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COMPENDIUM OF THE CASE-LAW OF THE COURT OF JUSTICE OF THE EU ON THE NATURA 2000 NETWORK



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COMPENDIUM OF THE CASE-LAW OF THE COURT OF JUSTICE OF THE EU ON THE NATURA 2000 NETWORK

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Видання ґрунтується на актуальному зібранні судової практики Суду справедливості ЄС у справах, які стосуються функціонування мережі Natura 2000 в Європейському Союзі та дотримання Пташиної та Оселищної директив країнами-членами ЄС. Збірник розроблений для викладачів та студентів старших курсів освітнього рівня «Бакалавр» та «Магістр» природничих спеціальностей, а також спеціальності «Право».

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This compendium is based on up-to-date collection of judgements of the Court of Justice of the EU in cases related to the operation of Natura 2000 network in European Union and compliance with the Birds and Habitats Directives by states-members of the EU. This publication covers the practical issues of creation, operation of Natura 2000 network, provides analysis of types of problems, considered by the Court of Justice of the EU, legal means of solution of conflicts between the European Commission and states — members of EU, systemic hardships in implementation of legal norms and lessons learned which might be useful for Ukraine in the context of approximation of national legislation with EU aquis as part of EU integration process. Compendium is prepared for academic and student community of the level "Bachelor" and "Master" in environmental science and law studies.

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INTRODUCTION

The European Union has set itself an ambitious objective: the protection and conservation of biodiversity through the establishment of the Natura 2000 network of protected areas. The legal foundation for this initiative was established by Directive 2009/147/EC on the conservation of wild birds (“the Birds Directive”) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”). The Birds Directive and the Habitats Directive (together referred to as the “Nature Directives”) impose binding obligations on the Member States with regard to biodiversity conservation.

The transposition of these directives into national legislation of the Member States has proven complex and has been accompanied by significant challenges. Among these are difficulties in interpretation, the absence of uniform enforcement mechanisms, and conflicts between economic development and environmental protection objectives. Divergences in the understanding and application of the provisions of the Birds and Habitats Directives by Member States have demonstrated the need for a coherent and uniform approach to their interpretation. The task of ensuring such consistency has fallen to the Court of Justice of the European Union (CJEU).

An analysis of more than one hundred rulings of the CJEU concerning the application of the Birds and Habitats Directives provides valuable insight into the types of issues considered, the methods by which conflicts between the European Commission and Member States have been resolved, the most frequent

shortcomings in the fulfilment of obligations, and the lessons that may be drawn for Ukraine in the context of its legislative approximation to EU law as part of its integration process.

The challenges encountered by Member States, as reflected in the case-law, provide valuable guidance for Ukraine in its path toward EU membership. The CJEU's decisions have identified frequent errors in the transposition of the Birds and Habitats Directives, shortcomings in the enforcement of environmental legislation, and approaches to reconciling economic development with nature protection.

The rulings of the CJEU serve as guiding principles for national courts and legislators in EU Member States in the development and implementation of domestic legislation based on the Birds and Habitats Directives.

This publication provides brief analysis of the case-law of CJEU on selected issues concerning Nature Directives and a chronological list of relevant CJEU cases, including the information on the parties to the proceedings, keywords, the applicable directive(s), and the provisions interpreted or applied by the Court.

THE NATURE DIRECTIVES

Within the *acquis communautaire* in the field of nature protection, two directives are of particular relevance: Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (“the Birds Directive”) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”).

The Birds Directive and the Habitats Directive are the European Union’s earliest and most significant legal instruments in the field of biodiversity conservation. They form the backbone of EU environmental law and policy and provide the legal framework for the establishment of *Natura 2000*, the largest coordinated network of protected areas in the world.

The Birds Directive

The Birds Directive (BD) was originally adopted in 1979 as Directive 79/409/EEC and codified in 2009 as Directive 2009/147/EC. It requires all Member States to ensure the protection of wild bird species naturally occurring in the European territory of the Union, together with their habitats (Article 1 BD).

The Directive establishes a general obligation of bird protection, applicable to the entire territory of the Member States (Article 3 BD). In particular, Member States must prohibit:

- all forms of deliberate capture or killing of birds (Article 5(a) BD);
- deliberate disturbance, especially during breeding, rearing, and migration (Article 5(b) BD);

- destruction of, or damage to, nests and eggs, as well as the removal of nests (Article 5(c) BD);
- the keeping, transport, sale, or exchange of specimens taken from the wild (Article 6 BD); and
- the use of large-scale or non-selective means of capture or killing, including nets, traps, glue, and similar devices (Article 8 BD and Annex IV).

The Directive nevertheless provides for exceptions to the general prohibitions set out in Article 5. Specifically, the hunting of species listed in Annex II of the Directive is permitted under certain conditions, provided that this does not compromise conservation efforts in their distribution area (Article 7 BD).

So is the trade in species listed in Annex III (again under certain conditions). For all other species exceptions to the prohibitions in Article 5 are only possible where the requirements of Article 9 are fulfilled. Article 9 allows Member States to derogate (i.e. depart) from the basic prohibitions in Article 5 if three conditions are fulfilled:

- there is no other satisfactory solution;
- one of the reasons listed in 9(1)(a), 9(1)(b), or 9(1)(c) applies; and
- the technical requirements of Article 9(2) are met.

Member States must report all derogations to the Commission on a yearly basis. The Commission then assesses the reports to ensure full compliance with Article 9. If the Commission identifies issues, it communicates these to the Member State concerned.

To ensure the conservation of all wild bird species, Member States are obliged to maintain and re-establish sufficient diversity and area of habitats (Article 3(1) BD).

For species listed in Annex I, as well as for regularly occurring (in each EU Member State) migratory species, Member States must designate Special Protection Areas (SPAs) (Article 4(1)–(2) BD). Wetlands of international importance should receive particular attention. SPAs form part of the Natura 2000 network, together with Special Areas of Conservation (SACs) designated under the Habitats Directive.

Within Natura 2000 sites, Member States must:

- avoid activities that could significantly disturb protected species or deteriorate their habitats (Article 4(4) BD); and
- implement appropriate conservation measures to maintain or restore habitats and species, taking into account economic, social, and cultural requirements as well as regional and local characteristics (Article 2 BD).

Every six years, Member States must report on the population status of species protected under the Birds Directive that are present on their territory. The Commission compiles and assesses this data. This results in an EU status assessment of all European birds across their natural range within the EU, and not just in protected areas. The results are published, together with the results concerning habitats and species (from the Habitats Directive) in a ‘State of Nature in the European Union’ report.¹

The Habitats Directive

The Habitats Directive (HD), adopted in 1992, thirteen years after the Birds Directive. Like the Birds Directive, the Habitats Directive requires all Member States to establish a strict protection regime for species listed in Annex IV (Article 12–13 HD), both inside and outside Natura 2000 sites.

Specifically, Member States must prohibit:

- all forms of deliberate capture or killing in the wild;
- deliberate disturbance, e.g. during breeding, rearing, hibernation and migration;
- deterioration or destruction of breeding sites or resting places;
- deliberate destruction of nests or eggs, or the picking, collecting, cutting, uprooting or destruction of protected plants in the wild;

¹ https://environment.ec.europa.eu/topics/nature-and-biodiversity/birds-directive_en

- the use of all indiscriminate means of capture or killing capable of causing local disappearance and serious disturbance to populations of such species; and
- the keeping, transport and sale of specimens taken from the wild.

Member States must also take measures, where necessary, to ensure that the taking or exploitation of specimens of species listed in Annex V is compatible with their being maintained at a favourable conservation status.² (Article 14 HD).

Under specific conditions described in Article 16 of the Habitats Directive, countries may derogate (grant exceptions) from the provisions of species protection under Articles 12 to 15 of the Directive. Derogations are only allowed if there is no other satisfactory alternative and the consequences of these derogations are not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

Every two years, Member States must submit a derogation report to the Commission on the derogations they have granted to the strict species protection regime. The Commission then checks the reports to ensure that all the conditions of Article 16 have been fully respected. If the Commission identifies issues, it communicates these to the Member State concerned.

Every six years, Member States must report to the Commission on the conservation status of species and habitat types protected under the Habitats Directive that are present on their territory. This report shall include in particular information concerning the conservation measures, as well as evaluation of the impact of those measures on the conservation status of

² The conservation status will be taken as 'favourable' when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

the natural habitat types of Annex I and the species in Annex II and the main results of the surveillance. Several scientific parameters are used to assess their status (good, poor, bad) across their natural range within the EU, and not just in protected areas (Article 17 HD).

The Directive also obliges Member States to designate Special Areas of Conservation (SACs) for habitat types listed in Annex I and species listed in Annex II (Articles 3–4 HD). The process is based on scientific criteria set out in Annex III.

The designation procedure proceeds in three stages:

1. Member States submit a national list of proposed sites (Article 4(1) HD).

2. The European Commission, in cooperation with Member States, the European Environment Agency, and independent experts, assesses the national lists, asks for its amendments in order to ensure sufficiency, and then adopts a list of Sites of Community Importance (SCIs) (Article 4(2) HD).

3. Within six years at the latest, Member States must formally designate SCIs as SACs, set site conservation objectives and adopt the necessary conservation measures (Article 4(4) HD).

In addition, Article 6(3)–(4) HD establishes an obligatory assessment procedure for plans and projects likely to have a significant impact on Natura 2000 sites, requiring an appropriate assessment of their implications for protected habitat types and species within those sites before plan/project approval.

Thanks to the implementation of the Habitats Directive, more than 23,500 SCIs have been designated across the Union since 1994 when the Directive came into force, covering approximately 950,000 km² of terrestrial and marine areas. Together with SPAs under the Birds Directive, these form the Natura 2000 network — the largest coordinated ecological network of protected areas worldwide.³

³ https://environment.ec.europa.eu/topics/nature-and-biodiversity/habitats-directive_en

THE COURT OF JUSTICE OF THE EUROPEAN UNION

Since the establishment of the Court of Justice of the European Union in 1952, its mission has been to ensure that “the law is observed” “in the interpretation and application” of the EU treaties⁴.

As part of that mission, the Court of Justice of the European Union:

- reviews the legality of the acts of the institutions of the European Union;
- ensures that the Member States comply with obligations under the EU treaties; and
- interprets European Union law at the request of the national courts and tribunals.

The Court thus constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of EU law.

The Court of Justice of the European Union, which has its seat in Luxembourg, consists of two courts: the Court of Justice and the General Court (created in 1988). The Civil Service Tribunal, established in 2004, ceased to operate on 1 September 2016 after its jurisdiction was transferred to the General Court

⁴ The EU treaties are binding agreements between EU member countries. They set out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its member countries.

in the context of the reform of the European Union’s judicial structure.⁵

The Court of Justice has jurisdiction on various categories of proceedings. Rulings which are mentioned in this compendium come from actions for failure of Member States to fulfil obligations or from references for a preliminary ruling.

Actions for failure to fulfil obligations — These actions enable the Court of Justice to determine whether a Member State has fulfilled its obligations under EU law. Before bringing the case before the Court of Justice, the Commission conducts a preliminary procedure in which the Member State concerned is given the opportunity to reply to the complaints addressed to it. If that procedure does not result in the Member State terminating the failure, an action for infringement of EU law may be brought before the Court of Justice. The action may be brought by the Commission — as, in practice, is usually the case — or by a Member State. If the Court finds that an obligation has not been fulfilled, the State must bring the failure to an end without delay. If, after a further action is brought by the Commission, the Court of Justice finds that the Member State concerned has not complied with its judgment, it may impose on it a fixed or periodic financial penalty. However, if measures transposing a directive are not notified to the Commission, it may propose that the Court impose a pecuniary penalty on the Member State concerned, once the initial judgment establishing a failure to fulfil obligations has been delivered. Where failure to comply with a judgment of the Court is likely to harm the environment, the protection of which is one of the European Union’s policy objectives, as is apparent from Article 191 TFEU (Treaty of the Functioning of the European Union), such a breach is of a particularly serious nature.

References for a preliminary ruling — The Court of Justice cooperates with all the supreme courts of the Member States, which are the ordinary courts in matters of EU law.

⁵ https://curia.europa.eu/jcms/jcms/Jo2_6999/en/

To ensure the effective and uniform application of EU legislation and to prevent divergent interpretations, the national courts may, and sometimes must, refer to the Court of Justice and ask it to clarify a point concerning the interpretation of EU law, so that they may ascertain, for example, whether their national legislation complies with that law. A reference for a preliminary ruling may also seek the review of the validity of an act of EU law. The Court of Justice's reply is not merely an opinion, but takes the form of a judgment or reasoned order. The national court to which it is addressed is, in deciding the dispute before it, bound by the interpretation given. The Court's judgment likewise binds other national courts before which the same problem is raised. It is thus through references for preliminary rulings that any European citizen can seek clarification of the EU rules which affect him. Although such a reference can be made only by a national court, all the parties to the proceedings before that court, the Member States and the institutions of the EU may take part in the proceedings before the Court of Justice. In that way, several important principles of EU law have been laid down by preliminary rulings, sometimes in reply to questions referred by national courts of first instance.⁶

Judicial proceedings before the CJEU, whether in the form of infringement actions or preliminary references, have been central to the development of EU environmental law. They have clarified the interpretation and application of many provisions of the Birds Directive and the Habitats Directive.

Through its jurisprudence, the CJEU has established important precedents that have shaped the EU environmental acquis, strengthened the implementation of the Natura 2000 network, and ensured that Member States meet their obligations under the Nature Directives.

⁶ Article 6 of the Habitats Directive. Rulings of the European Court of Justice, p. 8, https://www.gov.si/assets/ministrstva/MNVP/Dokumenti/CPVO/Usposabljanje/ECJ_rulings_Art_6.pdf

ANALYSIS OF THE CASE-LAW CONCERNING NATURE DIRECTIVES

Analysis of few points in the case-law of CJEU concerning Nature Directives showed the respective areas where the court's interpretation of Nature Directives was needed and outlined the problems which faced Member States in transposition of Directives, implementation and enforcement of relevant national legislation.

1. Transposition of Nature Directives (common principles)⁷

According to the case-law of the Court:

Under the third paragraph of Article 249 EC, a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods for implementing the Directive in question in domestic law. However, in accordance with settled case-law, while the transposition of a directive into domestic law does not necessarily require that the content of the Directive be incorporated formally and verbatim in express, specific legislation and, depending on its content, a general legal context may be adequate for the purpose, that is on condition that that context does indeed guarantee the full application of the

⁷ European Commission, Nature and biodiversity cases – Ruling of the European Court of Justice, Publications Office, 2006, p. 10.

Directive in a sufficiently clear and precise manner. In that regard, it is important in each individual case to determine the nature of the provision, laid down in a directive, to which the action for infringement relates, in order to gauge the extent of the obligation to transpose imposed on the Member States. (*Case C-6/04, Commission v. United Kingdom*)

The provisions of Directives must be implemented with unquestionable binding force, and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty. The principle of legal certainty requires appropriate publicity for the national measures adopted pursuant to Community rules in such a way as to enable the persons concerned by such measures to ascertain the scope of their rights and obligations in the particular area governed by Community law. (*Case C-415/01, Commission v. Belgium*)

It would be contrary to the principle of legal safety if a Member State could rely on the regional authorities' power to issue regulations in order to justify national legislation which does not comply with the prohibitions laid down in a directive. (*Case C-157/89, Commission v. Italy*)

Member States are, in the context of the [Habitats] Directive, under a particular duty to ensure that their legislation intended to transpose that Directive is clear and precise. (*Case C-98/03, Commission v. Germany*)

A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive. (*Case C-166/97, Commission v. France — "Seine Estuary"*)

The fact, should it be established, that a practice is in conformity with the requirements of a directive which concern protection cannot constitute a reason for not transposing that Directive into the domestic law of the Member State concerned. (*Case C-6/04, Commission v. United Kingdom*)

2. Failure to comply with obligations under the Nature Directives and the Aarhus Convention

Commission v Poland (Case C-432/21). In this infringement action, the European Commission alleged that Poland had failed to comply with its obligations under the Birds Directive and the Habitats Directive, as well as under the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the “Aarhus Convention”).⁸

According to the CJEU, EU law imposes an obligation on Member States to ensure that environmental organisations are able to bring legal proceedings against forest management plans which may have a significant effect on Natura 2000 sites.

The Court recalled that under Polish law, a forest management plan is defined as “the basic forest management document” prepared for a specific site, containing a description and an assessment of the state of the forest and the objectives, tasks and methods of forest management’ (Article 6(1)(6) of the Law on Forests) and is approved by the Minister of Environment (Article 22(1)).

