).

- 60 At the date on which the period laid down in the additional reasoned opinion expired, Ireland had failed to fulfil that obligation in respect of 140 of the 423 sites of Community importance at issue.
- 61 In its defence, Ireland acknowledges that it has not completed the process of identifying and publishing specific conservation objectives for all of the 423 sites of Community importance at issue.
- 62 That Member State claims to have made considerable efforts to identify and publish specific conservation objectives. The COVID-19 pandemic, however, delayed the finalisation of that work. At the date of Ireland's defence, 371 sites had conservation objectives. At the date of its rejoinder, conservation objectives had been set for all of the sites.
- 63 In the light of the progress made, it argues, there has been no material breach of Article 4(4) of the Habitats Directive.

## 2. Findings of the Court

- 64 With regard to the wording of Article 4(4) of the Habitats Directive, it should be pointed out that, although it does not explicitly mention the obligation to set conservation objectives, that provision nevertheless requires the competent authorities of the Member State concerned, when designating the special area of conservation, to establish priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a habitat type. Establishing those priorities implies that those conservation objectives have already been set (judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, paragraph 46).
- 65 Thus, and taking into account also the context and purpose of Article 4(4) of the Habitats Directive, the Court has considered that, although it is apparent from that provision that the designation of special areas of conservation and the determination of conservation priorities must be carried out as soon as possible and in any event within six years at most from the moment when a site of Community importance has been selected in the context of the procedure laid down in paragraph 2 of that article, that period applies also to the establishment of the conservation objectives, given that they are necessary for the setting of those priorities and must, therefore, precede it (see, to that effect, judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, paragraphs 47 to 53).
- 66 It should be added that only specific and precise objectives may be regarded as 'conservation objectives' within the meaning of the Habitats Directive (see, to that effect, judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, paragraph 59).
- 67 In the present case, the six-year periods granted to Ireland for designating the sites the list of which is set out in Decisions 2004/813 and 2009/96 expired on 7 December 2007 and 12 December 2014, respectively.
- 68 Ireland acknowledges that, upon the expiry of the period laid down in the additional reasoned opinion, namely on 9 January 2019, it had not set in the national legal order the specific conservation objectives relating to the 140 sites of Community importance for which the Commission raises the second complaint.

69 In those circumstances, it must be held that, by failing to define detailed site-specific conservation objectives for 140 of the 423 sites of Community importance at issue, Ireland has failed to fulfil its obligations under Article 4(4) of the Habitats Directive.

70 Accordingly, the second complaint must be upheld.

***C. Third complaint: failure to comply with the obligation to establish the necessary conservation measures***

*1. Arguments of the parties*

71 In its application, the Commission claims that Ireland has failed to fulfil its obligations under Article 6(1) of the Habitats Directive by failing to adopt the necessary conservation measures. First of all, no conservation measures have been adopted in respect of 230 sites. Next, the conservation measures adopted in 149 other sites are incomplete. Moreover, the measures for the 44 sites with a complete set of conservation measures are not valid because they were adopted prior to the setting of the conservation objectives. Finally, Ireland is accused of having adopted a general practice of establishing conservation measures which are insufficiently precise.

*(a) Sites with, according to the Commission, no conservation measures or with partial conservation measures*

72 The Commission is of the view that the required conservation measures should have been adopted within the six-year period laid down in Article 4(4) of that directive applicable to the designation of special areas of conservation. It maintains that conservation measures, within the meaning of Article 6(1) of the Habitats Directive, must, according to the judgments of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)* (C-290/18, EU:C:2019:669, paragraph 52), and of 17 December 2020, *Commission v Greece* (C-849/19, EU:C:2020:1047, paragraph 76), be established and implemented in the framework of those special areas of conservation and thus within the period of designation of those areas.

73 The Commission considers that it is clear from the wording of Article 6(1) of the Habitats Directive that the Member State concerned is obliged to establish conservation measures for all special areas of conservation within its territory.

74 First, however, Ireland did not notify the Commission of any conservation measures relating to 230 sites of the 423 sites of Community importance at issue.

75 Second, regarding the remaining 193 sites, which are subject to conservation measures, the Commission maintains, relying on the judgments of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)* (C-290/18, EU:C:2019:669, paragraph 55), and of 17 December 2020, *Commission v Greece* (C-849/19, EU:C:2020:1047, paragraph 86), that conservation measures must be established on the basis of each species and each habitat type present on each of the relevant sites. Ireland has put in place conservation measures for only a subset of the protected species and/or habitat types in 149 sites, however.