Then, the Court assessed the plan in light of the Habitats Directive and came to the conclusion that forest management plans fall within Article 6(3) as ‘any plan or project not directly connected with or necessary to the management of [a Natura 2000 site] but likely to have a significant effect thereon. Therefore, a forest management plan constitutes “a decision on activities which may have a significant effect on the environment” under Article 6(1)(b) of Aarhus Convention and therefore falls within the scope of Article 9(2) of Aarhus Convention, which provides “members of the public

⁸ <https://epi.org.ua/environment/rishennya-sudu-yevropejskogo-soyuzu-vid-2-bereznya-2023-roku-za-pozovom-yevropejskoyi-komisiyi-proty-respubliki-polshha-osnovni-polozhennya/>

concerned”, including environmental organisations, with wide access to justice.⁹

3. Failure to classify, inappropriate classification or failure to designate the SCIs

One of the most frequent infringement concerns the **failure of Member States to classify territories of ecological importance** or the **inappropriate classification of such sites**. This omission undermines the very foundation of the Natura 2000 network, as it leaves ecologically valuable habitats without adequate protection.

A prominent example is *Commission v Cyprus* (Case C-340/10), concerning Paralimni Lake. The CJEU found that Cyprus had failed to classify the site as a site of Community importance (SCI) within the required time limits. The Court held that this failure was due to an inadequate ecological assessment, despite the fact that the area hosted habitats of species protected under both the Birds Directive and the Habitats Directive. By delaying the classification of Paralimni Lake, Cyprus endangered the habitats of threatened species and jeopardised the achievement of the conservation objectives pursued by the EU legal framework.

This case demonstrates how delays or omissions in site classification not only contravene the Member States’ legal obligations but also undermine the overall coherence and effectiveness of the Natura 2000 network.

In the most recent case — *Commission v. Ireland* (Case C-444/21) the CJEU stated that Ireland failed to fulfil its obligations under art. 4(4) of the Habitats Directive by failing to designate 217 of the sites of Community importance as special

⁹ The Court of Justice of the EU confirms environmental NGOs can challenge forest management plans, — <https://www.clientearth.org/latest/news/the-court-of-justice-of-the-eu-confirms-environmental-ngos-can-challenge-forest-management-plans/>

areas of conservation as soon as possible and within six years at most. And in judgement concerning infringement proceedings against Germany (Case C-116/22), CJEU found that Germany as a party failed to fulfil its obligations under Article 4(4) of the Habitats Directive by a failure to designate as special areas of conservation for 88 of the 4606 sites of Community importance.

4. Limitation of Member States' Discretion in the Designation and Reduction of SPAs

In *Commission v Germany* (Leybucht Dykes, Case C-57/89), the CJEU clarified the scope of Member States' discretion under the Birds Directive. The Court acknowledged that, pursuant to Article 4(1) of the Directive, Member States retain a degree of discretion in selecting the territories "most suitable" for classification as special protection areas (SPAs). However, this discretion does not extend to the modification or reduction of such areas once designated under Article 4(4).

According to the Court, once a Member State has classified a territory as an SPA, it has thereby recognised that the area contains the most suitable habitats for the species listed in Annex I of the Directive. Consequently, the power to reduce or alter the boundaries of such areas is permissible only in **exceptional circumstances**, and only where those circumstances correspond to an overriding general interest that is superior to the ecological objectives enshrined in the Directive. Importantly, the Court held that **economic and recreational interests cannot qualify as such overriding interests**.

Furthermore, the Court clarified that Member States are not authorised to rely on the "economic requirements" referred to in Article 2 of the Birds Directive when designating SPAs or defining their boundaries. The ecological objectives of the Directive prevail over such considerations, thereby reinforcing the primacy of biodiversity protection within the EU legal framework.

5. Ornithological Criteria as the Determinant for Designation of SPAs

In *Commission v Spain (Santoña Marshes, Case C-355/90)*, the CJEU clarified the limits of Member States' discretion in designating special protection areas (SPAs) under the Birds Directive.

The Court acknowledged that Member States retain a **margin of discretion** in selecting the territories to be designated as SPAs. Although Member States do have a certain margin of discretion with regard to the choice of special protection areas, the classification of those areas is nevertheless subject to certain ornithological criteria determined by the directive, such as the presence of birds listed in Annex I, on the one hand, and the designation of a habitat as a wetland area, on the other.

By emphasizing ornithological considerations, the Court confirmed that Member States may not rely on socio-economic or other non-ecological grounds to exclude or limit the designation of sites which meet the ecological requirements established by the Directive. The ruling thus reinforced the principle, also developed in *Leybucht Dykes (Commission v Germany, Case C-57/89)*, mentioning that the power of the Member States to reduce the extent of a special protection area can be justified only on exceptional grounds. Those grounds must correspond to a general interest which is superior to the general interest represented by the ecological objective of the directive.

6. The Primacy of Ecological Criteria over Economic Considerations in SPA Designation

In *Commission v Great Britain (Lappel Bank, Case C-44/95)*, the CJEU reaffirmed that a Member State is not authorised to take account of the economic requirements when designating an Special Protection Area (SPA) or defining its boundaries, pursuant to Article 2 of the Birds Directive. The Court clarified

that the designation process must be guided exclusively by ecological considerations and the conservation objectives established by the Directive.

Similarly, in *Commission v Bulgaria* (Case C-141/14), the CJEU confirmed that the classification of an area as an SPA must be based on **ornithological criteria**, consistent with Articles 4 and Annex I of the Birds Directive. The Court further emphasized that the protection of designated territories must be ensured even when development projects, such as wind farms, are planned. Member States are required to guarantee that such projects **do not compromise the conservation objectives** of the SPA, thereby upholding the ecological integrity of the site.

Together, these rulings underscore the principle that the ecological objectives of the Birds Directive prevail over economic or developmental considerations in both the designation process and management of SPAs.

7. The Primacy of Ecological Objectives in the Habitats Directive

In several judgments concerning the application of the Habitats Directive, the CJEU has emphasized that **economic, social, and cultural considerations**, as well as regional and local conditions, **cannot compromise the overarching objective** of the Directive. Specifically, when composing the draft list of Sites of Community Importance (SCIs), Member States must ensure that such considerations **do not jeopardise the integrity of the European network of protected areas**.

The Court has consistently held that the ecological objectives, including the maintenance and restoration of natural habitats and species of Community interest (Annexes I and II HD), take precedence over other interests during both the selection of sites and the designation process (Articles 3–4 HD). Allowing non-ecological factors to influence the identification or classification of SCIs would risk undermining the

coherence and effectiveness of the Natura 2000 network, thereby compromising the achievement of the Directive's conservation goals.¹⁰

8. Insufficient protection of classified territories and sites

Another category of CJEU cases concerns the obligations of Member States to **protect territories designated under the Habitats Directive**, in particular pursuant to **Article 6**. Article 6(1) HD requires Member States to **implement appropriate and regular conservation measures** for Special Areas of Conservation (SACs), including sites adopted as Sites of Community Importance (SCIs).

In case C-116/22 (*Commission v. Germany*), the Court found that by failure to adopt the necessary conservation measures for a group of sites among the sites of Community importance, Germany failed to fulfil its obligations under art. 6(1).

The Court has consistently emphasized that the **application of conservation measures is a systematic and binding obligation**, which significantly limits the discretion of Member States. In practice, this obligation requires that Member States adopt measures that are:

- **necessary**, addressing the specific conservation needs of the habitats and species present;
- **adaptive**, allowing for the management of sites in response to changing ecological conditions; and
- **sufficient**, ensuring that the conservation objectives of the Habitats Directive are effectively achieved.

Failure to implement such measures may constitute an infringement of EU law under Article 258 TFEU, as it jeopardises the favourable conservation status of protected habitats and

¹⁰ Case C-226/08, *Sdadt Papenburg v. Germany*, Case C-67/99, *Commission v. Ireland*, Case C-71/99, *Commission v. Germany*, Case C-220/99, *Commission v. Germany*, Case C-117/03, *Dragaggi and others*.

species and undermines the coherence and integrity of the Natura 2000 network.¹¹

In *Commission v Netherlands (Waddenzee, Case C-127/02)*, the CJEU clarified the relationship between Articles 6(2) and 6(3) of the Habitats Directive. The Court observed that the provisions of these paragraphs share a **common objective**: the protection and maintenance of the integrity of Special Areas of Conservation (SACs).

Specifically, the authorization of a plan or project under **Article 6(3) HD** requires a prior assessment to determine whether the proposed activity is **likely to have a significant effect** on the integrity of the site. If such an effect is likely, the plan or project may not be authorized unless compensatory measures are adopted in accordance with Article 6(4).

In this context, the Court explained that **compliance with Article 6(3) inherently ensures compliance with Article 6(2)**, since the assessment required under Article 6(3) guarantees that the plan or project will not result in the deterioration of the habitat or the disturbance of the species for which the site was designated. In other words, Article 6(3) operationalizes the protective duty set out in Article 6(2) by requiring that potential adverse effects are systematically evaluated and mitigated prior to authorization.

9. Inappropriate Assessment of the Projects

The **appropriate assessment** is the core mechanism of the Habitats Directive for safeguarding Natura 2000 sites. Such an assessment must be conducted **prior to the authorization** of any plan or project that is likely to have a significant effect on the integrity of a site (Article 6(3) HD). It requires the consideration of **cumulative effects**, including the combined impact of the plan or project with other existing or planned activities.

¹¹ Case C-508/04, *Commission v. Austria*, Case C-293/07, *Commission v. Greece*.

The scope of assessment is not limited to activities carried out within the boundaries of Natura 2000 sites. Development plans and projects located **both inside and outside the protected areas** may affect the sites and therefore fall within the permitting and assessment obligations under Articles 6(3) and 6(4) HD.

In its case-law, the CJEU has repeatedly interpreted the obligations under Article 6(3) and clarified that **grounds invoked by Member States to exempt certain activities** from appropriate assessment are generally **insufficient or inappropriate**. Examples of such impermissible grounds include:

- the periodic renewal of licenses;¹²
- limited use of water, flowing through the protected site;¹³
- location of the project within or outside of the protected site;¹⁴
- small-scale project;¹⁵ or
- *low costs entailed or the particular type of work planned*.¹⁶

The CJEU has clarified the meaning of the term “**likely to have a significant effect**” within the context of Article 6(3) of the Habitats Directive.

In *Commission v Netherlands (Waddenzee, Case C-127/02)*, the Court held that a **plan or project not directly connected with or necessary to the management of a Natura 2000 site** must nevertheless be regarded as likely to have a significant effect if it has the potential to **undermine the conservation objectives of the site**.

This interpretation establishes a **precautionary and expansive standard**: any activity that could negatively affect the integrity of a site — regardless of its connection to site

¹² Case C-127/02, *Commission v Netherlands*.

¹³ Case C-98/03, *Commission v. Germany*.

¹⁴ Case C-98/03, *Commission v. Germany*.

¹⁵ Case C-6/04, *Commission v. United Kingdom*.

¹⁶ Case C-256/98, *Commission v. France*.

management — triggers the requirement for an **appropriate assessment** under Article 6(3) HD. The ruling underscores that the focus is on **the potential impact on conservation objectives**, rather than the formal categorization or purpose of the project.

In *Commission v France* (Case C-241/08), the Court of Justice of the European Union held that **systematic exemptions of works and developments** from the protective regime of Natura 2000 sites are incompatible with the objectives of the Habitats Directive.

Although the Habitats Directive does not explicitly define the **content or methodology** required for an appropriate assessment under Article 6(3), the Court of Justice of the European Union has clarified these requirements in its jurisprudence. The Court has emphasized that an appropriate assessment must be **based on the best scientific knowledge available**. The competent national authorities are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.¹⁷

CJEU ruled: positive appropriate assessment in accordance with art. 6(3) of HD could be granted only when the most reliable scientific knowledge is presented about the absence of any reasonable doubts that the project will adversely affect the integrity of site or territory.

In subsequent judgments, the Court further clarified that plan or project not directly connected with or necessary to the management of a site will adversely affect the **integrity** of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat.¹⁸

The CJEU has clarified the meaning of “**best scientific knowledge available**” in the context of an appropriate

¹⁷ Case C-127/02, *Commission v Netherlands*.

¹⁸ Case C-258/11, *Sweetman and others*.

assessment under **Article 6(3) of the Habitats Directive**. The Court held that an assessment **cannot be considered appropriate** if it contains gaps or fails to provide **complete, precise, and definitive findings and conclusions** capable of eliminating all **reasonable scientific doubt** regarding the likely effects of the proposed works on the integrity of the site.¹⁹

10. Lack or inadequate system of species protection

Both the Birds Directive and the Habitats Directive impose **special protection measures** for species.

Article 9 of the Birds Directive allows Member States to grant **derogations** from the general prohibitions, including restrictions on hunting, capture, or marketing of species. However, such derogations are strictly **conditional**:

1. The derogation must be **limited to cases where no satisfactory alternative solution exists**;
2. It must be based on at least one of the **exhaustively listed grounds** in Article 9(1)(a)–(c); and
3. It must comply with the **formal requirements** set out in Article 9(2), which are intended to ensure that derogations are **strictly necessary** and subject to **supervision by the European Commission**.

Although Art. 9 of the Birds Directive permits certain derogations from the general protection regime, its application must be **carefully constrained** to address **specific circumstances** and to maintain the **overall objectives of the Directive**, ensuring the conservation of species and habitats of Community interest.²⁰

Article 12 of the Habitats Directive requires Member States to **establish a system of strict protection** for animal species

¹⁹ Case C-404/09, *Commission v Spain*.

²⁰ Case 247/85, *Commission v. Belgium*.

listed in **Annex IV(a)** within their natural habitats. This includes prohibitions on:

- **Deliberate disturbance** of these species, particularly during critical periods such as **breeding, rearing, hibernation, and migration**; and
- **Deterioration or destruction** of their breeding sites or resting places.

The CJEU has held that Member States must ensure that measures in force provide **effective protection in practice**, not merely on paper. In the case concerning the establishment of a marine park, the Court found that the existing provisions **did not guarantee sufficient protection** against deliberate disturbance during the breeding period, nor against the deterioration or destruction of breeding sites for the protected species.²¹

The CJEU has emphasized that the **system of strict protection** under Article 12 of the Habitats Directive **requires the adoption of coherent and coordinated preventive measures**. This obligation extends not only to deliberate acts but also to **non-deliberate interference** that may negatively affect species listed in Annex IV(a).²²

A strict protection system, within the meaning of Article 12(1)(b) and (d) of the Directive, supposes the adoption of coherent and coordinated measures, of a preventive nature.²³

11. Lack of balance between economic interests and nature conservation goals and strict application of derogations

The CJEU has consistently emphasized the **strict interpretation of derogations** under Article 6(4) of the Habitats Directive, requiring Member States to **examine all alternative**

²¹ Case C-103/00, Commission v. Hellenic Republic.

²² Case C-183/05, Commission v. Ireland.

²³ Case C-518/04, Commission v. Hellenic Republic.

solutions before authorizing any plan or project that may affect a Natura 2000 site.

In *Commission v Portugal (Castro Verde, Case C-239/04)*, the Court held that the Portuguese Republic **failed to fulfil its obligations under Article 6(4)** of the Habitats Directive by authorising a motorway route crossing the Castro Verde Special Protection Area (SPA), despite a negative environmental impact assessment and the existence of alternative routes. The environmental impact study demonstrated that the proposed route would have a **very significant negative effect** on 17 wild bird species listed in **Annex I of the Birds Directive** and on their habitats. Certain species were shown to be highly sensitive to **disturbance and habitat fragmentation** resulting from the motorway construction.

The study concluded that the project would have a “**significantly high**” overall impact and a “**high negative impact**” on the avifauna present in the Castro Verde SPA. Accordingly, the Portuguese authorities **could not lawfully assume** that the project would have no adverse effects on the integrity of the SPA when granting authorisation.

This ruling underscore that **derogations under Article 6(4) must be applied restrictively**, and that any plan or project may only be authorised **after demonstrating the absence of alternative solutions** and the implementation of all necessary compensatory measures to maintain the integrity of the site.

Disputes frequently arise where **economic development projects conflict with the protection of Natura 2000 sites**. The CJEU has addressed such conflicts by emphasising the strict application of Articles 6(4) of the of the Habitats Directive and Art. 4 of the Birds Directive.

In *Commission v Austria (Lauteracher Ried, Case C-209/04)*, the Court held that Austria **failed to fulfil its obligations** by authorising the construction of the federal S18 Lake Constance dual carriageway **despite a negative environmental assessment for the site**. The Court found that Austria had **not complied fully with the requirements of Article 6(4) of the Habitats Directive**, in conjunction with Article 7 HD, nor with Articles 4(1) and 4(2) of the Birds Directive.