- 76 The Commission submits that it arrived at that figure by comparing the number of qualifying features of the sites, indicated by Ireland in the relevant standard data forms, with how many of those features Ireland indicated that it had established conservation measures.
- 77 The measures indicated by Ireland in its reply to the Commission's reasoned opinion are insufficient for reducing the number of sites with incomplete conservation measures. According to the Commission, most of those measures were only at the implementing stage, more specifically at the planning stage. In addition, Ireland did not provide any information from which it could be concluded that the measures referred to would complete the set of conservation measures and thus cover all interest features of the sites concerned.
- 78 In its defence, Ireland submits that it is implementing comprehensive and detailed conservation measures through 10 national programmes. Those programmes have been designed by reference to habitat type and species and not by reference to site. However, the implementation of those programmes is undertaken on a site-specific basis. Those factors demonstrate that that Member State not only is in compliance with Article 6(1) of the Habitats Directive, but also has the intention of complying further with the requirements of that provision in a practical manner which ensures appropriate protection of the relevant species and habitats.
- 79 More specifically, that Member State states that it has adopted a complete suite of conservation measures for 79 sites listed in the annex to the defence and produces the measures adopted for a sample of 6 sites by way of illustration. At least partial conservation measures are in place in a substantial number of sites.
- 80 Ireland states that the implementing regulations contain conservation measures in that they require prior consent to carry on an activity and thus seek to prevent damage from occurring to the site in question. Thus, each of the sites at issue has conservation measures.
- 81 Ireland acknowledges that the manner in which the information was communicated to the Commission may be deficient. Given the absence of a centralised data management system for the capture of interventions and management measures for the sites at issue, it has been difficult for Ireland to transfer outcomes comprehensively, on the basis of evidence, from local site management level to national level. The development of a centralised data hub is envisaged.
- 82 The Commission notes that the 10 national programmes referred to by Ireland and the list of 79 sites with allegedly complete conservation measures together concern only 137 sites. Ireland thus concedes that there are at least 286 sites without any conservation measures.
- 83 Regarding those 79 sites and the additional sites covered by the 10 national programmes cited by Ireland by reference to the content of the documents annexed to its defence, the Commission states that that Member State does not state, in its defence, in which section of the annexes the allegedly 'comprehensive and complete' nature of the conservation measures for those 79 sites is discussed, nor does it refer to the 10 programmes it summarised in one of those annexes specifically in order to rebut the incompleteness of the conservation measures. Thus, in accordance with Article 124(1)(b) of the Rules of Procedure of the Court of Justice, it is not necessary to take into account the information contained in those annexes.
- 84 Moreover, four of those programmes were adopted after the expiry of the period laid down in the additional reasoned opinion. It is also apparent from the annex to the defence that some of those programmes only partly cover the qualifying features of the sites.

- 85 In its rejoinder, Ireland submits that interpretation of Article 6(1) of the Habitats Directive advocated by the Commission, according to which that provision requires it to be demonstrated that conservation measures have been implemented at all sites and that those measures operate without error, is unattainable and disregards the real-world environment. That approach has support neither in the directive nor in the case-law of the Court.
- 86 Conservation measures, by their nature, need adjustment, meaning that the identification of further or different measures is not sufficient to demonstrate that Ireland has failed to fulfil its obligations. It is sufficient that Ireland consistently keeps under review the conservation measures which are being implemented across the Natura 2000 network, so as to ensure that threats and pressures which have been identified in respect of individual sites are addressed. That approach is supported by Articles 11 and 17 of the Habitats Directive, which provide for the evaluation of conservation measures and, where necessary, for the adjustment of their implementation in order to ensure their effectiveness.
- 87 The fact that the conservation programmes are not explicitly linked to the boundaries of the sites does not call into question the effectiveness of those measures. On the contrary, the establishment of comprehensive programmes, and not individual measures for each site, has an overarching impact on the protection of species and habitats and reflects the need for interlinked actions in order to meet the complexity of the conservation objective.
- 88 In the annex to its rejoinder, Ireland produces the conservation measures adopted in respect of 6 additional sites, included in the list of 79 sites, and 21 sites relating to the bat *Rhinolophus hipposideros*, as well as additional information concerning the few sites which it had selected for illustrative purposes in its defence.
- 89 In its statement in intervention, the Federal Republic of Germany objects to the interpretation according to which conservation measures should relate to each species or habitat type present in the sites concerned.
- 90 The case-law of the Court refers to an obligation to take conservation measures not specific or individual for each species or habitat type, but established in the light of the ecological requirements of each species and each habitat type (see, to that effect, judgment of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraph 55).
- 91 In the judgment of 7 December 2000, *Commission v France* (C-374/98, EU:C:2000:670, paragraph 20), concerning the Birds Directive but applicable to the Habitats Directive, the Court rejected the complaint against the French Republic according to which the special conservation measures were insufficient without species-specific provisions for all the wild bird species present in the area concerned on the ground that the national provisions at issue, in so far as they prohibited activities capable of adversely affecting the integrity of the biotopes in question, benefitted all the wild birds that frequented the areas covered by that legislation.
- 92 Depending on the context, either general prohibitions are sufficient to prevent the main key threats and pressures on the site, or differentiating measures are required. It is therefore overly formalistic systematically to require area-specific measures.
- 93 In its observations on the statement in intervention of the Federal Republic of Germany, the Commission objects to any claim of formalism.