Furthermore, the Court noted that, following the authorization of the project, it had **not been established that all necessary compensatory measures were implemented** to safeguard the overall coherence of the Natura 2000 network. This case illustrates that economic considerations **cannot justify the bypassing of environmental obligations**, and that any authorization for a project likely to impact a Natura 2000 site must be contingent upon **adequate compensatory measures** to maintain the integrity and coherence of the network. Thus, compensation measures must be developed and implemented to ensure coherence of NATURA 2000 site in case of adverse effects on the site by project or plan.

12. Interpretation of the term “imperative reasons of overriding public interest”²⁴

In 2010, The Constitutional Court of the Kingdom of Belgium had before it a number of actions seeking to annul the decree of the Walloon Parliament which ‘ratified’ the building consents for various works on the grounds of overriding reasons in the public interest. The Constitutional Court decided to refer to the European Court for a preliminary ruling on several questions, one of which asked: must Article 6(4) of [the Habitats] Directive ... be interpreted as permitting the creation of infrastructure designed to accommodate the management centre of a private company and a large number of employees to be regarded as an imperative reason of overriding public interest?’

Findings of the Court: “An interest capable of justifying, within the meaning of Article 6(4) of the Habitats Directive, the implementation of a plan or project **must be both ‘public’ and ‘overriding’**, which means that it must be of such an importance that it can be weighed up against that directive’s

²⁴ Article 6 of the Habitats Directive. Rulings of the European Court of Justice, pp. 56–57, https://www.gov.si/assets/ministrstva/MNVP/Dokumenti/CPVO/Usposabljanje/ECJ_rulings_Art_6.pdf

objective of the conservation of natural habitats and wild fauna and flora. **Works intended for the location or expansion of an undertaking satisfy those conditions only in exceptional circumstances.**”

“**It cannot be ruled out that that is the case where a project, although of a private character, in fact by its very nature and by its economic and social context presents an overriding public interest** and it has been shown that there are no alternative solutions. In the light of those criteria, the mere construction of infrastructure designed to accommodate a management centre cannot constitute an imperative reason of overriding public interest within the meaning of Article 6(4) of the Habitats Directive.”

“The answer to Question 6 is therefore that Article 6(4) of the Habitats Directive must be interpreted as meaning that **the creation of infrastructure intended to accommodate a management centre cannot be regarded as an imperative reason of overriding public interest**, such reasons including those of a social or economic nature, within the meaning of that provision, capable of justifying the implementation of a plan or project that will adversely affect the integrity of the site concerned. (*Case C-182/10 Solvay and Others, paragraphs 71–79*)

In 2010, the National Court in Greece referred a series of question to the European Court of Justice relating to the partial diversion of the upper waters of the River Acheloos to Thessaly. One of the questions asked was: For the purpose of Articles 3, 4 and 6 of Directive 92/43, can reasons for which a project to divert waters is undertaken that relate principally to irrigation and secondarily to water supply constitute the imperative public interest which that directive requires in order for that scheme to be permitted to be carried out notwithstanding its adverse effects on areas protected by that directive?

“Irrigation and the supply of drinking water meet, in principle, those conditions and are therefore capable of justifying the implementation of a project for the diversion of water in the absence of alternative solutions. However, where the SCI concerned hosts a priority natural habitat type and/or a

priority species, the only considerations which may be raised, under the second subparagraph of Article 6 (4) of Directive 92/43, are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

“As regards irrigation, it is evident that it cannot in principle qualify as a consideration relating to human health or public safety. On the other hand, it appears more plausible that irrigation may, in some circumstances, have beneficial consequences of primary importance for the environment. In contrast, the supply of drinking water is, in principle, to be included within considerations relating to human health”.

“In the light of the foregoing, the answer to the twelfth question is that Directive 92/43, and in particular Article 6 (4) thereof, must be interpreted as meaning that grounds linked, on the one hand, to **irrigation and**, on the other, to **the supply of drinking water**, relied on in support of a project for the diversion of water, may constitute imperative reasons of overriding public interest capable of justifying the implementation of a project which adversely affects the integrity of the sites concerned”.

“Where such a project adversely affects the integrity of a SCI hosting a priority natural habitat type and/or a priority species, its implementation may, in principle, be justified by grounds linked with the supply of drinking water. In some circumstances, it might be justified by reference to beneficial consequences of primary importance which irrigation has for the environment. On the other hand, irrigation cannot, in principle, qualify as a consideration relating to human health or public safety, justifying the implementation of a project such as that at issue in the main proceedings.” (*Case C-43/10 Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, paragraphs 120–128)

CONCLUSIONS

The analysis of the judgments of the Court of Justice of the European Union concerning the implementation of the Birds and Habitats Directives highlights key aspects that are **relevant for both Ukraine and EU Member States**. These aspects must be considered during the **approximation of EU legislation** and the **implementation of EU environmental standards**.

1. Appropriate Transposition of EU Directives

Failure to transpose Directives properly and in a timely manner leads to legal proceedings before the CJEU or national courts. Timely and correct transposition of EU norms **prevents disputes with the European Commission** and avoids potential financial sanctions.

2. Systematic Approach to Protected Site Management

CJEU judgments emphasize that the classification of protected sites alone is insufficient. Member States must **develop and implement comprehensive management regime** for such sites, ensuring **long-term conservation of habitats and species**.

3. Balance between Economic and Environmental Concerns

Case-law demonstrates that **economic benefits cannot justify the degradation of protected sites or habitats**. The CJEU consistently emphasizes that **conservation objectives must be considered in the planning and implementation of projects and plans**.

4. Strengthening Institutional Capacity

Many Member States encounter challenges in **coordination among different public authorities**, which can result in violations or incorrect application of Directive provisions. Building **institutional capacity and inter-agency coordination** is therefore essential.

The case-law of the CJEU represents a **valuable source of experience for Ukraine**. Analysis of these judgments allows the identification of **typical implementation challenges** and supports the **adaptation of national legislation** in a manner that avoids repeating the mistakes of other Member States. By following the principles and guidance established by the CJEU, Ukraine can establish an **effective biodiversity conservation system** in line with the **high standards of the European Union**.

LIST OF CASES

Case #	Short information	Art. of BD	Art. of HD
1. Case C-236/85	Judgment of the Court of 13 October 1987. — Commission of the European Communities v Kingdom of the Netherlands. — Conservation of wild birds. — Articles 6 and 9 of the Birds Directive.	6(2,5), 9(1)	
2. Case 247/85	Judgment of the Court of 8 July 1987. — Commission of the European Communities v Kingdom of Belgium. — Conservation of wild birds. — Articles 5, 6, 7 and 9 of the Birds Directive.	1(1), 2, 5(B,E), 6(1,2,3,4), 7, 9(1A, 1C,2)	
3. Case C-252/85	Judgment of the Court of 27 April 1988. — Commission of the European Communities v French Republic. — Conservation of wild birds. Articles 5, 7, 8 and 9 of the Birds Directive.	1, 5(B,C,E), 7(4), 8(1), 9(1,2)	

Case #	Short information	Art. of BD	Art. of HD
4. Case 262/85	Judgment of the Court of 8 July 1987. — Commission of the European Communities v Italian Republic. — Conservation of wild birds. — Articles 6, 7, 8 and 9 of the Birds Directive.	6(1-4), 7(4), 8(1), 9(1,2)	
5. Case C-412/85	Judgment of the Court of 17 September 1987. — Commission of the European Communities v Federal Republic of Germany. — Conservation of wild birds. — Articles 5 and 9 of the Birds Directive.	5, 9(1,2)	
6. Case C-339/87	Judgment of the Court of 15 March 1990. — Commission of the European Communities v Kingdom of the Netherlands. Conservation of wild birds. — Articles 5, 6, 7, 8 and 9 of the Birds Directive.	5, 6, 7, 8, 9(1,2)	
7. Case C-288/88	Judgment of the Court of 3 July 1990. — Commission of the European Communities v Federal Republic of Germany. — Failure of a Member State to fulfil its obligations — Articles 5, 8 and 9 of the Birds Directive.	5, 8, 9	
8. Case C-57/89	Judgment of the Court of 28 February 1991. — Commission of the European Communities v Federal Republic of Germany. Conservation of wild birds — Construction work in a special protection area. — Leybucht — Articles 2 and 4 of the Birds Directive. SPA Changes of site borders.	2, 4(1,3,4)	

Case #	Short information	Art. of BD	Art. of HD
9. Case C-157/89	Judgment of the Court of 17 January 1991. — Commission of the European Communities v Italian Republic. — Failure to comply with a directive — Conservation of wild birds. — Article 7 of the Birds Directive.	7 (4)	
10. Case C-169/89	Judgment of the Court (Sixth Chamber) of 23 May 1990. — Criminal proceedings against Gourmetterie Van den Burg. — Reference for a preliminary ruling: Hoge Raad — Netherlands. — Free movement of goods — Prohibition on the importation of birds. — Articles 6 and 14 of the Birds Directive.	6(2,3), 14	
11. Case C-334/89	Judgment of the Court of 17 January 1991. — Commission of the European Communities v Italian Republic. — Failure by a Member State to fulfil its obligations — Conservation of wild birds. — Article 4 of the Birds Directive.	4(1)	
12. Case C-355/90	Judgment of the Court of 2 August 1993. — Commission of the European Communities v Kingdom of Spain. — Conservation of wild birds — Special protection areas Marismas de Santoña. — Articles 3 and 4 of the Birds Directive. SPA designation.	2, 3(1), 4(1,2,4)	

Case #	Short information	Art. of BD	Art. of HD
13. Case C-75/91	Judgment of the Court of 6 February 1992. Commission of the European Communities v Kingdom of the Netherlands. Failure of a Member State to fulfil its obligations — Failure to comply with a judgment of the Court.	—	
14. Case C-435/92	Judgment of the Court of 19 January 1994. — Association pour la Protection des Animaux Sauvages and others v Préfet de Maine-et-Loire and Préfet de Loire-Atlantique. — Reference for a preliminary ruling: Tribunal administratif de Nantes — France. — Conservation of wild birds — Hunting season. — Article 7 of the Birds Directive.	7 (4)	
15. Case C-118/94	Judgment of the Court (Fifth Chamber) of 7 March 1996. — Associazione Italiana per il World Wildlife Fund, Ente Nazionale per la Protezione Animali, Lega per l'Ambiente — Comitato Regionale, Lega Anti Vivisezione — Delegazione Regionale, Lega per l'Abolizione della Caccia, Federnatura Veneto and Italia Nostra — Sezione di Venezia v Regione Veneto. — Reference for a preliminary ruling: Tribunale amministrativo regionale per il Veneto — Italy. — Hunting — Conditions for exercise of the Member States' power to derogate. — Articles 5, 7 and 9 of the Birds Directive.	5, 7, 9(1,2)	

Case #	Short information	Art. of BD	Art. of HD
16. Case C-149/94	Judgment of the Court (Third Chamber) of 8 February 1996. — Criminal proceedings against Didier Vergy. — Reference for a preliminary ruling: Tribunal de grande instance de Caen — France. — Prohibition of sale — Specimen born and reared in captivity. — Articles 1, 2, 5, 6 and 9 of the Birds Directive.	1, 2, 5, 6, 9	
17. Case C-202/94	Judgment of the Court (Third Chamber) of 8 February 1996. — Criminal proceedings against Godefridus van der Feesten. — Reference for a preliminary ruling: Gerechtshof-Hertogenbosch — Netherlands. — Scope of the Directive — Protected species — Application of the Directive to a subspecies not occurring naturally in the wild in the European territory of the Member States. — Articles 1 and 14 of the Birds Directive.	1, 14	
18. Case C-44/95	Judgment of the Court of 11 July 1996. — Regina v Secretary of State for the Environment, ex parte: Royal Society for the Protection of Birds. — Reference for a preliminary ruling: House of Lords — United Kingdom. — Delimitation of Special Protection Areas — Discretion enjoyed by the Member States — Economic and social considerations — Lappel Bank. — Articles 2, 3 and 4 of the Birds Directive and Articles 6 and 7 of the Habitats Directive. SPA designation.	2, 3, 4(1,2,4)	6, 7

Case #	Short information	Art. of BD	Art. of HD
19. Case C-5/96	Judgment of the Court of 19 May 1998. — Commission of the European Communities v Kingdom of the Netherlands. — Conservation of wild birds — Special protection areas. — IBA 1989 — Article 4 of the Birds Directive. SPA designation.	4 (1)	
20. Case C-10/96	Judgment of the Court (Third Chamber) of 12 December 1996. Ligue royale belge pour la protection des oiseaux ASBL and Société d'études ornithologiques AVES ASBL v Région Wallonne, intervenser: Fédération royale ornithologique belge ASBL. Reference for a preliminary ruling: Conseil d'Etat — Belgium. Council Directive 79/409/EEC on the conservation of wild birds — Prohibition of capture — Derogations. Article 9(1) of Birds Directive.	9 (1)	
21. Case C-329/96	Judgment of the Court (Fifth Chamber) of 26 June 1997. — Commission of the European Communities v Hellenic Republic. — Failure to fulfil obligations — Failure to transpose the Habitats Directive.		23
22. Case C-83/97	Judgment of the Court (Fifth Chamber) of 11 December 1997. — Commission of the European Communities v Federal Republic of Germany. — Failure to fulfil obligations — Failure to transpose the Habitats Directive. — Article 189 of the EEC Treaty and Article 23 of the Habitats Directive.		23

Case #	Short information	Art. of BD	Art. of HD
23. Case C-166/97	Judgment of the Court (Fifth Chamber) of 18 March 1999. — Commission of the European Communities v French Republic. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Special protection areas. — Article 4 of the Birds Directive.	4(1,2,4)	
24. Case C-96/98	Judgment of the Court (Fifth Chamber) of 25 November 1999. — Commission of the European Communities v French Republic. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Special protection areas. — Articles 2 and 4 of the Birds Directive. SPA Changes of site borders.	2, 4(1,2,4)	
25. Case C-256/98	Judgment of the Court (Fifth Chamber) of 6 April 2000. — Commission of the European Communities v French Republic. — Failure by a Member State to fulfil its obligations — Conservation of natural habitats and of wild fauna and flora. — Article 6 of the Habitats Directive.		6(3,4)
26. Case C-371/98	Judgment of the Court of 7 November 2000. — The Queen v Secretary of State for the Environment, Transport and the Regions, ex parte First Corporate Shipping Ltd, interveners: World Wide Fund		2(3), 3(1,2), 4(1,2)

Case #	Short information	Art. of BD	Art. of HD
Case C-371/98 (Continuation)	for Nature UK (WWF) and Avon Wildlife Trust. — Reference for a preliminary ruling: High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court) — United Kingdom. — Conservation of natural habitats and of wild fauna and flora — Definition of the boundaries of sites eligible for designation as special areas of conservation — Discretion of the Member States — Economic and social considerations — Severn Estuary. Articles 2, 3 and 4 of the Habitats Directive.	4 (1, 2, 4)	6 (2-4), 7
27. Case C-374/98	Judgment of the Court (Sixth Chamber) of 7 December 2000. — Commission of the European Communities v French Republic. — Failure of Member State to fulfil its obligations — Conservation of wild birds — Special protection areas. — Article 4 of the Birds Directive and Articles 6 and 7 of the Habitats Directive.	7 (4)	
28. Case C-38/99	Judgment of the Court (Sixth Chamber) of 7 December 2000. — Commission of the European Communities v French Republic. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Hunting periods. — Article 7 of the Birds Directive.		

Case #	Short information	Art. of BD	Art. of HD
29. Case C-67/99	Judgment of the Court (Sixth Chamber) of 11 September 2001. — Commission of the European Communities v Ireland. — Failure by a Member State to fulfil its obligations — Conservation of natural habitats — Conservation of wild fauna and flora — List of sites — Site information. — Article 4 of the Habitats Directive.		4(1)
30. Case C-71/99	Judgment of the Court (Sixth Chamber) of 11 September 2001. — Commission of the European Communities v Federal Republic of Germany. — Failure by a Member State to fulfil its obligations — Conservation of natural habitats — Conservation of wild fauna and flora — List of sites — Site information. — Article 4 of the Habitats Directive.	4(1)	
31. Case C-159/99	Judgment of the Court (Sixth Chamber) of 17 May 2001. — Commission of the European Communities v Italian Republic. — Failure by a Member State to fulfil its obligations — Directive 79/409/EEC — Conservation of wild birds — Admissibility. — Articles 5, 7 and 9 of the Birds Directive.	5(a,e), 7(1), 9(1,2)	
32. Case C-220/99	Judgment of the Court (Sixth Chamber) of 11 September 2001. — Commission of the European Communities v French Republic. — Failure by a Member State to fulfil its obligations —		4(1)

Case #	Short information	Art. of BD	Art. of HD
Case C-220/99 (Continuation)	Conservation of natural habitats — Conservation of wild fauna and flora — List of sites — Site information. — Article 4 of the Habitats Directive.		
33. Case C-103/00	Judgment of the Court (Sixth Chamber) of 30 January 2002. — Commission of the European Communities v Hellenic Republic. — Failure by a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Protection of species <i>Caretta caretta</i> on Zakynthos. — Article 12 of the Habitats Directive.		12 (1) (b), (d)
34. Case C-117/00	Judgment of the Court (Sixth Chamber) of 13 June 2002. — Commission of the European Communities v Ireland. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Special protection areas. — Articles 3 and 4 of the Birds Directive and Article 6 of the Habitats Directive.	3, 4 (4)	6 (2)
35. Case C-240/00	Judgment of the Court (Sixth Chamber) of 6 March 2003. — Commission of the European Communities v République de Finlande. — Protection of wild birds and their habitats — Special protection areas. — Article 4 of the Birds Directive.	4 (1), (2), (3)	

Case #	Short information	Art. of BD	Art. of HD
36. Case C-75/01	Judgment of the Court (Sixth Chamber) of 13 February 2003. — Commission of the European Communities v Kingdom of Belgium. — Failure by a Member State to fulfil its obligations — Conservation of natural habitats — Wild fauna and flora — Incomplete transposition. — Articles 1, 4, 5, 6, 7, 12, 13, 14, 15, 16, 22 and 23 of the Habitats Directive.		1, 4(5), 5(4), 6, 7, 12(1)(b),(c), 12(2), 12(4), 13(1)(b), 14, 15, 16(1), 22(b), 23(2)
37. Case C-202/01	Judgment of the Court (Sixth Chamber) of 26 November 2002. — Commission of the European Communities v French Republic. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Classification as special protection areas — Plaine des Maures. — Article 4 of the Birds Directive.	4(1, 2)	
38. Case C-324/01	Judgment of the Court (Sixth Chamber) of 5 December 2002. — Commission of the European Communities v Kingdom of Belgium. — Failure by a Member State to fulfil its obligations — Conservation of natural habitats — Wild fauna and flora — Incomplete transposition. — Articles 1, 4, 5, 6, 7, 12, 13, 14, 15, 16, 22 and 23 of the Habitats Directive.		1, 4(5), 5(4), 6, 7, 12(1)(b),(c), 12(2), 12(4), 13(1)(b), 14, 15, 16(1), 22(b), 23(2)

Case #	Short information	Art. of BD	Art. of HD
39. Case C-378/01	Judgment of the Court (Sixth Chamber) of 20 March 2003. — Commission of the European Communities v Italian Republic. — Failure of a Member State to fulfil obligations — Special protection areas — Conservation of wild birds. — Article 4 of the Birds Directive.	4(1,2,3)	
40. Case C-415/01	Judgment of the Court (Sixth Chamber) of 27 February 2003. — Commission of the European Communities v Kingdom of Belgium. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Special protection areas. Article 4 of the Birds Directive and Articles 6 and 7 of the Habitats Directive.	4(1,2,4)	6(2,3,4), 7
41. Case C-434/01	Judgment of the Court (Sixth Chamber) of 6 November 2003. — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland. — Failure of a Member State to fulfil obligations — Conservation of natural habitats — Wild fauna and flora. — Articles 12 and 16 of the Habitats Directive.		12(1), 16
42. Case C-72/02	Judgment of the Court of 24 June 2003. — Commission of the European Communities v Portuguese Republic. — Failure of a Member State to fulfil its obligations — Conservation of natural habitats and wild birds. — Articles 2, 4, 6, 7, 8 and 12 of the Birds Directive and Articles 1, 3, 6, 10, 11 and 12 of the Habitats Directive.	2,4(1,4), 6,7,8, 12	1,3(3), 6(1-4), 10,11, 12

Case #	Short information	Art. of BD	Art. of HD
43. Case C-143/02	Judgment of the Court (Third Chamber) of 20 March 2003. — Commission of the European Communities v Italian Republic. — Failure of a Member State to fulfil obligations — Conservation of natural habitats — Wild fauna and flora. — Articles 5, 6 and 7 of the Habitats Directive.		5 (1), 6 (2), 7
44. Case C-182/02	Judgment of the Court (Sixth Chamber) of 16 October 2003. — Ligue pour la protection des oiseaux and Others v Premier ministre and Ministre de l'Aménagement du territoire et de l'Environnement. — Reference for a preliminary ruling: Conseil d'Etat — France. — Conservation of wild birds — Opening and closing dates for hunting — Derogations. — Articles 7, and 9 of the Birds Directive.	7 (4), 9 (1)	
45. Case C-209/02	Judgment of the Court (Second Chamber) of 29 January 2004. — Commission of the European Communities v Republic of Austria. — Failure of a Member State to fulfil obligations — Conservation of natural habitats — Wild fauna and flora — Habitat of the corncrake — Wörschacher Moos special protection area. — Article 4 of the Birds Directive and Articles 6 and 7 of the Habitats Directive.	4	6 (3,4), 7

Case #	Short information	Art. of BD	Art. of HD
46. Case C-79/03	Judgment of the Court (Second Chamber) of 9 December 2004. Commission of the European Communities v Kingdom of Spain. — Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Hunting — Article 8(1) and 9(1) of the Birds Directive.	8(1), 9(1)	
47. Case C-98/03	Judgment of the Court (Second Chamber) of 10 January 2006. Commission of the European Communities v Federal Republic of Germany. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Assessment of the implications of certain projects on a protected site — Protection of species. Articles 4(1), 6(3,4), 12(1), 13, 16 of Habitats Directive.		4(1), 6(3,4), 12(1), 13, 16
48. Case C-117/03	Judgment of the Court (Second Chamber) of 13 January 2005. Società Italiana Dragaggi SpA and Others v Ministero delle Infrastrutture e dei Trasporti and Regione Autonoma Friuli Venezia Giulia. Reference for a preliminary ruling: Consiglio di Stato — Italy. Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — National list of sites eligible for identification as sites of Community importance — Conservation measures. Arts 4(5), and 6(2), (3) and (4) of Habitats Directive.		4(5), 6(2), (3), (4)

Case #	Short information	Art. of BD	Art. of HD
49. Case C-441/03	Judgment of the Court (Second Chamber) of 14 April 2005. Commission of the European Communities v Kingdom of the Netherlands. Failure by a Member State to fulfil its obligations – Directives 79/409/EEC and 92/43/EEC – Conservation of wild birds – Conservation of natural habitats – Failure to transpose within the prescribed periods. Article 4 of the Birds Directive and Article 1, 2, 6, 7, 11 and 15 of the Habitats Directive.	4(1,2)	1 (a), (e) (i), 2(2), 6(1), 6(2), (4), 7, 11, 15
50. Case C-407/03	Judgment of the Court (Fifth Chamber) of 15 July 2004. Commission of the European Communities against Republic of Finland. Failure of a Member State to fulfil its obligations – Conservation of natural habitats – Wild fauna and flora. Art. 6(3) of Habitats Directive.		6(3)
51. Case C-6/04	Judgment of the Court (Second Chamber) of 20 October 2005. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland. Failure of a Member State to fulfil obligations – Directive 92/43/EEC – Conservation of natural habitats – Wild fauna and flora. Articles 6, 11, 12, 13, 14, 15 and 16 of the Habitats Directive.		6, 11, 12, 13, 14, 15, 16

Case #	Short information	Art. of BD	Art. of HD
52. Case C-135/04	<p>Judgment of the Court (Second Chamber) of 9 June 2005. Commission of the European Communities v Kingdom of Spain. Conservation of wild fauna — Wild birds — Hunting periods — Hunting of woodpigeon during return journey in the province of Guipúzcoa. Articles 7, 9 of the Birds Directive.</p>	7, 9(1)(c)	
53. Case C-209/04	<p>Judgment of the Court (Second Chamber) of 23 March 2006. Commission of the European Communities v Republic of Austria. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Corncrake — Special protection area in the Lauteracher Ried national nature reserve — Exclusion of the Soren and Gleggen-Köblern sites — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Procedure for a construction plan or project — Procedure for determining the road line of a dual carriageway — Procedure for environmental impact study — Procedural breaches relating to the project for the construction of the federal S 18 dual carriageway in Austria — Temporal application of Directive 92/43. Article 4(1) and (2) of Wild Birds Directive, and Article 6(3) and (4) of Habitats Directive.</p>	4(1),(2)	6(3),(4)

Case #	Short information	Art. of BD	Art. of HD
54. Case C-221/04	Judgment of the Court (Second Chamber) of 18 May 2006. Commission of the European Communities v Kingdom of Spain. Failure by a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Protection of species — Hunting using stopped snares in private hunting areas — Castilla y León. Article 12 of the Habitats Directive.		12(1)
55. Case C-255/04	Judgment of the Court (Second Chamber) of 28 June 2007. Commission of the European Communities v Kingdom of Spain. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Special protection areas — IBA 98 — Value — Quality of the data — Criteria — Margin of discretion — Manifest inadequacy as to number and size of areas classified. Article 4(1, 2) of the Birds Directive.	4(1, 2)	
56. Case C-239/04	Judgment of the Court (Second Chamber) of 26 October 2006. Commission of the European Communities v Portuguese Republic. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Castro Verde special protection area — Lack of alternative solutions. Article 6(3) and (4) of Habitats Directive.		6(3, 4)

Case #	Short information	Art. of BD	Art. of HD
57. Case C-334/04	<p>Judgment of the Court (Second Chamber) of 25 October 2007. Commission of the European Communities v Hellenic Republic. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Annex I — Conservation of wild birds — Special protection areas — IBA 2000 — Value — Quality of the data — Criteria — Margin of discretion — Manifestly insufficient classification — Wetlands. Article 4 of the Birds Directive. SPA designation.</p>	4(1),2)	
58. Case C-418/04	<p>Judgment of the Court (Second Chamber) of 13 December 2007. Commission of the European Communities v Ireland. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Articles 4 and 10 — Transposition and application — IBA 2000 — Value — Quality of the data — Criteria — Margin of discretion — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6 — Transposition and application. 4 and 10 of the Birds Directives, Article 6 of the Habitats Directive. SPA designation.</p>	4(1),(2),(4), 10	6(2)-(4), 7

Case #	Short information	Art. of BD	Art. of HD
59. Case C-507/04	<p>Judgment of the Court (Fourth Chamber) of 12 July 2007. Commission of the European Communities v Republic of Austria. Failure of a Member State to fulfil obligations — Conservation of wild birds — Directive 79/409/EEC — Measures transposing the directive. Article 1, 5, 6, 7, 8, 9 and 11 of the Birds Directive.</p>	<p>1, 5, 6, 7(4), 8, 9(1)(a,c),(2), 11</p>	
60. Case C-508/04	<p>Judgment of the Court (Fourth Chamber) of 10 May 2007. Commission of the European Communities v Republic of Austria. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Measures transposing the directive. Article 1, 6, 12, 13, 16 and 22 of the Habitats Directive.</p>		<p>1, 6(1), 12, 13, 14, 15(a),(b), 16, 22</p>
61. Case C-518/04	<p>Judgment of the Court (Fifth Chamber) of 16 March 2006. Commission of the European Communities v Hellenic Republic. Failure of a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Protection of Species. Article 12 of the Habitats Directive.</p>		<p>12(1)(b)(d)</p>

Case #	Short information	Art. of BD	Art. of HD
62. Case C-60/05	Judgment of the Court (Second Chamber) of 8 June 2006. WWF Italia and Others v Regione Lombardia. Reference for a preliminary ruling: Tribunale amministrativo regionale per la Lombardia — Italy. Conservation of wild birds — Directive 79/409/EEC — Derogations from the system of protection. Article 9 of the Birds Directive.	9 (1)(c)	
63. Case C-183/05	Judgment of the Court (Second Chamber) of 11 January 2007. Commission of the European Communities v Ireland. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Articles 12 (1) and (2), 13 (1)(b) and 16 — Conservation of natural habitats and of wild fauna and flora — Protection of species. Article 12 and 16 of the Habitats Directive.		12 (1), (2), 13 (1)(b), 16
64. Case C-191/05	Judgment of the Court (Second Chamber) of 13 July 2006. Commission of the European Communities v Portuguese Republic. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Special protection area — Alteration without scientific basis. Article 4 of the Birds Directive.	4 (1, 2)	

Case #	Short information	Art. of BD	Art. of HD
65. Case C-244/05	<p>Judgment of the Court (Second Chamber) of 14 September 2006. Bund Naturschutz in Bayern eV and Others v Freistaat Bayern. Reference for a preliminary ruling: Bayerischer Verwaltungsgerichtshof — Germany. Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Protection regime before the inclusion of a habitat in the list of sites of Community importance. Articles 3(1) and 4(1) of the Habitats Directive.</p>		3(1), 4(1)
66. Case C-304/05	<p>Judgment of the Court (Fourth Chamber) of 20 September 2007. Commission of the European Communities v Italian Republic. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Directive 79/409/EEC — Conservation of wild birds — Assessment of the environmental impact of works to modify ski runs. Article 6 and 7 of the Habitats Directive and Article 4 of the Birds Directive.</p>	4	6(2-4), 7

Case #	Short information	Art. of BD	Art. of HD
67. Case C-342/05	Judgment of the Court (Second Chamber) of 14 June 2007. Commission of the European Communities v Republic of Finland. Failure of a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Wolf hunting. Articles 12, 13, 14, 15(a) and (b), and 16(1) of the Habitats Directive.		12, 13, 14, 15(a), (b) 16(1)
68. Case C-388/05	Judgment of the Court (Second Chamber) of 20 September 2007. Commission of the European Communities v Italian Republic. Failure of a Member State to fulfil obligations — Conservation of natural habitats — Wild fauna and flora — Special Protection Area ‘Valloni e steppe pedegarganiche’. Article 4 of the Birds Directive, Articles 6(2) and 7 of the Habitats Directive.	4	6(2), 7
69. Case C-179/06	Judgment of the Court (Fourth Chamber) of 4 October 2007. Commission of the European Communities v Italian Republic. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Environmental impact assessment. Article 6(3) of the Habitats Directive.		6(3)

Case #	Short information	Art. of BD	Art. of HD
70. Case C-186/06	Judgment of the Court (Second Chamber) of 18 December 2007. Commission of the European Communities v Kingdom of Spain. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Irrigable area of the Segarra-Garrigues Canal (Lleida). Article 4(4) of the Birds Directive, Article 6(2) and 7 of the Birds Directive.	4(4)	6(2), 7
71. Case C-362/06	Judgment of the Court (Second Chamber) of 23 April 2009. Markku Sahlistedt and Others v Commission of the European Communities. Appeals — Conservation of natural habitats — List, adopted by a Commission decision, of sites of Community importance for the Boreal biogeographical region — Admissibility of an action for annulment brought by natural or legal persons against that decision. Article 4 of the Habitats Directive.		4
72. Case C-503/06	Judgment of the Court (Sixth Chamber) of 15 May 2008. Commission of the European Communities v Italian Republic. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Derogations from the system of protection of wild birds — Region of Liguria. Article 9 of the Birds Directive.	9	

Case #	Short information	Art. of BD	Art. of HD
73. Case C-293/07	Judgment of the Court (Second Chamber) of 11 December 2008. Commission of the European Communities v Hellenic Republic. Failure of a Member State to fulfil obligations — Directives 79/409/EEC and 92/43/EC — Conservation of wild birds — Special protection areas — Insufficient measures of protection. Article 4 of the Birds Directive, Article 6 of the Habitats Directive.	4(1, 2, 4)	6(2-4)
74. Case C-535/07	Judgment of the Court (Second Chamber) of 14 October 2010. European Commission v Republic of Austria. Failure of a Member State to fulfil obligations — Directives 79/409/EEC and 92/43/EEC — Conservation of wild birds — Incorrect designation and inadequate legal protection of special protection areas. Article 4 of the Birds Directive, Articles 6 and 7 of the Habitats Directive. SPA designation.	4(1, 2)	6(2), 7
75. Case C-76/08	Judgment of the Court (Second Chamber) of 10 September 2009. Commission of the European Communities v Republic of Malta. Failure of a Member State to fulfil obligations — Admissibility — Conservation of wild birds — Directive 79/409/EEC — Spring hunting — Prohibition — Derogation from the system of protection — Condition that there be no 'other satisfactory solution' — Legitimate expectations. Article 9 of the Birds Directive.	9(1)	