94 That institution agrees with the Federal Republic of Germany that a conservation measure can target several features if they have similar ecological requirements. However, each habitat type and species present on the site must benefit from the necessary conservation measures that are based on specific conservation objectives. That is not the case here, since Ireland reported measures for only a subset of the relevant features.

*(b) Sites with, according to the Commission, conservation measures which are not based on conservation objectives*

95 In its application, the Commission criticises Ireland for adopting conservation measures, when the conservation objectives had not yet been established in respect of the 44 sites in question that had a complete set of conservation measures.

96 According to that institution, it follows from the case-law of the Court, in particular from the judgment of 17 December 2020, *Commission v Greece* (C-849/19, EU:C:2020:1047, paragraphs 46 to 52), that conservation measures must be based on conservation objectives.

97 From this, the Commission infers the legal requirement of basing conservation measures on site-specific and clearly defined conservation objectives, comprising a substantive component (objectives and measures must correlate) and a sequential component (objectives must not succeed the measures). That approach is confirmed by the systematic interpretation of Article 6(1) of the Habitats Directive in the light of Article 6(3) thereof, which provides that the assessment of projects likely to have an effect on a special area of conservation must be carried out in view of the conservation objectives.

98 In its defence, Ireland disputes the Commission's interpretation of the judgment of 17 December 2020, *Commission v Greece* (C-849/19, EU:C:2020:1047), which is overly literal and fails to have regard to the spirit and wording of Article 6(1) of the Habitats Directive. In the case which gave rise to that judgment, no conservation objective had been set. Such a scenario must be distinguished from the case in which conservation objectives are set after the establishment of conservation measures.

99 In its reply, the Commission adds that the fact that conservation objectives must precede conservation measures is necessary in view of the object and purpose of the Habitats Directive. Conservation objectives define the parameters for assessing whether conservation measures achieve those objectives. If conservation objectives were set only after the establishment of conservation measures, there would be a risk that those objectives would merely mirror previously defined conservation measures.

100 In its rejoinder, Ireland maintains that the Commission's approach leads to the conservation measures implemented by Member States for the purposes of the Habitats Directive being discounted because they pre-date the publication of the conservation objectives.

101 The conservation measures at issue, however, are based on a tailored assessment of threats and pressures.

- 102 In its statement in intervention, the Federal Republic of Germany also considers that a failure to fulfil obligations cannot arise from the mere fact that the establishment of conservation objectives did not precede the setting of conservation measures. The decisive factor in view of which a failure to fulfil obligations must be assessed is the effectiveness of the conservation measures, irrespective of the date on which they have been adopted.
- 103 Any other interpretation would require, in a purely formal manner, conservation measures to be taken again even though the measures adopted are effective and fully meet the substantive criteria of Article 6(1) of the Habitats Directive. The imposition of that formal requirement would run counter to the case-law of the Court, in particular the judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 213), according to which the most important factor is that the necessary conservation measures are actually taken.
- 104 The Federal Republic of Germany also sees a contradiction in the Commission's reasoning. First, that institution considers that conservation objectives must be established as soon as a site is designated as a site of Community importance. Second, it accepts that the establishment of those objectives is subject to the six-year period laid down in Article 4(4) of the Habitats Directive.
- 105 In its observations on the statement in intervention of the Federal Republic of Germany, the Commission submits that the scenario in which conservation measures adopted before the establishment of conservation objectives met those objectives would be pure coincidence. Rather, there is a risk that *ex post* conservation objectives would not fulfil their function of determining the potential contribution of a site to the Natura 2000 network because they merely mirrored the ambition of existing conservation measures that were not based on conservation objectives and, thus, were not geared towards the overall objective of the Habitats Directive, namely to maintain and restore favourable conservation status. That problem is accentuated where, as in the present case, measures systematically precede the establishment of objectives.
- 106 The Commission moreover denies that there is any contradiction in its interpretation. The order imposed by the Habitats Directive follows the wording of Articles 4 and 6 of that directive.

*(c) A persistent and systematic practice of establishing conservation measures that are not sufficiently precise and that fail to address all significant pressures and threats*

- 107 In its application, the Commission argues that conservation measures must be clear and precise. Generic or programmatic measures or measures requiring further implementing measures to become effective are not sufficient (judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, paragraphs 77 and 78 and the case-law cited).
- 108 In addition, Article 6(1) of the Habitats Directive also provides for a qualitative requirement, namely that those measures must allow all main pressures or threats to be addressed.
- 109 In the present case, the conservation measures put in place by Ireland were systematically and persistently of insufficient quality because they were not sufficiently precise and detailed or failed to address all significant pressures and threats.
- 110 The Commission can, under Article 258 TFEU, seek a finding that the provisions of a directive have not been complied with because authorities of a Member State have adopted a general practice contrary thereto, which particular situations illustrate where appropriate (judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 27).

- 111 The Commission maintains, based on a qualitative assessment of a wide range of Irish sites with existing conservation measures, that the conservation measures in place in Ireland were systematically and persistently of insufficient quality because they were not sufficiently precise and detailed or failed to address all significant pressures and threats.
- 112 The Commission illustrates that systemic defect by means of a detailed assessment focusing on two important priority habitat types in a wide range of Irish sites, namely coastal lagoons and blanket bogs, on the one hand, and a particularly endangered species, the freshwater pearl mussel, on the other.
- 113 Those examples are representative and, therefore, indicative of a general and persistent infringement by Ireland of Article 6(1) of the Habitats Directive. They concern a large number of sites chosen, inter alia, on account of their – unfavourable or bad – conservation status identified in Ireland's reports drawn up under Article 17 of that directive and the importance of the habitats and species at issue, in particular, Ireland hosting a large proportion of blanket bogs and freshwater pearl mussels. Last, the geographical distribution of the examined sites is representative of the geographical configuration of the network of sites of Community importance and of special areas of protection in Ireland.
- 114 The Commission thus provides, first of all, the example of coastal lagoons, for which, inter alia, conservation measures for 'silting up' and 'submersion' and 'management of water levels' were reported. Those measures are not sufficiently specific since they lack quantitative terms and indication of responsible actors or timelines for action and fail to address, inter alia, the pressure relating to the pollution of surface waters.
- 115 The wide range of pressures on that habitat type and the insufficiency of those measures are confirmed by the report drawn up by Ireland in 2019 under the Habitats Directive, according to which the status of lagoons is bad and deteriorating.
- 116 The Commission next takes the example of blanket bogs. In its view, the conservation measures for the sites concerned are too generic. In that context, that institution cites factors such as 'mechanical removal of peat', 'peat extraction', 'burning', 'forestry clearance', 'grazing', 'general forestry management', 'management of water levels', 'other leisure and tourism impacts', 'hunting', 'removal of undergrowth', 'removal/control of ... plant species' and 'fencing'.
- 117 It appears from Ireland's report for 2013 under the Habitats Directive that those measures focused on the threat of overgrazing but do not sufficiently address other important pressures and threats to blanket bogs, such as, as is apparent from Ireland's report for 2019, windfarm and other infrastructural developments, peat cutting, erosion, burning, afforestation, agricultural activities causing nitrogen deposition, or drainage. Those reports indicate that the state of those bogs is bad and deteriorating.
- 118 The Commission last takes the example of the protection sites for freshwater pearl mussels and considers that the conservation measures for those sites refer, in a very generic way, to 'discharges', 'disposal of household waste', 'water pollution' or 'irrigation' without providing for conservation measures with quantitative terms, responsible actors or timelines.

- 119 In addition, it is of the view that those measures do not address the pressures, identified by Ireland, resulting from ‘diffuse pollution to surface waters due to agricultural and forestry activities’, ‘surface water abstraction for public water supply’, ‘burning down’ or ‘forest planting on open ground’.
- 120 The measures of the KerryLIFE project, to which Ireland refers in its reply to the Commission’s additional reasoned opinion, are insufficient, in particular because they fail to address pressures resulting from forestry on the sites at issue. Ireland also referred to the European Innovation Partnership project for seven sites protecting the freshwater pearl mussel, but did not provide information on how the related measures responded to each of the key pressures and threats the species in question was facing at those sites.
- 121 The report drawn up by Ireland for 2019 under the Habitats Directive confirms the pressure brought to bear on those sites and indicates that their conservation measures have been insufficient, as the overall status is assessed in that report as bad and ‘deteriorating’.
- 122 In its defence, Ireland submits, by way of illustration, that site-specific restoration and drainage plans have been developed for all of Ireland’s network of raised bog designated as special areas of conservation, including 53 of the sites at issue, and conservation measures are actively being implemented across all of that network. The conservation measures outlined in each plan are designed to achieve, for each special area of conservation, the targets laid out in the site-specific conservation objective for the ‘Active raised bogs’ habitat included in Annex I to the Habitats Directive. Those plans are currently being implemented under various strands of the raised bog conservation programme.
- 123 In its reply, the Commission submits that the cursory explanations in the defence and the annexes thereto do not demonstrate that the measures taken are sufficiently precise and detailed for the habitat types and species referred to by the present complaint. Ireland has failed to specify ‘who does what, where and when’ and whether the measures taken are sufficient to address all key pressures and threats.
- 124 In addition, of the 6 sites referred to in paragraph 79 of the present judgment, which are among the 79 sites for which Ireland claims to have adopted complete conservation measures, the Carrowmagappul Bog SAC site is one of the raised bog sites for which restoration plans still exist only in draft form and the Slieve Bloom Mountains site relates to a blanket bog, which is in need of active restoration and for which a restoration plan has not yet been prepared.
- 125 The absence of conservation measures to address the problems posed of forestry in the catchment area of sites hosting freshwater pearl mussels is further corroborated by the latest scientific analysis on the species and its conservation. The KerryLIFE project is criticised in that analysis for failing to restore areas which have been drained for forestry.
- 126 In its rejoinder, Ireland draws attention to its work at improving conservation measures. That Member State takes the view that Article 6(1) of the Habitats Directive does not require that conservation measures necessarily address all of the threats to and pressures on a site at any given point in time.