Case #	Short information	Art. of BD	Art. of HD
76. Case C-241/08	<p>Judgment of the Court (Second Chamber) of 4 March 2010. European Commission v French Republic. Failure of a Member State to fulfil obligations – Directive 92/43/EEC – Article 6(2) and (3) – Incorrect transposition – Special areas of conservation – Significant effect of a project on the environment – ‘Non-disturbing’ nature of certain activities – Assessment of the effects on the environment. Article 6(2-4) of the Habitats Directive.</p>		6(2-4)
77. Case C-259/08	<p>Judgment of the Court (Sixth Chamber) of 15 January 2009. Commission of the European Communities v Hellenic Republic. Failure of a Member State to fulfil obligations – Directive 79/409/EEC – Conservation of wild birds – Preservation and maintenance of habitats – Classification of special protection areas – Prohibition of hunting and capture – Incorrect transposition. Article 3, 4, 5 and 8 of the Birds Directive.</p>	3(1), (2), 4(1), 5, 8(1)	
78. Case C-308/08	<p>Judgment of the Court (Fourth Chamber) of 20 May 2010. European Commission v Kingdom of Spain. Failure of a Member State to fulfil obligations – Directive 92/43/EEC – Conservation of natural habitats – Wild fauna and flora – Protection arrangements before a habitat is placed on the list of sites of Community importance – Project for upgrading a country road. Articles 3(1) and 4(1), 12(4) of the Habitats Directive.</p>		3(1), 4(1), 12(4)

Case #	Short information	Art. of BD	Art. of HD
79. Case C-491/08	<p>Judgment of the Court (Fourth Chamber) of 10 June 2010. European Commission v Italian Republic. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Sites of Community importance — Tourism complex ‘Is Arenas’. Articles 3(1), and 4(1), 6(2) of the Habitats Directive.</p>		3(1), 4(1), 6(2)
80. Case C-560/08	<p>Judgment of the Court (Fifth Chamber) of 15 December 2011. European Commission v Kingdom of Spain. Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Directive 92/43/EEC — Conservation of natural habitats — Projects for the widening and/or upgrading of the M-501 road in Spain — ZEP ES 0000056 ‘Encinares del río Alberche y río Cofio’ ZEP ES0000056 — Proposed SCI ES310005 ‘Cuenca del río Guadarrama’ and proposed SCI ES3110007 ‘Cuenca de los ríos Alberche y Cofio’. Articles 6(3) and (4), 7 and 12(1)(b) and (d) of Habitats Directive.</p>		6(3), (4), 7, 12(1)(b), (d)

Case #	Short information	Art. of BD	Art. of HD
81. Case C-573/08	Judgment of the Court (Third Chamber) of 15 July 2010. European Commission v Italian Republic. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Measures transposing the directive. Articles 2, 3, 4, 5, 6, 7, 9, 10, 11, 13 and 18 of Birds Directive.	2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 18	
82. Case C-164/09	Judgment of the Court (Fourth Chamber) of 11 November 2010. European Commission v Italian Republic. Failure of a Member State to fulfil obligations — Conservation of wild birds — Directive 79/409/EEC — Derogations from the system of protection for wild birds — Hunting. Articles 7, 9(1) of the Birds Directive.	7, 9(1)	
83. Case C-383/09	Judgment of the Court (Fourth Chamber) of 9 June 2011. European Commission v French Republic. Failure of a Member State to fulfil obligations — Habitats Directive — Inadequacy of measures taken to protect the species <i>Cricetus cricetus</i> (European hamster) — Deterioration of habitats. Article 12(1)(d) of Habitats Directive.		12(1)

Case #	Short information	Art. of BD	Art. of HD
84. Case C-404/09	<p>Judgment of the Court (Fourth Chamber) of 24 November 2011. European Commission v Kingdom of Spain. Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Open-cast coal mines — ‘Alto Sil’ site — Special protection area — Site of Community importance — Brown bear (<i>Ursus arctos</i>) — Capercaillie (<i>Tetrao urogallus</i>). Article 6(2)-(4) of the Habitats Directive.</p>		6(2-4)
85. Case C-508/09	<p>Judgment of the Court (Eighth Chamber) of 3 March 2011. European Commission v Italian Republic. Failure of a Member State to fulfil obligations — Conservation of wild birds — Directive 79/409/EEC — Derogations from the system of protection for wild birds. Article 5(a) and 9(1) and (2) of the Birds Directive.</p>	5(a), 9(1),(2)	
86. Case C-522/09	<p>Judgment of the Court (Fourth Chamber) of 14 April 2011. European Commission v Roumanie. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Special protection areas — Areas designated insufficient in number and size — Irregularity of the pre-litigation procedure — Inadmissibility of the action. Article 4(1) and (2) of the Birds Directive.</p>	4(1),(2)	

Case #	Short information	Art. of BD	Art. of HD
87. Case C-538/09	<p>Judgment of the Court (First Chamber) of 26 May 2011. European Commission v Kingdom of Belgium. Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Article 6(3) — Special areas of conservation — Appropriate assessment of the implications of a plan or project which is likely to have a significant effect on a protected site — Exemption from assessment of plans or projects which are subject to a declaratory scheme — Incorrect transposition. Article 6(3) of the Habitats Directive.</p>		6 (5)
88. Case C-90/10	<p>Judgment of the Court (Fourth Chamber) of 22 September 2011. European Commission v Kingdom of Spain. Failure of a Member State to fulfil obligations — ‘Habitats’ directive — Conservation of natural habitats — Wild fauna and flora — Articles 4(4) and 6(1) and (2) — Establishment of priorities for special areas of conservation and of adequate protection thereof — Failure to ensure adequate legal protection of the special areas of conservation in the Canary Islands. Articles 4(4) and 6(1) and (2) of the Habitats Directive.</p>		4 (4), 6 (1), (2)

Case #	Short information	Art. of BD	Art. of HD
89. Case C-340/10	Judgment of the Court (Fourth Chamber) of 15 March 2012. European Commission v Republic of Cyprus. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Articles 4(1) and 12(1) — Failure to include Paralimni Lake as a site of Community importance within the time-limit laid down — System of protection for the species <i>Natrix natrix cypriaca</i> (Cypriot grass snake). Articles 3(1), 4(1) and 12(1) of the Habitats Directive.		3(1), 4(1), 12(1)
90. Case C-46/11	Judgment of the Court (Eighth Chamber) of 15 March 2012 — European Commission v Republic of Poland (Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Inadequate protection of certain species, including the otter (<i>Lutra lutra</i>) Article 12, 13 and 16 of the Habitats Directive.		12, 13, 16(1)
91. Case C-192/11	Judgment of the Court (Seventh Chamber) of 26 January 2012. European Commission v Republic of Poland. Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Scope of the system of protection — Derogations from the prohibitions laid down by the directive. Article 1, 5 and 9 of the Birds Directive.	1, 5, 9(1), (2)	

Case #	Short information	Art. of BD	Art. of HD
92. Case C-258/11	<p>Judgment of the Court (Third Chamber) of 11 April 2013 (request for a preliminary ruling from the Supreme Court – Ireland) – Peter Sweetman and Others v An Bord Pleanála (Environment – Directive 92/43/EEC – Article 6 – Conservation of natural habitats – Special areas of conservation – Assessment of the implications for a protected site of a plan or project – Criteria to be applied when assessing the likelihood that such a plan or project will adversely affect the integrity of the site concerned – Lough Corrib site – N6 Galway City Outer Bypass road scheme). Article 6(3) of the Habitats Directive.</p>		6(3)
93. Case C-517/11	<p>Judgment of the Court (Fourth Chamber) of 7 February 2013 – European Commission v Hellenic Republic (Failure of a Member State to fulfil obligations – Directive 92/43/EEC – Conservation of natural habitats – Article 6(2) – Deterioration and pollution of Lake Koroneia – Protection – Inadequacy of the measures taken – Directive 91/271/EEC – Urban waste-water treatment – Articles 3 and 4(1) and (3) – Agglomeration of Langada – System for the collection and treatment of urban waste-water – ‘Absence’. Article 6(2) of the Habitats Directive.</p>		6(2)

Case #	Short information	Art. of BD	Art. of HD
94. Case C-301/12	<p>Judgment of the Court (Second Chamber) of 3 April 2014 (request for a preliminary ruling from the Consiglio di Stato – Italy) – Cascina Tre Pini s.s. v Ministero dell’Ambiente e della Tutela del Territorio e del Mare, Regione Lombardia, Presidenza del Consiglio dei Ministri, Consorzio Parco Lombardo della Valle del Ticino, Comune di Somma Lombardo (Request for a preliminary ruling – Environment – Conservation of natural habitats and of wild fauna and flora – Directive 92/43/EEC – Sites of Community importance – Review of status in the event of pollution or degradation of the environment – National legislation not providing for persons concerned to request such a review – Attribution to the competent national authorities of a discretionary power to undertake of their own motion a review procedure of that status). Articles 4(1), 9 and 11 of the Habitats Directive.</p>		4(1), 9, 11

Case #	Short information	Art. of BD	Art. of HD
95. Case C-521/12	<p>udgment of the Court (Second Chamber) of 15 May 2014 (request for a preliminary ruling from the Raad van State (Netherlands)) – T. C. Briels and Others v Minister van Infrastructuur en Milieu (Environment – Directive 92/43/EEC – Article 6(3) and (4) – Conservation of natural habitats – Special areas of conservation – Assessment of the implications for a protected site of a plan or project – Authorisation for a plan or project on a protected site – Compensatory measures – Natura 2000 site Vlijmens Ven, Moerputten & Bossche Broek – Project on the route of the A2’s-Hertogenbosch – Eindhoven motorway). Article 6(3), (4) of the Habitats Directive.</p>		6(3), (4)
96. Case C-600/12	<p>Judgment of the Court (Fifth Chamber) of 17 July 2014 – European Commission v Hellenic Republic (Failure to fulfill obligations – Environment – Waste management – Directives 2008/98/EC, 1999/31/EC and 92/43/EEC – Discharge of waste on the island of Zakynthos – Zakynthos national marine park – Natura 2000 site – Caretta caretta sea turtle – Extension of the validity period of environmental clauses – Lack of conditioning plan – Operation of a landfill site – Faults – Saturation of the landfill site – Infiltration of leachate – Insufficient coverage and dispersion of waste – Extension of the landfill site. Article 6(3) of the Habitats Directive.</p>		6(3)

Case #	Short information	Art. of BD	Art. of HD
97. Case C-141/14	<p>Judgment of the Court (Third Chamber) of 14 January 2016. European Commission v Republic of Bulgaria. Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Kaliakra and Belite Skali special protection areas — Directive 92/43/EEC — Conservation of natural habitats and wild species — Kompleks Kaliakra site of Community importance — Directive 2011/92/EU — Assessment of the effects of certain projects on the environment — Temporal applicability of the system of protection — Deterioration of natural habitats of species and disturbance of species — Wind power — Tourism. Articles 4(1) and (2), (4) of the Birds Directive, Article 6(2)-(4) of the Habitats Directive.</p>	4(1), (2), (4)	6(2)-(4)
98. Case C-399/14	<p>Judgment of the Court (Third Chamber) of 14 January 2016. Grüne Liga Sachsen eV and Others v Freistaat Sachsen. Request for a preliminary ruling from the Bundesverwaltungsgericht. Reference for a preliminary ruling — Directive 92/43/EEC — Article 6(2) to (4) — Site included in the list of sites of Community importance after a project was authorised but before it began to be carried out — Review of the project after the site was included in that list — Rules governing that review — Consequences of the completion of the project for the choice of alternatives. Article 6(2) to (4) of the Habitats Directive.</p>		6(2)-(4)

Case #	Short information	Art. of BD	Art. of HD
99. Case C-461/14	<p>Judgment of the Court (Fifth Chamber) of 24 November 2016. European Commission v Kingdom of Spain. Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Special protection areas — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Directive 92/43/EEC — Conservation of natural habitats. Article 6(2) of the Habitats Directive and article 4(4) of the Birds Directive.</p>	4 (4)	6 (2)
100. Case C-504/14	<p>Judgment of the Court (Fourth Chamber) of 10 November 2016. European Commission v Hellenic Republic. Failure of a Member State to fulfil obligations — Environment — Nature conservation — Directive 92/43/EEC — Article 6(2) and (3) and Article 12(1)(b) and (d) — Wild fauna and flora — Conservation of natural habitats — Sea turtle Caretta caretta — Protection of sea turtles in the Gulf of Kyparissia — ‘Dunes of Kyparissia’ Site of Community importance — Protection of species. Articles 4(2), 6(2), (3) and (4) and 12(1)(b) and (d) of Habitats Directive.</p>		6(2), (3), 12(1)(b), (d)

Case #	Short information	Art. of BD	Art. of HD
101. Case C-387/15	<p>Judgment of the Court (Seventh Chamber) of 21 July 2016. Hilde Orleans and Others v Vlaams Gewest. Requests for a preliminary ruling from the Raad van State (Belgium). Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats — Special areas of conservation — Natura 2000 site ‘Scheldt and Durme estuary from the Dutch border to Ghent’ — Development of a port area — Assessment of the implications of a plan or project for a protected site — Occurrence of adverse effects — Prior but not yet completed development of an area of an equivalent type to the part destroyed — Completion subsequent to the assessment — Article 6(3) and (4) of the Habitats Directive.</p>		6(3), (4)
102. Case C-557/15	<p>Judgment of the Court (Third Chamber) of 21 June 2018. European Commission v Republic of Malta. Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Live-capturing and keeping — Species belonging to the finch family — Prohibition — National derogation regime — Member States’ power of derogation — Conditions. Articles 5(a) and (e), 8(1), 9(1) and (2) of the Birds Directive.</p>	5(a), (e), 8(1), 9(1), (2)	

Case #	Short information	Art. of BD	Art. of HD
103. Case C-281/16	Judgment of the Court (Fourth Chamber) of 19 October 2017. Vereniging Hoekschevaards Landschap v Staatssecretaris van Economische Zaken. Request for a preliminary ruling from the Raad van State. Reference for a preliminary ruling — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Implementing Decision (EU) 2015/72 — List of sites of Community importance for the Atlantic biogeographical region — Reduction of the size of a site — Scientific error — Validity. Articles 2(1), 3(1), 4(1) of Habitats Directive.		2(1), 3(1), 4(1)
104. Case C-683/16	Judgment of the Court (Third Chamber) of 13 June 2018. Deutscher Naturschutzring — Dachverband der deutschen Natur- und Umweltschutzverbände e.V. v Bundesrepublik Deutschland. Request for a preliminary ruling from the Verwaltungsgericht Köln. Reference for a preliminary ruling — Common Fisheries Policy — Regulation (EU) No 1380/2013 — Article 11 — Conservation of marine biological resources — Protection of the environment — Conservation of natural habitats and of wild fauna and flora — Exclusive competence of the European Union. Articles 3(1), 4(4) and 6(2) of the Habitats Directive.		3(1), 4(4), 6(2)
105. Case C-97/17	Judgment of the Court (Second Chamber) of 26 April 2018. European Commission v Republic of Bulgaria. Failure of a Member State to fulfil obligations — Protection of nature —	4(1)	

Case #	Short information	Art. of BD	Art. of HD
Case C-97/17 (Continuation)	Directive 2009/147/EC – Conservation of wild birds – Special Protection Area (SPA) – Classification as SPAs of the most suitable territories in number and size for the conservation of the bird species listed in Annex I to Directive 2009/147 – Important Bird Area (IBA) – IBA Rila – Partial classification of IBA Rila as an SPA. Article 4(1) of the Birds Directive.		
106. Case C-441/17	Judgment of the Court (Grand Chamber) of 17 April 2018. European Commission v Republic of Poland. Failure of a Member State to fulfil obligations – Environment – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Article 6(1) and (3) – Article 12(1) – Directive 2009/147/EC – Conservation of wild birds – Articles 4 and 5 – ‘Puszcza Białowieska’ Natura 2000 site – Amendment of the forest management plan – Increase in the volume of harvestable timber – Plan or project not directly necessary to the management of the site that is likely to have a significant effect on it – Appropriate assessment of the implications for the site – Adverse effect on the integrity of the site – Actual implementation of the conservation measures – Effects on the breeding sites and resting places of the protected species. Articles 1(1)(l), 6(1), (3) and (4), 12(1)(a) and (d) of the Habitats Directive, Articles 4(1) and (2), 5(b) and (d) of the Birds Directive.	4(1), (2), 5(b), (d)	1(1)(l), 6(1), (3), (4), 12(1)(a), (d)