- 127 In its statement in intervention, the Federal Republic of Germany disputes the level of completeness and precision required by the Commission and objects to the taking into account of the reports drawn up by Ireland on the basis of Article 17 of the Habitats Directive in order to prove the failure.
- 128 As regards the completeness of the measures, it is sometimes possible, by means of a general prohibition on committing damaging acts, to address all the key threats and pressures. To require in general that an explicitly separate, site-specific measure must always be taken for each pressure factor or each species and habitat type would amount to nothing more than mere formalism.
- 129 As regards the level of precision, that Member State considers that it should not be inferred from the requirement of clear and precise conservation measures that those measures must always include quantitative objectives, timelines for action or specify ‘who does what, where and when’.
- 130 It follows from the judgment of 10 May 2007, *Commission v Austria* (C-508/04, EU:C:2007:274, paragraph 76), that the Habitats Directive requires the adoption of necessary conservation measures and restricts any latitude of the national authorities when laying down rules or taking decisions to the means to be applied and the technical choices to be made in connection with those measures. In addition, in the judgment of 14 October 2010, *Commission v Austria* (C-535/07, EU:C:2010:602, paragraph 60), relating to the Birds Directive, the Court held that that directive, while being binding as to the result to be achieved, leaves to the national authorities the choice of form and methods of implementation of that directive.
- 131 In terms of the use made of reports drawn up by Ireland on the basis of Article 17 of the Habitats Directive, the Federal Republic of Germany points out that those reports do not relate specifically to the situation in the sites at issue, but to that of the entire territory concerned. Therefore, no conclusions as to the effectiveness of the measures taken in the sites at issue can be drawn from them.
- 132 Moreover, the developments observed in those reports might result from the fact that the issue concerns natural populations and ecosystems which in some cases have – by nature – a high degree of fluctuation or their own dynamics, which dynamics can also be strengthened, superseded or impaired by various anthropogenic influences, which cannot always be compensated for by measures related to protected areas.
- 133 In its observations on the statement in intervention of the Federal Republic of Germany, the Commission states that it is indeed possible for one conservation measure to target several features if they have similar ecological requirements. However, the problem with many Irish sites was that Ireland, in respect of numerous sites, reported measures for only a subset of the relevant features.
- 134 In addition, the Commission states that the discretion left to Member States in the means of establishing conservation measures has limits. First of all, it follows from Article 6(1) of the Habitats Directive that conservation measures have to address all main pressures or threats likely to affect the habitat types and species on the site. Next, conservation measures must be clear and precise. Finally, the Court has considered conservation measures insufficient if they were generic and programmatic or required further implementing measures to become effective (judgments of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraph 55, and of 17 December 2020, *Commission v*

*Greece*, C-849/19, EU:C:2020:1047, paragraph 82). The quality of conservation measures, including in terms of precision, is therefore not left to the unfettered discretion of the Member States.

- 135 Furthermore, the report drawn up on the basis of Article 17 of the Habitats Directive states that the conservation status trend of the habitat types in this case within the Natura 2000 network – the ‘coastal lagoon’ and ‘blanket bog’, and for a particularly endangered species, the ‘freshwater pearl mussel’ – was ‘decreasing’. It therefore refers explicitly to the situation in Natura 2000 areas.

## 2. Findings of the Court

### (a) Preliminary observations

- 136 As a preliminary point, it should be recalled that Article 6 of the Habitats Directive places the Member States under a series of obligations and provides for specific procedures designed, as is clear from Article 2(2) of that directive, to maintain, or as the case may be, restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of interest for the European Union, in order to attain that directive’s more general objective, which is to ensure a high level of environmental protection as regards the sites protected pursuant to it (judgment of 7 November 2018, *Holohan and Others*, C-461/17, EU:C:2018:883, paragraph 30 and the case-law cited).
- 137 More specifically, pursuant to Article 6(1) of the Habitats Directive, for every special area of conservation the Member States must establish the necessary conservation measures which correspond to the ecological requirements of the natural habitat types listed in Annex I to that directive and the species listed in Annex II to that directive present on the site concerned (judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 207).
- 138 The obligations on Member States under Article 6 of the Habitats Directive, including the obligation to adopt the necessary conservation measures laid down in paragraph 1 of that article, must be implemented effectively and by complete, clear and precise measures (judgment of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraph 53 and the case-law cited).
- 139 In the case at hand, it should be noted that, as has been held in paragraph 56 of the present judgment, Ireland failed to designate as special areas of conservation as soon as possible and within six years at most 217 of the 423 sites of Community importance at issue. Conservation measures within the meaning of Article 6(1) of the Habitats Directive, however, must be established and implemented in the framework of those special areas of conservation (see, to that effect, judgment of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraph 52).
- 140 The circumstance that Ireland has failed to fulfil its obligation under Article 4(4) of the Habitats Directive to designate the sites of Community importance at issue as special areas of conservation does not relieve it, in respect of the same sites, of the obligation to establish the necessary conservation measures, in accordance with Article 6(1) of that directive and of a

finding of a failure to fulfil obligations in the event of breach of that latter obligation (see, to that effect, judgment of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraphs 52 to 54).

(b) *Sites with no conservation measures or with incomplete conservation measures*

- 141 That said, it must be borne in mind that, according to settled case-law relating to the burden of proof in proceedings for failure to fulfil an obligation under Article 258 TFEU, it is for the Commission to determine whether the obligation has not been fulfilled. It is the Commission that must provide the Court with the information necessary for it to determine whether the infringement is made out, and the Commission may not rely on any presumption for that purpose (judgment of 2 September 2021, *Commission v Sweden (Waste water treatment plants)*, C-22/20, EU:C:2021:669, paragraph 143 and the case-law cited).
- 142 The Member States are nevertheless required, under Article 4(3) TEU, to facilitate the achievement of the Commission's tasks, which consist inter alia, pursuant to Article 17(1) TEU, in ensuring that the provisions of the FEU Treaty and the measures taken by the institutions pursuant thereto are applied. In particular, account should be taken of the fact that, where it is a question of checking that the national provisions intended to ensure effective implementation of a directive are applied correctly in practice, the Commission, which does not have investigative powers of its own in the matter, is largely reliant on the information provided by any complainants and by the Member State concerned (judgment of 2 September 2021, *Commission v Sweden (Waste water treatment plants)*, C-22/20, EU:C:2021:669, paragraph 144 and the case-law cited).
- 143 It follows in particular that, where the Commission has adduced sufficient evidence of certain matters, it is incumbent on the Member State to challenge in substance and in detail the information produced (judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 44).
- 144 In the case at hand, the Commission has claimed that Ireland did not notify it of any conservation measures relating to 230 sites of the 423 sites of Community importance at issue. In addition, it states, on the basis of the comparison referred to in paragraph 71 of the present judgment, that, of the remaining 193 sites, for which there are conservation measures, 149 sites do not have complete measures, covering each species and each habitat type significantly present.
- 145 In response to that argument, first, Ireland contends that conservation measures are implemented through 10 national programmes designed by reference to habitat type and species, and by the implementing regulations, which provide for prior consent for the carrying on of an activity that may have a significant or adverse effects on or cause the deterioration of a site of Community importance.
- 146 Second, that Member State indicates that it has adopted complete conservation measures for 79 of the sites of Community importance at issue.
- 147 In that regard, in the first place, concerning those implementing regulations, it should be recalled that Article 6 of the Habitats Directive divides the measures into three categories, namely conservation measures, preventive measures and compensatory measures, provided for in Article 6(1), (2) and (4), respectively (judgment of 21 July 2016, *Orleans and Others*, C-387/15 and C-388/15, EU:C:2016:583, paragraph 33).

- 148 Article 6(2) and (3) of the Habitats Directive respectively provides for the obligation to avoid the deterioration of sites and for appropriate assessment of plans and projects likely to have a significant effect on the sites. The purpose of those two paragraphs is therefore to protect sites from deterioration.
- 149 In implementing Article 6(2) of the Habitats Directive, it may be necessary to adopt both measures intended to avoid external man-caused impairment and disturbance and measures to prevent natural developments that may cause the conservation status of species and habitats in special areas of conservation to deteriorate (judgment of 20 October 2005, *Commission v United Kingdom*, C-6/04, EU:C:2005:626, paragraph 34).
- 150 The conservation measures referred to in Article 6(1) of the Habitats Directive cannot, with all the more reason, in principle, be limited to measures intended to avoid external man-caused impairment and disturbance and should include, if necessary, positive proactive measures to maintain the site or restore it to a state of conservation.
- 151 In those circumstances, it must be held that the implementing regulations, which are limited to providing for prior consent for the carrying on of an activity that may have a significant or adverse effects on or cause the deterioration of a site of Community importance, are not sufficient to satisfy the obligations of Article 6(1) of the Habitats Directive.
- 152 So far as concerns, in the second place, the 10 national programmes designed by Ireland by reference to habitat types and species and the list of 79 sites in respect of which that Member State claims to have adopted complete conservation measures, it must be held, first, that the information submitted to the Court by that Member State is not sufficient to rebut the Commission's line of argument according to which there are no conservation measures for the 230 sites which are the subject of the present complaint.
- 153 Second, it is not possible to establish from the information submitted to the Court by Ireland that the measures adopted by that Member State include, for all the 193 sites referred to in paragraph 144 of the present judgment and beyond the 44 sites accepted by the Commission, systematic conservation measures established in the light of the ecological requirements of each species and habitat type present on those sites. Article 6(1) of the Habitats Directive requires conservation measures to be established in the light of the ecological requirements of each species and habitat type present on each of the sites of Community importance at issue (see, to that effect, judgment of 5 September 2019, *Commission v Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraph 55).
- 154 Accordingly, it must be held that that Member State has failed to fulfil its obligations under Article 6(1) of the Habitats Directive, first, by failing to adopt conservation measures for 230 of the 423 sites concerned and, second, by failing to adopt complete conservation measures for 149 of the remaining 193 sites.