Case #	Short information	Art. of BD	Art. of HD
107. Case C-461/17	<p>Judgment of the Court (Second Chamber) of 7 November 2018. <i>Brian Holohan and Others v An Bord Pleanála</i>. Request for a preliminary ruling from the High Court (Ireland). Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats — Conservation of wild fauna and flora — Road construction project — Appropriate assessment of effects on the environment — Extent of the obligation to state reasons — Directive 2011/92/EU — Assessment of the implications of certain projects — Annex IV, Point 3 — Article 5 (3) (d) — Meaning of the concept of ‘main alternatives’. Articles 6 (3) of the Habitats Directive.</p>	6 (3)	
108. Case C-674/17	<p>Judgment of the Court (Second Chamber) of 10 October 2019. <i>Luonnonnsuojeluyhdistys Tapiola Pohjois-Savo — Kainuu ry v Risto Mustonen and Others</i>. Request for a preliminary ruling from the Korkein hallinto-oikeus. Reference for a preliminary ruling — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 12 (1) — System of strict protection of animal species — Annex IV — <i>Canis lupus (wolf)</i> — Article 16 (1) (e) — Derogation allowing the taking of certain specimens in limited numbers — Hunting for population</p>		12 (1), 16 (1) (e)

Case #	Short information	Art. of BD	Art. of HD
Case C-674/17 (Continuation)	management purposes — Evaluation of the conservation status of populations of the species concerned. Articles 12 and 16 of the Habitats Directive.		
109. Case C-161/19	Judgment of the Court (First Chamber) of 23 April 2020. European Commission v Republic of Austria. Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Authorisations for spring hunting of male specimens of the ‘woodcocks’ bird species (<i>Scolopax rusticola</i>) in Lower Austria (Austria) — Articles 7(4) and (9)(1)(c) — No ‘other satisfactory solution’ — Notion of ‘small numbers’. Articles 7(4) and 9(1)(c) of the Birds Directive.	7(4), 9(1)(c)	
110. Case C-217/19	Judgment of the Court (First Chamber) of 23 April 2020. European Commission v Republic of Finland. Action for failure to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Authorisations for spring hunting of male specimens of the ‘common eider’ bird species (<i>Somateria mollissima</i>) in the province of Åland (Finland) — Concepts of ‘judicious use’ and ‘small numbers’. Article 7(4) and Article 9(1)(c) of the Birds Directive.	7(4), 9(1)(c)	

Case #	Short information	Art. of BD	Art. of HD
111. Case C-473/19	<p>Judgment of the Court (Second Chamber) of 4 March 2021. Föreningen Skydda Skogen and Others v Länsstyrelsen i Västra Götalands län and Others. Requests for a preliminary ruling from the Vänersborgs tingsrätt, mark- och miljödomstolen. Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 12(1) — Directive 2009/147/EC — Conservation of wild birds — Article 5 — Forestry — Prohibitions intended to ensure the conservation of protected species — Plan for final felling of trees — Site hosting protected species. Articles 5, 12(1)(a) to (d) of the Birds Directive.</p>	5, 12(1)(a)-(d)	
112. Case C-477/19	<p>Judgment of the Court (Seventh Chamber) of 2 July 2020. IE v Magistrat der Stadt Wien. Request for a preliminary ruling from the Verwaltungsgericht Wien. Reference for a preliminary ruling — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 12(1) — System of strict protection for animal species — Annex IV — <i>Cricetus cricetus</i> (European hamster) — Resting places and breeding sites — Deterioration or destruction — Areas which have been abandoned. Article 12(1) of the Habitats Directive.</p>		12(1)

Case #	Short information	Art. of BD	Art. of HD
113. Case C-432/21	<p>Judgment of the Court (Second Chamber) of 2 March 2023.</p> <p>Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(1) to (3), Article 12(1)(a) to (d), Article 13(1)(a) and Article 16(1) — Directive 2009/147/EC — Conservation of wild birds — Article 4(1), Article 5(a), (b) and (d) and Article 9(1) — Forest management based on good practice — Forest management plans — Aarhus Convention — Access to justice — Article 6(1)(b) and Article 9(2) — Examination of the lawfulness, as regards the substance and procedure, of forest management plans — Right of environmental organisations to bring an action.</p>	6(1)-(3), 12(1)(a)-(d), 13(1)(a) and 16(1)	6(1)-(5), 2(1)(a)-(d), 13(1)(a) and 16(1)
114. Case C-444/21	<p>Judgment of the Court of 29 June 2023. European Commission v Ireland (Protection des zones spéciales de conservation).</p> <p>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.</p>		4(4), 6(1)

Case #	Short information	Art. of BD	Art. of HD
115. Case C-116/22	Judgment of the Court (Second Chamber) of 21 September 2023. European Commission v Federal Republic of Germany. Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 4(4) and Article 6(1) — Failure to designate special areas of conservation — Failure to determine conservation objectives — Absence or insufficiency of conservation measures — Administrative practice.		4(4), 6(1)
116. Case C-601/22	Judgment of the Court (First Chamber) of 11 July 2024. Umweltverband WWF Österreich and Others v Tiroler Landesregierung. Request for a preliminary ruling from the Landesverwaltungsgericht Tirol. Reference for a preliminary ruling — Validity and interpretation — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 12(1) — System of strict protection for animal species — Annex IV — Canis lupus (wolf) — Equal treatment between Member States — Article 16(1) — National authorisation to take a specimen of a wild animal of the canis lupus species — Evaluation of the conservation status of populations of the species concerned — Geographical scope — Determination of the damage — Satisfactory alternative solution.		12(1) 16(1)

Case #	Short information	Art. of BD	Art. of HD
117. Case C-436/22	<p>Judgment of the Court (First Chamber) of 29 July 2024. Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL) v Administración de la Comunidad de Castilla y León. Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla y León. Reference for a preliminary ruling — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Articles 2, 4, 11, 12, 14, 16 and 17 — System of strict protection for animal species — Canis lupus (wolf) — Cynegetic exploitation — Assessment of the conservation status of populations of the species concerned — Conservation status of that species ‘unfavourable-poor’ — Exploitation incompatible with the maintenance or restoration of the species at a favourable conservation status — Taking into account of all the most recent scientific data.</p>		11, 12, 14, 17

Case #	Short information	Art. of BD	Art. of HD
118. Case C-66/23	<p>Judgment of the Court (First Chamber) of 12 September 2024. Elliniki Ornithologiki Etaireia and Others v Ypourgos Esoterikon and Others. Request for a preliminary ruling from the Symvoulio tis Epikrateias. Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Directive 2009/147/EC — Conservation of wild birds — Conservation of natural habitats and of wild fauna and flora — Classification of a territory as a Special Protection Area — ‘Classification’ species — Temporary horizontal measures applied uniformly to all Special Protection Areas — Failure to adopt individualised management plans.</p>	4 (1), 4 (2)	6 (2)-(4)
119. Case C-47/23	<p>Judgment of the Court (Third Chamber) of 14 November 2024. European Commission v Federal Republic of Germany. Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(2) — Appropriate steps to avoid, in special areas of conservation, the deterioration of natural habitats — Habitat types 6510 (lowland hay meadows) and 6520 (mountain hay meadows) protected by the Natura 2000 network — Loss of area — No specific surveillance of natural habitats — General and structural failure — Article 4(1) — Proposal by each Member State of a list of sites indicating which natural habitat types and native species the sites host — Regular updating of information relating to those sites.</p>		4 (1), 6 (2)

Case #	Short information	Art. of BD	Art. of HD
120. Case C-629/23	<p>Judgment of the Court (Fifth Chamber) of 12 June 2025. <i>MTÜ Eesti Suurkiskjad v Keskkonnaamet</i>. Request for a preliminary ruling from the Riigikohus. Reference for a preliminary ruling — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — First subparagraph of Article 1 (i) — Conservation status of a species — Concept — Article 14 — Management measures — Taking in the wild and exploitation compatible with the maintenance or restoration of the species at a favourable conservation status — Second subparagraph of Article 1 (i) — Assessment whether the conservation status of the species concerned is favourable — Cumulative conditions — <i>Canis lupus (wolf)</i> — Classification in the ‘vulnerable’ category of the International Union for Conservation of Nature’s ‘Red List’ — Animal species forming part of a population whose natural range extends beyond the territory of a Member State — Taking account of exchanges with populations of the same species present in neighbouring Member States or in third countries — Article 2 (3) — Taking account of economic, social and cultural requirements and regional and local characteristics.</p>		1 (i), 2 (3), 14 (1)

SUMMARY OF CASES

1. Case C-236/85 — Judgment of the Court of 13 October 1987. — Commission of the European Communities v Kingdom of the Netherlands. — Conservation of wild birds. — Articles 6(2,3) and 9(1) of the Birds Directive.

Summary

The transposition of a Directive into national law does not necessarily require the provisions of the Directive to be enacted in precisely the same words in an express and specific enactment; a general legal context may be sufficient if it is sufficiently clear and precise in order to ensure effectively the full application of the Directive. Mere administrative practices, which by their nature are alterable will by the authorities and are not given the appropriate publicity. Do not fulfil that requirement.

A faithful transposition becomes particularly important in a case such as that of Directive 79/409/EEC on the conservation of wild birds, in which the management of the common heritage is entrusted to the member states as regards their respective territories.

2. Case 247/85 — Judgment of the Court of 8 July 1987. — Commission of the European Communities v Kingdom of Belgium. — Conservation of wild birds. — Articles 1(1), 2, 5(B,E), 6(1,2,3,4), 7 and 9(1A, 1C, 2) of the Birds Directive.

Summary

The transposition of a Directive into national law does not necessarily require the provisions of the Directive to be enacted in precisely the same words in a specific, express legal provi-

sion of national law; a general legal context may be sufficient if it actually ensures the full application of the Directive in a sufficient clear and precise manner.

However, a faithful transposition becomes particularly important in a case such as the transposition of Directive 74/409 concerning the conservation of wild birds in which the management of the common heritage is entrusted to the member states in their respective territories.

3. Case C-252/85 — Judgment of the Court of 27 April 1988. — Commission of the European Communities v French Republic. — Conservation of wild birds. Articles 1, 5 (B, C, E), 7(4), 8(1) and 9(1,2) of the Birds Directive.

Summary

The transposition of a Directive into national law does not necessarily require the provisions of the Directive to be enacted in precisely the same words in a specific, express legal provision of national law; a general legal context may be sufficient if it actually ensures the full application of the Directive in a sufficient clear and precise manner. However, a faithful transposition becomes particularly important in a case such as the transposition of Directive 74/409 concerning the conservation of wild birds in which the management of the common heritage is entrusted to the member states in their respective territories.

4. Case 262/85 — Judgment of the Court of 8 July 1987. — Commission of the European Communities v Italian Republic. — Conservation of wild birds. — Articles 6(1-4), 7(4), 8(1) and 9(1,2) of the Birds Directive.

Summary

The transposition of a Directive into national law does not necessarily require the provisions of the Directive to be enacted in precisely the same words in a specific, express legal provision of national law; a general legal context may be sufficient if it actually ensures the full application of the Directive in a sufficient clear and precise manner.

However, a faithful transposition becomes particularly important in a case such as the transposition of Directive 74/409 concerning the conservation of wild birds in which the management of the common heritage is entrusted to the member states in their respective territories.

5. Case C-412/85 — Judgment of the Court of 17 September 1987. — Commission of the European Communities v Federal Republic of Germany. — Conservation of wild birds. — Articles 5 and 9(1,2) of the Birds Directive.

Summary

A member state which, in the law transposing Directive 79/409/EEC concerning the conservation of wild birds, provides that the general prohibitions laid down in Article 5 of the Directive on the deliberate killing or capture of the species of birds referred to in Article 1 of the Directive and on the deliberate destruction of, or damage to, their nests and eggs and the deliberate disturbance of those birds, in so far as their disturbance would be significant having regard to the objectives of the Directive, do not apply where the acts concerned take place in the course of the normal use of the land for agricultural, forestry or fishing purposes or in the context of the exploration of the products obtained from such activities, has not correctly transposed the Directive. By so doing, it is authorizing derogations which do not meet the requirements laid down in this regard in Article 9 of the Directive.

6. Case C-339/87 — Judgment of the Court of 15 March 1990. — Commission of the European Communities v Kingdom of the Netherlands. Conservation of wild birds. — Articles 5, 6, 7, 8 and 9(1,2) of the Birds Directive.

Summary

The transposition of a directive into national law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific express legal provision, a general legal context may be sufficient if it actually

ensures the full application of the directive in a sufficiently clear and precise manner. That may be the case where transposition is effected by a legislative provision serving as the basis for the adoption of administrative measures which are officially published, general in scope and capable of creating rights and obligations for individuals. In contrast, mere administrative practices, which by their nature may be changed at will by the authorities, do not constitute proper transposition.

This is an area where the faithful transposition of directives is particularly important, since a common heritage is at stake whose management is entrusted to the Member States as regards their respective territories. Consequently, any derogations made by the legislation of a Member State from the general prohibitions set out in Directive 79/409 in order to ensure the conservation of wild birds must be based on at least one of the reasons listed exhaustively in Article 9(1) of the directive and must meet the criteria laid down in Article 9(2), the purpose of which is to limit derogations to what is strictly necessary and to enable the Commission to supervise them.

The fact that certain means of hunting or means of killing which are prohibited by Directive 79/409 on the conservation of wild birds are unknown in a Member State does not release that Member State from its obligation to adopt laws or administrative procedures in order to ensure that the provisions of the directive are adequately transposed. In view of the principle of legal certainty the relevant prohibitions must be reproduced in mandatory legal provisions.

7. Case C-288/88 — Judgment of the Court of 3 July 1990. — Commission of the European Communities v Federal Republic of Germany. — Failure of a Member State to fulfil its obligations — Articles 5, 8 and 9 of the Birds Directive.

Summary

Federal Republic of Germany has failed to fulfil its obligations under the EEC Treaty by not adopting all the measures necessary to implement Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

8. Case C-57/89 — Judgment of the Court of 28 February 1991. — Commission of the European Communities v Federal Republic of Germany. — Conservation of wild birds — Construction work in a special protection area. — Leybucht — Articles 2 and 4 (1, 3, 4) of the Birds Directive. SPA Changes of site borders.

Summary

Although the Member States do have a certain discretion with regard to the choice of the territories which are most suitable for classification as special protection areas pursuant to Article 4(4) of Directive 79/409 on the conservation of wild birds, they do not have the same discretion to modify or reduce the extent of such areas, which contain the most suitable environments for the species listed in Annex I, and thus unilaterally escape from the obligations imposed on them by Article 4(4) of the directive.

The power of the member States to reduce the extent of special protection areas can be justified only on exceptional grounds corresponding to a general interest which is superior to the general interest represented by the ecological objective of the directive. In that context the economic and recreational requirements referred to in Article 2 of the directive do not enter into consideration, since that provision does not constitute an autonomous derogation from the system of protection established by the directive.

9. Case C-157/89 — Judgment of the Court of 17 January 1991. — Commission of the European Communities v Italian Republic. — Failure to comply with a directive — Conservation of wild birds. — Article 7(4) of the Birds Directive.

Summary

Italian Republic by authorizing the hunting of various species of birds during the rearing season and the various stages of reproduction and of various migratory species during their return to their rearing grounds, has failed to fulfil its obligations under Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

10. Case C-169/89 — Judgment of the Court (Sixth Chamber) of 23 May 1990. — Criminal proceedings against Gourmetterie Van den Burg. — Reference for a preliminary ruling: Hoge Raad — Netherlands. — Free movement of goods — Prohibition on the importation of birds. — Articles 6(2,3) and 14 of the Birds Directive.

Summary

Article 14 of Directive 79/409 on the conservation of wild birds, which authorizes the Member States to adopt stricter protective measures than those provided for under the directive, applies only to migratory or endangered species, with the result that Member States are required, with regard to the other bird species covered, to bring into force the laws, regulations and administrative provisions necessary to comply with the directive, but are not authorized to adopt stricter protective measures except as regards species occurring within their territory.

It follows that a prohibition on the importation and marketing of a bird species which does not occur in the territory of the legislating Member State but is found in another Member State where it may lawfully be hunted under the terms of the directive and under national legislation and which is neither migratory nor endangered within the meaning of the directive is contrary to the directive and cannot be justified by Article 36 of the Treaty since this matter has already been the subject of exhaustive harmonization

11. Case C-334/89 — Judgment of the Court of 17 January 1991. — Commission of the European Communities v Italian Republic. — Failure by a Member State to fulfil its obligations — Conservation of wild birds. — Article 4(1) of the Birds Directive.

Summary

Italian Republic by failing to adopt within the prescribed period the measures needed to implement in national law Commission Directive 85/411/EEC of 25 July 1985 amending Council Directive 79/409/EEC on the conservation of wild birds,

or at least by failing to inform the Commission of any measures adopted, has failed to fulfil its obligations under the EEC Treaty.