*(c) Sites with conservation measures which are not based on conservation objectives*

- 155 As is apparent from the case-law of the Court, Member States are required to establish the necessary conservation measures which correspond to the ecological requirements, the identification of which presupposes the setting of conservation objectives (see, to that effect, judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, paragraph 49).



- 156 The Court has held that the determination of conservation objectives is a necessary prerequisite for the establishment of conservation priorities and measures (see, to that effect, judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, paragraph 50).
- 157 It follows that the setting of conservation objectives is a mandatory and necessary step between the designation of special areas of conservation and the implementation of conservation measures (judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, paragraph 52).
- 158 It is true that, as is apparent from paragraphs 64 to 70 of the present judgment and from the judgment of 17 December 2020, *Commission v Greece* (C-849/19, EU:C:2020:1047, paragraphs 42 to 61), the failure of a Member State to adopt specific and precise conservation objectives must be regarded as constituting a failure to fulfil its obligations under Article 4(4) of the Habitats Directive.
- 159 That being so, as the Advocate General observed, in essence, in points 85 to 88 of her Opinion, Article 6(1) of that directive does not require the conservation measures to be adopted imperatively after the adoption of the conservation objectives.
- 160 The fact remains that, even if those objectives are defined after the adoption of the conservation measures, it is necessary for those measures to meet those objectives.
- 161 In the present case, as regards the 44 sites which it considers to have had a complete set of conservation measures, the Commission has not shown that the specific conservation measures adopted by Ireland did not correspond to conservation objectives defined after the adoption of those measures.
- 162 In those circumstances, it must be held that the mere fact that conservation measures were adopted for the sites of Community importance at issue before the conservation objectives had been defined does not constitute an infringement of Article 6(1) of the Habitats Directive, with the result that the Commission has not established, for the 44 sites concerned, that the conservation measures adopted did not meet the requirements of that provision.
- (d) A persistent and systematic practice of establishing conservation measures that are not sufficiently precise and that fail to address all significant pressures and threats*
- 163 It is appropriate to recall that the Habitats Directive requires the adoption of necessary conservation measures, a fact which excludes any discretion in this regard on the part of the Member States and restricts any latitude of the national authorities when laying down rules or taking decisions to the means to be applied and the technical choices to be made in connection with those measures (judgment of 10 May 2007, *Commission v Austria*, C-508/04, EU:C:2007:274, paragraph 76).
- 164 In the present case, the Commission presents, by way of illustration, three examples covering, in its view, a wide range of sites, and relating to two priority types of habitats, namely coastal lagoons and blanket bogs, as well as to a priority species, namely the freshwater pearl mussel, in order to demonstrate that the conservation measures adopted and applied in Ireland are, systematically and persistently of insufficient quality because they were not sufficiently precise and detailed or failed to address all significant pressures and threats.

- 165 In that regard, it should be recalled that, without prejudice to the Commission's obligation to satisfy in each and every case the burden of proof which it bears, in principle nothing prevents the Commission from seeking in parallel a finding that provisions of a directive have not been complied with by reason of the conduct of a Member State's authorities with regard to particular specifically identified situations and a finding that those provisions have not been complied with because its authorities have adopted a general practice contrary thereto, which the particular situations illustrate where appropriate (judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 27).
- 166 Where the Commission has adduced sufficient evidence to show that a Member State's authorities have developed a repeated and persistent practice which is contrary to the provisions of a directive, it is incumbent on that Member State to challenge in substance and in detail the information produced and the consequences flowing therefrom (judgment of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 47).
- 167 At the same time, in view of its obligation to prove the alleged failure by a Member State to fulfil its obligations, the Commission cannot, under the guise of claiming that the Member State concerned has generally and persistently failed to fulfil its obligations under EU law, avoid complying with that obligation to prove the alleged failure on the basis of concrete evidence of the infringement of the specific provisions which it invokes, and rely on simple presumptions or schematic causations (see, to that effect, judgment of 5 September 2019, *Commission v Italy* (*Bacterium Xylella fastidiosa*), C-443/18, EU:C:2019:676, paragraph 80).
- 168 The present action pertains to 423 sites of Community importance of the Atlantic biogeographical region.
- 169 That region is characterised by a large number of sites which are the subject of the complaint raised by the Commission and, as is apparent from the file before the Court, by a significant diversity of the species and habitats present on those sites.
- 170 In such a case, in the light of the case-law cited in paragraph 167 of the present judgment, it is for the Commission to demonstrate, as the Advocate General observed, in essence, in point 106 of her Opinion, that the examples of species and habitats submitted by that institution, in support of the complaint seeking a declaration of a general and persistent failure to fulfil the obligations arising from the Habitats Directive, are representative for all the sites of Community importance at issue.
- 171 In the present case, however, the Commission has not discharged the burden of proof referred to in the preceding paragraph.
- 172 It is true that, in its application, the Commission maintains that, on expiry of the period laid down in the additional reasoned opinion, it considered, on the basis of a qualitative assessment of a wide range of Irish sites with existing conservation measures, that the conservation measures in place were systematically and persistently of an insufficient quality because they were not sufficiently precise and detailed, or that they failed to address all significant pressures and threats.
- 173 However, neither in the application nor in its reply has the Commission demonstrated to the requisite legal standard, by means of sufficiently precise, clear and detailed arguments and data, that the examples which it presents by way of illustration, namely, in this case, coastal lagoons, blanket bogs and the freshwater pearl mussel, are representative for all the sites of Community importance at issue.