12. Case C-355/90 — Judgment of the Court of 2 August 1993. — Commission of the European Communities v Kingdom of Spain. — Conservation of wild birds — Special protection areas Marismas de Santoña. — Articles 2, 3(1) and 4(1,2,4) of the Birds Directive. SPA designation.

Summary

Articles 3 and 4 of Directive 79/409 on the conservation of wild birds require Member States to preserve, maintain and re-establish the habitats of the said birds as such, because of their ecological value. The obligations on Member States under those articles exist even before any reduction is observed in the number of birds or any risk of a protected species becoming extinct has materialized.

In implementing Directive 79/409 on the conservation of wild birds, Member States are not authorized to invoke, at their option, grounds of derogation based on taking other interests into account. With respect, more specifically, to the obligation to take special conservation measures for certain species under Article 4 of the directive, such grounds must, in order to be acceptable, correspond to a general interest which is superior to the general interest represented by the ecological objective of the directive. In particular, the interests referred to in Article 2 of the directive, namely economic and recreational requirements, do not enter into consideration, as that provision does not constitute an autonomous derogation from the general system of protection established by the directive.

In choosing the territories which are most suitable for classification as special protection areas pursuant to Article 4(1) of Directive 79/409 on the conservation of wild birds, Member States have a certain discretion which is limited by the fact that the classification of those areas is subject to certain ornithological criteria determined by the directive, such as the presence of birds listed in Annex I to the directive, on the one

hand, and the designation of a habitat as a wetland area, on the other. However, Member States do not have the same discretion under Article 4(4) of the directive to modify or reduce the extent of such areas.

13. Case C-75/91 — Judgment of the Court of 6 February 1992. — Commission of the European Communities v Kingdom of the Netherlands. — Failure of a Member State to fulfil its obligations — Failure to comply with a judgment of the Court.

Summary

The immediate and uniform implementation of Community law requires that the process of complying with a judgment must be initiated at once and must be completed as soon as possible.

14. Case C-435/92 — Judgment of the Court of 19 January 1994. — Association pour la Protection des Animaux Sauvages and others v Préfet de Maine-et-Loire and Préfet de Loire-Atlantique. — Reference for a preliminary ruling: Tribunal administratif de Nantes — France. — Conservation of wild birds — Hunting season. — Article 7(4) of the Birds Directive.

Summary

Pursuant to Article 7(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, the closing date for the hunting of migratory birds and waterfowl must be fixed in accordance with a method which guarantees complete protection of those species during the period of pre-mating migration. Methods whose object or effect is to allow a certain percentage of the birds of a species to escape such protection, such as those consisting in fixing the closing date for hunting by reference to the period during which migratory activity reaches its highest level, or those taking into account the moment at which a certain percentage of birds have started to migrate, or those consisting in ascertaining the average date of the commencement of pre-mating migration, accordingly do not comply with that provision.

It is incompatible with the third sentence of Article 7(4) of the directive, concerning migratory species in particular, for a Member State to fix closing dates for the hunting season which vary according to the species of bird, unless the Member State concerned can adduce evidence, based on scientific and technical data relevant to each individual case, that staggering the closing dates for hunting does not impede the complete protection of the species of bird liable to be affected by such staggering. The fixing of closing dates which vary between the different parts of the territory of a Member State is compatible with the Directive on condition that complete protection of the species is guaranteed.

If the power to fix the closing date for the hunting of migratory birds is delegated to subordinate authorities, the provisions which confer that power must ensure that the closing date can be fixed only in such a way as to make possible complete protection of the species during pre-mating migration.

15. Case C-118/94 — Judgment of the Court (Fifth Chamber) of 7 March 1996. — *Associazione Italiana per il World Wildlife Fund, Ente Nazionale per la Protezione Animali, Lega per l'Ambiente — Comitato Regionale, Lega Anti Vivisezione — Delegazione Regionale, Lega per l'Abolizione della Caccia, Federnatura Veneto and Italia Nostra — Sezione di Venezia v Regione Veneto*. — Reference for a preliminary ruling: Tribunale amministrativo regionale per il Veneto — Italy. — Hunting — Conditions for exercise of the Member States' power to derogate. — Articles 5, 7 and 9(1,2) of the Birds Directive.

Summary

Pursuant to the division of judicial functions between national courts and the Court of Justice provided for by Article 177 of the Treaty, the Court gives preliminary rulings where the questions referred concern the interpretation of a provision of Community law without, in principle, having to look into the circumstances in which the national courts were prompted to submit questions and envisage applying the provision of Community law which they have asked the Court to interpret.

The matter would be different only if it were apparent either that the procedure provided for in Article 177 had been misused and was in fact being used to have the Court give a ruling when there was no genuine dispute or that the provision of Community law referred to the Court for interpretation was manifestly incapable of applying.

Article 9(1) of Directive 79/409 on the conservation of wild birds, which provides for the possibility for the Member States to derogate from the general prohibition on hunting protected species laid down in Articles 5 and 7 of the directive where there is no other satisfactory solution and for one of the reasons listed exhaustively therein, and Article 9(2), which defines the precise formal conditions for such derogations, must be interpreted as authorizing the Member States to grant those derogations only by measures which refer in sufficient detail to the factors mentioned in Article 9(1) and (2).

16. Case C-149/94 — Judgment of the Court (Third Chamber) of 8 February 1996. — Criminal proceedings against Didier Vergy. — Reference for a preliminary ruling: Tribunal de grande instance de Caen — France. — Prohibition of sale — Specimen born and reared in captivity. — Articles 1, 2, 5, 6 and 9 of the Birds Directive.

Summary

Directive 79/409 on the conservation of wild birds requires the Member States to prohibit trade in specimens belonging to a species of bird which is not listed in the annexes thereto in so far as the species concerned is a species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies subject to the option to derogate provided for by Article 9.

The duty to provide such protection is unaffected by the fact that the natural habitat of the species in question may not occur in the territory of the Member State concerned. The importance of complete and effective protection of wild birds throughout the Community, irrespective of the areas they stay in or pass through, causes any national legislation which

delimits the protection of wild birds by reference to the concept of national heritage to be incompatible with the Directive.

However, Directive 79/409 is not applicable to specimens of birds born and reared in captivity. To extend the protective regime beyond bird populations present in their natural environment would not serve the environmental objective underlying the Directive. Furthermore, since the Community legislature has taken no action with regard to trade in specimens of birds born and raised in captivity, the Member States remain competent to regulate that trade, subject to Article 30 et seq. of the Treaty concerning products imported from other Member States.

17. Case C-202/94 — Judgment of the Court (Third Chamber) of 8 February 1996. — Criminal proceedings against Godefridus van der Feesten. — Reference for a preliminary ruling: Gerechtshofs-Hertogenbosch — Netherlands. — Scope of the Directive — Protected species — Application of the Directive to a subspecies not occurring naturally in the wild in the European territory of the Member States. — Articles 1 and 14 of the Birds Directive.

Summary

The present request for a preliminary ruling raises a number of novel issues regarding the interpretation of the wild birds directive (hereinafter ‘the Directive’). In particular, it poses the question of whether the protection of the Directive extends to subspecies of birds which are not to be found in the wild state in the European territory of the Member States, where the subspecies in question is difficult or impossible to distinguish from other subspecies of the same species, and where other subspecies are protected under the Directive.

18. Case C-44/95 — Judgment of the Court of 11 July 1996. — Regina v Secretary of State for the Environment, ex parte: Royal Society for the Protection of Birds. — Reference for a preliminary ruling: House of Lords — United Kingdom. —

Delimitation of Special Protection Areas — Discretion enjoyed by the Member States — Economic and social considerations — Lappel Bank. — Articles 2, 3 and 4(1,2,4) of the Birds Directive and Articles 6 and 7 of the Habitats Directive. SPA designation.

Summary

Article 4(1) or Article 4(2) of Directive 79/409 on the conservation of wild birds, which requires the Member States to take special conservation measures for certain species, and in particular to designate as Special Protection Areas the most suitable territories for their conservation, must be interpreted as meaning that a Member State is not authorized to take account of the economic requirements mentioned in Article 2 of the directive when choosing and defining the boundaries of a Special Protection Area or even to take account of economic requirements constituting a general interest superior to that represented by the ecological objective of that directive.

Similarly, a Member State may not take account of economic requirements in so far as they amount to imperative reasons of overriding public interest of the kind referred to in Article 6(4) of Directive 92/43 on the conservation of the natural habitats of wild fauna and flora, as inserted in Directive 79/409. Although the latter provision widened the range of grounds on which it may be justified to encroach upon Special Protection Areas already designated as such, by expressly including therein reasons of a social or economic nature, it nevertheless did not make any change regarding the initial stage of classification referred to in Article 4(1) and (2) of Directive 79/409, and therefore the classification of sites as Special Protection Areas must in all circumstances be carried out in accordance with the criteria accepted by those provisions.

19. Case C-3/96 — Judgment of the Court of 19 May 1998. — Commission of the European Communities v Kingdom of the Netherlands. — Conservation of wild birds — Special protection areas. — IBA 1989 — Article 4(1) of the Birds Directive. SPA designation.

Summary

The aim of the pre-litigation procedure provided for in Article 169 of the Treaty is to give the Member State concerned an opportunity to justify its position or, as the case may be, to comply of its own accord with the requirements of the Treaty. If that attempt to reach a settlement proves unsuccessful, the Member State is requested to comply with its obligations as set out in the reasoned opinion which concludes the pre-litigation procedure, within the period prescribed in that opinion. The proper conduct of that procedure constitutes an essential guarantee intended by the Treaty not only to protect the rights of the Member State concerned but also to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter, the subject-matter being determined by the Commission's reasoned opinion.

Where it is not disputed that the reasoned opinion and the procedure leading up to it were properly conducted, a Member State's right to a fair hearing is not infringed by the circumstance that the contentious procedure is opened by an application which takes no account of any new matters of fact or law put forward by the Member State concerned in its reply to the reasoned opinion. It is fully open to that State to raise those matters in the contentious procedure, to begin with in its first pleading in defence.

Article 4(1) of Directive 74/409 on the conservation of wild birds requires Member States, if species mentioned in Annex I occur on their territory, to classify as special protection areas the most suitable territories in number and size for their conservation, an obligation which it is not possible to avoid by adopting other special conservation measures. Nor may the economic requirements mentioned in Article 2 of the directive be taken into account in this respect.

As regards the Member States' margin of discretion in choosing the most suitable territories, that does not concern the appropriateness of classifying as special protection areas the territories which appear the most suitable according to ornithological criteria, but only the application of those criteria

for identifying the most suitable territories for conservation of the species in question.

Consequently, where it appears that a Member State has classified as special protection areas sites the number and total area of which are manifestly less than the number and total area of the sites considered to be the most suitable, it will be possible to find that that Member State has failed to fulfil its obligation under Article 4(1) of the directive; for assessing the extent to which the Member State has complied with that obligation, the Court may use as a basis of reference the Inventory of Important Bird Areas in the European Community, 1989, which draws up an inventory of areas of great importance for the conservation of wild birds in the Community.

20. Case C-10/96 — Judgment of the Court (Third Chamber) of 12 December 1996. *Ligue royale belge pour la protection des oiseaux ASBL and Société d'études ornithologiques AVES ASBL v Région Wallonne*, interveners: *Fédération royale ornithologique belge ASBL*. Reference for a preliminary ruling: *Conseil d'Etat — Belgium*. Article 9(1 C) of birds Directive.

Summary

Article 9(1)(c) of Directive 79/409 on the conservation of wild birds, under which Member States may, on condition that there is no other satisfactory solution, derogate from the prohibition of killing or capturing protected species, must be interpreted as meaning that a Member State may not, on a decreasing basis and for a limited period, authorize the capture of certain protected species in order to enable bird fanciers to stock their aviaries, where breeding and reproduction of those species in captivity are possible but are not yet practicable on a large scale by reason of the fact that many fanciers would be compelled to alter their installations and change their habits. It is only if it is established that, were it not for the capture of birds in the wild, breeding and reproduction of protected species in captivity could not prosper that this alternative could not be regarded as constituting a satisfactory solution within the meaning of that provision.

Article 9(1)(c) of Directive 79/409 on the conservation of wild birds must be interpreted as meaning that a Member State is authorized, with a view to obviating, in bird breeding for recreational purposes, the problems of consanguinity which would result from too many endogenous crossings, to permit the capture of protected species, which may constitute judicious use within the meaning of that provision, on condition that there is no other satisfactory solution, it being understood that the number of specimens which may be captured must be fixed at the level of what proves to be objectively necessary to provide a solution for those problems, subject always to observance of the maximum limit referred to in that provision.

21. Case C-329/96 — Judgment of the Court (Fifth Chamber) of 26 June 1997. — Commission of the European Communities v Hellenic Republic. — Failure to fulfil obligations — Failure to transpose the Habitats Directive.

Summary

By application lodged at the Court Registry on 8 October 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing, within the prescribed period, to adopt and/or notify to it the laws, regulations and administrative provisions necessary to comply with 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, hereinafter 'the Directive'), the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and that directive.

It must accordingly be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, the Hellenic Republic has failed to fulfil its obligations under Article 23 thereof.

22. Case C-83/97 — Judgment of the Court (Fifth Chamber) of 11 December 1997. — Commission of the European Com-

munities v Federal Republic of Germany. — Failure to fulfil obligations — Failure to transpose the Habitats Directive. — Article 189 of the EEC Treaty and Article 23 of the Habitats Directive.

Summary

Mere administrative practices, which by their nature are alterable at will by the administration and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under Article 189 of the Treaty.

23. Case C-166/97 — Judgment of the Court (Fifth Chamber) of 18 March 1999. — Commission of the European Communities v French Republic. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Special protection areas. — Article 4(1,2,4) of the Birds Directive.

Summary

A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive.

In an action under Article 169 of the Treaty, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing at the end of the period laid down in the reasoned opinion.

Article 4(1) and (2) of Directive 79/409 on the conservation of wild birds requires the Member States to provide the special protection areas referred to therein with a legal protection regime that is capable, in particular, of ensuring both the survival and reproduction of the bird species listed in Annex I to the directive and the breeding, moulting and wintering of migratory species which are regular visitors, albeit not listed in that annex.

Under Article 4(4) of Directive 79/409 on the conservation of wild birds, Member States are required to take appropriate steps to avoid pollution and deterioration of the habitats of the

species concerned, even in relation to an area which has not been classified as a special protection area provided that, under the directive, it should have been so classified. It follows that any infringement of that provision presupposes that the area in question is one of the most suitable territories in number and size for the conservation of protected species, within the meaning of the fourth subparagraph of Article 4(1) of the directive which lays down the criteria for such classification.

In this connection, the mere fact that a site has been included by a Member State in an inventory of important areas for bird conservation does not prove that it ought to have been classified as a special protection area.

24. Case C-96/98 — Judgment of the Court (Fifth Chamber) of 25 November 1999. — Commission of the European Communities v French Republic. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Special protection areas. — Articles 2 and 4(1,2,4) of the Birds Directive. SPA Changes of site borders.

Summary

In an action under Article 169 of the Treaty (now Article 226 EC), the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing at the end of the period laid down in the reasoned opinion.

Article 4(1) and (2) of Directive 79/409 on the conservation of wild birds requires the Member States to provide the special protection areas referred to therein with a legal protection regime that is capable, in particular, of ensuring both the survival and reproduction of the bird species listed in Annex I to the Directive and the breeding, moulting and wintering of migratory species which are regular visitors, albeit not listed therein.

Sufficient protection for the purposes of that provision is not ensured by national legislation concerning water which fails to make provision for water management or by agri-environmental measures that are voluntary and purely hortatory in nature in relation to farmers working holdings located in special pro-

tection areas. The first sentence of Article 4(4) of the Directive 79/409 on the conservation of wild birds requires Member States to take appropriate steps to avoid, inter alia, deterioration of habitats, not only in areas classed as special protection areas in accordance with Article 4(1), but also in areas which are the most suitable for the conservation of wild birds, even if they have not been classified as special protection areas, provided that they merit such classification. It follows, with regard to the latter areas, that any infringement of the first sentence of Article 4(4) of Directive 79/409 presupposes that the areas in question are among the most suitable territories in number and size for the conservation of protected species, within the meaning of the fourth subparagraph of Article 4(1), and that these areas have suffered deterioration.

Even if it were assumed that Community aid measures for agriculture are disadvantageous to agriculture compatible with the conservation requirements laid down by Directive 79/409, that would not dispense a Member State from its obligations under that Directive, in particular, those under the first sentence of Article 4(4) thereof.

For a complaint to be upheld, where it is alleged that Article 4(4) of Directive 79/409 on the conservation of wild birds has been infringed by reason of the declassification, through a reduction in size, of a portion of an area which has been classified as a special protection area, the area in question must have been part of the classified special protection area.