- 174 In particular, as regards the Commission's finding that the geographical distribution of the examined sites represented the geographical configuration of the network of sites of Community importance and of special areas of conservation in Ireland, it should be observed that the Commission refers in that regard to Annexes A.21 and A.22 to its application, which contain maps of Ireland. An examination of those maps does not in itself, in the absence of an interpretation by the Commission of the information contained therein, presented in the application in a precise, detailed and exhaustive manner, enable a conclusion to be drawn as to the extent to which the three examples referred to in the preceding paragraph could be regarded as representative for all the sites of Community importance at issue.
- 175 In those circumstances, the Commission's argument that the conservation measures put in place by Ireland were generally, systematically and persistently of an insufficient quality because they were not sufficiently precise and detailed or because they failed to address all significant pressure and threats, cannot succeed.
- 176 Consequently, the third complaint is well founded only in so far as Ireland has not adopted the necessary conservation measures which correspond to the ecological requirements of the natural habitat types referred to in Annex I and the species referred to in Annex II to the Habitats Directive for the 423 sites of Community importance at issue.
- 177 In the light of all the foregoing considerations, it must be held that:
- by failing to designate as special areas of conservation, as soon as possible and within six years at most, 217 of the 423 sites of Community importance at issue, Ireland has failed to fulfil its obligations under Article 4(4) of the Habitats Directive;
  - by failing to define detailed site-specific conservation objectives for 140 of the 423 sites of Community importance at issue, Ireland has failed to fulfil its obligations under Article 4(4) of the Habitats Directive;
  - by failing to adopt the necessary conservation measures which correspond to the ecological requirements of the natural habitat types referred to in Annex I and the species referred to in Annex II to the Habitats Directive present on the 423 sites of Community importance at issue, Ireland has failed to fulfil its obligations under Article 6(1) of that directive.
- 178 The action is dismissed as to the remainder.

### **Costs**

- 179 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and Ireland has been largely unsuccessful, the latter must be ordered to pay the costs.
- 180 Pursuant to Article 140(1) of the Rules of Procedure, which provide that Member States which have intervened in the proceedings are to bear their own costs, the Federal Republic of Germany must be ordered to bear its own costs.

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

- 1. Declares that, by failing to designate as special areas of conservation, as soon as possible and within six years at most, 217 of the 423 sites of Community importance which were included on the list established by Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region, updated by Commission Decision 2008/23/EC of 12 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Atlantic biogeographical region and by Commission Decision 2009/96/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Atlantic biogeographical region, Ireland has failed to fulfil its obligations under Article 4(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2013/17/EU of 13 May 2013;**
- 2. Declares that, by failing to define detailed site-specific conservation objectives for 140 of the 423 sites of Community importance referred to in point 1 of the operative part, Ireland has failed to fulfil its obligations under Article 4(4) of Directive 92/43, as amended by Directive 2013/17;**
- 3. Declares that, by failing to adopt the necessary conservation measures which correspond to the ecological requirements of the natural habitat types referred to in Annex I and the species referred to in Annex II to Directive 92/43, as amended by Directive 2013/17, present on the 423 sites of Community importance referred to in point 1 of the operative part, Ireland has failed to fulfil its obligations under Article 6(1) of Directive 92/43, as amended;**
- 4. Dismisses the action as to the remainder;**
- 5. Orders Ireland to bear its own costs and to pay those incurred by the European Commission;**
- 6. Orders the Federal Republic of Germany to bear its own costs.**

Prechal

Arastey Sahún

Biltgen

Wahl

Passer

Delivered in open court in Luxembourg on 29 June 2023.

A. Calot Escobar  
Registrar

A. Prechal  
President of the Chamber