25. Case C-256/98 — Judgment of the Court (Fifth Chamber) of 6 April 2000. — Commission of the European Communities v French Republic. — Failure by a Member State to fulfil its obligations — Conservation of natural habitats and of wild fauna and flora. — Article 6(3,4) of the Habitats Directive.

Summary

Under Article 38(1)(c) of the Rules of Procedure of the Court of Justice parties are required to state the subject-matter of the proceedings in the application initiating proceedings. Even though Article 42 of those Rules allows, subject to specific

conditions, the introduction of new pleas in law, it is not permissible for a party to alter the very subject-matter of the proceedings. It follows that the merits of an application must be determined solely in the light of the submissions made in the application initiating the proceedings.

Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which requires the assessment of the implications of development plans not directly connected with or necessary to the management of a site in a special area of conservation but likely to have a significant effect thereon, cannot authorise a Member State to enact national legislation which allows that environmental impact assessment obligation for development plans to be waived because of the low costs entailed or the particular type of work planned.

26. Case C-371/98 — Judgment of the Court of 7 November 2000. — *The Queen v Secretary of State for the Environment, Transport and the Regions, ex parte First Corporate Shipping Ltd*, interveners: World Wide Fund for Nature UK (WWF) and Avon Wildlife Trust. — Reference for a preliminary ruling: High Court of Justice (England & Wales), Queen's Bench Division (Divisional Court) — United Kingdom. — Conservation of natural habitats and of wild fauna and flora — Definition of the boundaries of sites eligible for designation as special areas of conservation — Discretion of the Member States — Economic and social considerations — Severn Estuary. Articles 2(3), 3(1,2) and 4(1,2) of the Habitats Directive.

Summary

Article 4(1) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a Member State may not take account of economic, social and cultural requirements or regional and local characteristics, as mentioned in Article 2(3) of that directive, when selecting and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance.

To produce a draft list of sites of Community importance, capable of leading to the creation of a coherent European ecological network of special areas of conservation, the Commission must have available an exhaustive list of the sites which, at national level, have an ecological interest which is relevant from the point of view of the directive's objective of conservation of natural habitats and wild fauna and flora. Only in that way is it possible to realise the objective, in the first subparagraph of Article 3(1) of Directive 92/43, of maintaining or restoring the natural habitat types and the species' habitats concerned at a favourable conservation status in their natural range, which may lie across one or more frontiers inside the Community. Having regard to the fact that, when a Member State draws up the national list of sites, it is not in a position to have precise detailed knowledge of the situation of habitats in the other Member States, it cannot of its own accord, whether because of economic, social or cultural requirements or because of regional or local characteristics, delete sites which at national level have an ecological interest relevant from the point of view of the objective of conservation without jeopardising the realisation of that objective at Community level.

27. Case C-374/98 — Judgment of the Court (Sixth Chamber) of 7 December 2000. — Commission of the European Communities v French Republic. — Failure of Member State to fulfil its obligations — Conservation of wild birds — Special protection areas. — Article 4(1,2,4) of the Birds Directive and Articles 6(2–4) and 7 of the Habitats Directive.

Summary

The inventory of areas which are of great importance for the conservation of wild birds, more commonly known under the acronym IBA (Inventory of Important Bird Areas in the European Community), although not legally binding on the Member States concerned, contains scientific evidence making it possible to assess whether a Member State has complied with its obligation to classify as special protection areas the most suitable territories in number and size for conservation of the

protected species. It follows from the general scheme of Article 4 of Directive 79/409 on the conservation of wild birds that, where a given area fulfils the criteria for classification as a special protection area, it must be made the subject of special conservation measures capable of ensuring, in particular, the survival and reproduction of the bird species mentioned in Annex I to that directive.

The text of Article 7 of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora expressly states that Article 6(2) to (4) of that directive apply, in substitution for the first sentence of Article 4(4) of Directive 79/409 on the conservation of wild birds, to the areas classified under Article 4(1) or (2) of the latter directive. It follows that, on a literal interpretation of that passage of Article 7 of Directive 92/43, only areas classified as special protection areas fall under the influence of Article 6(2) to (4) of that directive. The fact that the protection regime under the first sentence of Article 4(4) of Directive 79/409 applies to areas that have not been classified as special protection areas but should have been so classified does not in itself imply that the protection regime referred to in Article 6(2) to (4) of Directive 92/43 replaces the first regime referred to in relation to those areas.

28. Case C-38/99 — Judgment of the Court (Sixth Chamber) of 7 December 2000. — *Commission of the European Communities v French Republic*. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Hunting periods. — Article 7 of the Birds Directive.

Summary

Article 7(4) of Directive 79/409 on the conservation of wild birds seeks in particular to impose a prohibition of hunting of all species of wild birds during the rearing periods and the various stages of reproduction and dependency and, in the case of migratory species, during their return to their rearing grounds. Moreover that article is designed to secure a complete system of protection in the periods during which the survival of wild birds is particularly under threat. Accordingly, protection

against hunting activities cannot be confined to the majority of the birds of a given species, as determined by average reproductive cycles and migratory movements.

The national authorities are not empowered by Directive 79/409 on the conservation of wild birds to lay down closing dates for hunting which vary according to species of migratory birds or waterfowl unless the Member State concerned can adduce evidence, based on scientific and technical data relevant to each individual case, that staggering the closing dates for hunting does not impede the complete protection of species of bird liable to be affected by such staggering.

The transposition of a directive into domestic law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific, express provision of national law and a general legal context may be sufficient if it actually ensures the full application of the directive in a sufficiently clear and precise manner. However, faithful transposition becomes particularly important in the case of Directive 79/409 on the conservation of wild birds where management of the common heritage is entrusted to the Member States in their respective territories.

29. Case C-67/99 — Judgment of the Court (Sixth Chamber) of 11 September 2001. — Commission of the European Communities v Ireland. — Failure by a Member State to fulfil its obligations — Conservation of natural habitats — Conservation of wild fauna and flora — List of sites — Site information. — Article 4(1) of the Habitats Directive.

Summary

Ireland has failed to fulfil its obligations under that directive by failing to transmit to the Commission, within the period prescribed, the list of sites mentioned in the first subparagraph of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, together with the information on those sites required by the second subparagraph of Article 4(1) thereof.

30. Case C-71/99 — Judgment of the Court (Sixth Chamber) of 11 September 2001. — Commission of the European Communities v Federal Republic of Germany. — Failure by a Member State to fulfil its obligations — Conservation of natural habitats — Conservation of wild fauna and flora — List of sites — Site information. — Article 4(1) of the Habitats Directive.

Summary

Federal Republic of Germany has failed to fulfil its obligations under that directive by failing to transmit to the Commission, within the prescribed period, the list of sites mentioned in the first subparagraph of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, together with the information on those sites required by the second subparagraph of Article 4(1) thereof.

31. Case C-159/99 — Judgment of the Court (Sixth Chamber) of 17 May 2001. — Commission of the European Communities v Italian Republic. — Failure by a Member State to fulfil its obligations — Directive 79/409/EEC — Conservation of wild birds — Admissibility. — Articles 5(a,e), 7(1) and 9(1,2) of the Birds Directive.

Summary

Where, in an action against a Member State for failure to fulfil its obligations, the Commission, in a supplementary reasoned opinion, formulates a new complaint against the Member State which was not formulated in its letter of formal notice, and that amendment of the complaints, despite the generality of terms which is admissible for a letter of formal notice, goes beyond a mere clarification of the first initial brief summary of complaints, the Commission's second complaint cannot be examined in the proceedings before the Court.

32. Case C-220/99 — Judgment of the Court (Sixth Chamber) of 11 September 2001. — Commission of the European Communities v French Republic. — Failure by a Member State

to fulfil its obligations — Conservation of natural habitats — Conservation of wild fauna and flora — List of sites — Site information. — Article 4(1) of the Habitats Directive.

Summary

The French Republic has failed to fulfil its obligations under Habitats directive by failing to transmit to the Commission, within the period prescribed, the list of sites mentioned in the first subparagraph of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, together with the information on those sites required by the second subparagraph of Article 4(1) thereof.

33. Case C-103/00 — Judgment of the Court (Sixth Chamber) of 30 January 2002. — Commission of the European Communities v Hellenic Republic. — Failure by a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Protection of species *Caretta caretta* on Zakynthos. — Article 12(1 b and d) of the Habitats Directive.

Summary

The Court declares that by failing to take, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* on Zakynthos so as to avoid any disturbance of the species during its breeding period and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

34. Case C-117/00 — Judgment of the Court (Sixth Chamber) of 13 June 2002. — Commission of the European Communities v Ireland. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Special protection areas. —

Articles 3 and 4(4) of the Birds Directive and Article 6(2) of the Habitats Directive.

Summary

The Owenduff-Nepin Beg Complex was classified as a special protection area in October 1996 and thus it is Article 6(2) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, rather than the first sentence of Article 4(4) of Directive 79/409 on the conservation of wild birds, that applies to the area. In so far as concerns land classified as a special protection area, Article 7 of Directive 92/43 provides that the obligations arising under the first sentence of Article 4(4) of Directive 79/409 are replaced, inter alia, by the obligations arising under Article 6(2) of Directive 92/43 as from the date of implementation of the latter directive or the date of classification under Directive 79/409, where the latter date is later.

35. Case C-240/00 — Judgment of the Court (Sixth Chamber) of 6 March 2003. — Commission of the European Communities v République de Finlande. — Protection of wild birds and their habitats — Special protection areas. — Article 4(1,2,3) of the Birds Directive.

Summary

Article 4(1) and (2) of Directive 79/409 on the conservation of wild birds requires Member States to classify as special protection areas the most suitable territories in number and size for the conservation of the species mentioned in Annex I as well as the breeding, moulting and wintering areas and staging posts along the migration routes of migratory species not listed in that annex. A contingent classification of the special protection area sites resulting from a decision of the competent authority in the Member State concerned, which may be amended in accordance with the judgments in the actions brought against it, cannot be held to constitute proper fulfilment of the obligation to classify sites which is incumbent on Member States and moreover, the lack of a full and definitive

classification prevents the Commission from taking the appropriate initiatives referred to in Article 4(3) of the directive for the purpose of the coordination necessary to ensure that the special protection areas form a coherent whole.

36. Case C-75/01 — Judgment of the Court (Sixth Chamber) of 13 February 2003. — Commission of the European Communities v Kingdom of Belgium. — Failure by a Member State to fulfil its obligations — Conservation of natural habitats — Wild fauna and flora — Incomplete transposition. — Articles 1, 4(5), 5(4), 6, 7, 12(1)(b) and (c), 12(2), 12(4), 13(1)(b), 14, 15, 16(1), 22(b) and 23(2) of the Habitats Directive.

Summary

The Grand Duchy of Luxembourg has failed to fulfil its obligations under Habitat directive by failing to take all the necessary measures to implement fully and correctly Articles 1, 4(5), 5(4), 6, 7, 12(1)(b) and (c), 12(2), 12(4), 13(1)(b), 14, 15, 16(1), 22(b) and 23(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora in conjunction with Annexes I, II, IV, V and VI to that directive.

37. Case C-202/01 — Judgment of the Court (Sixth Chamber) of 26 November 2002. — Commission of the European Communities v French Republic. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Classification as special protection areas — Plaine des Maures. — Article 4(1,2) of the Birds Directive.

Summary

The French Republic has failed to comply with its obligations under Article 4(1) and (2) of the Birds directive by not in sufficient measure classifying as special protection areas the territories most suitable for the conservation of the species of wild bird referred to in Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, and of migratory species, and, in particular, by not classifying a sufficiently

large area of the Plaine des Maures (France) as a special protection area.

38. Case C-324/01 — Judgment of the Court (Sixth Chamber) of 5 December 2002. — Commission of the European Communities v Kingdom of Belgium. — Failure by a Member State to fulfil its obligations — Conservation of natural habitats — Wild fauna and flora — Incomplete transposition. — Articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b) and (c) and 23(2) of the Habitats Directive.

Summary

The Kingdom of Belgium has failed to fulfil its obligations under the Habitat Directive by failing to adopt all the laws, regulations and administrative measures necessary to ensure the full and proper transposition of Articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b) and (c) and 23(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, in conjunction with Annexes II, IV, V and VI thereto.

39. Case C-378/01 — Judgment of the Court (Sixth Chamber) of 20 March 2003. — Commission of the European Communities v Italian Republic. — Failure of a Member State to fulfil obligations — Special protection areas — Conservation of wild birds. — Article 4(1,2,3) of the Birds Directive.

Summary

Article 4(1) and (2) of Directive 79/409 on the conservation of wild birds require the Member States to classify as special protection areas the territories meeting the ornithological criteria specified by those provisions. Neither the economic nor the recreational requirements mentioned in Article 2 of the directive may be taken into account when selecting special protection areas and defining their boundaries.

In order to assess whether a Member State has classified a sufficient number and area of territories as special protection areas for the purposes of Article 4(1) and (2) of that di-

rective, the Court may, in the absence of any evidence to the contrary, use the Inventory of Important Bird Areas in the European Community, published in 1989, as a basis for reference, although it is not legally binding on the Member State concerned.

40. Case C-415/01 — Judgment of the Court (Sixth Chamber) of 27 February 2003. — Commission of the European Communities v Kingdom of Belgium. — Failure by a Member State to fulfil its obligations — Conservation of wild birds — Special protection areas. — Article 4(1,2,4) of the Birds Directive and Articles 6(2,3,4) and 7 of the Habitats Directive.

Summary

The Région flamande has failed to transpose Article 4(1) and (2) of and Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, to demarcate special protection areas within its territory capable of being relied upon as against third parties, and to adopt the measures necessary to ensure that the classification of a site as a special protection area automatically and simultaneously entails the application of a system of protection and conservation complying with Community law.

41. Case C-434/01 — Judgment of the Court (Sixth Chamber) of 6 November 2003. — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland. — Failure of a Member State to fulfil obligations — Conservation of natural habitats — Wild fauna and flora. — Articles 12(1) and 16(1) of the Habitats Directive.

Summary

The United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Habitats directive by not ensuring the observance in its territory of Articles 12 and 16 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

42. Case C-72/02 — Judgment of the Court of 24 June 2003. — Commission of the European Communities v Portuguese Republic. — Failure of a Member State to fulfil its obligations — Conservation of natural habitats and wild birds. — Articles 2, 4(1,4), 6, 7, 8 and 12 of the Birds Directive and Articles 1, 3(3), 6(1–4), 10, 11 and 12(1,4) of the Habitats Directive.

Summary

Each of the Member States to which a directive is addressed is obliged to adopt, within the framework of its national legal system, all the measures necessary to ensure that the directive is fully effective, in accordance with the objective it pursues.

In order to concern only the relations between Member States and the Commission Article 12(1) of Directive 79/409 on the conservation of wild birds, which requires the Member States to draw up every three years a report on the implementation of national provisions taken under that directive and forward it to the Commission so that it can check that the directive has been complied with by the Member States, need not necessarily require the adoption of specific implementing measures in national law.

43. Case C-143/02 — Judgment of the Court (Third Chamber) of 20 March 2003. — Commission of the European Communities v Italian Republic. — Failure of a Member State to fulfil obligations — Conservation of natural habitats — Wild fauna and flora. — Articles 5(1), 6(2) and 7 of the Habitats Directive.

Summary

The Italian Republic has failed to fulfil its obligations under Articles 5, 6 and 7 of Habitats directive by adopting legislation transposing Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the habitats directive), which: excludes from the scope of the rules on the assessment of the implications for the environment projects other than those listed in the Italian legislation implementing directives on environmental impact assessment

that are likely to have a significant effect on sites of Community importance, fails to impose upon the competent authorities of the Member State any obligation to take appropriate steps in respect of special protection areas to avoid the deterioration of natural habitats and of the habitats of species or disturbance of the species for which the areas were designated, in so far as such disturbance could be significant in relation to the objectives of the habitats directive, fails to provide that the conservation measures referred to in Article 6(2) of that directive apply to the sites referred to in Article 5(1) of that directive.

44. Case C-182/02 — Judgment of the Court (Sixth Chamber) of 16 October 2003. — *Ligue pour la protection des oiseaux and Others v Premier ministre and Ministre de l'Aménagement du territoire et de l'Environnement*. — Reference for a preliminary ruling: Conseil d'Etat — France. — Conservation of wild birds — Opening and closing dates for hunting — Derogations. — Articles 7(4), and 9(1) of the Birds Directive.

Summary

By decision of 25 January 2002, received at the Court on 15 May 2002, the Conseil d'État (Council of State) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Article 9(1)(c) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

45. Case C-209/02 — Judgment of the Court (Second Chamber) of 29 January 2004. — *Commission of the European Communities v Republic of Austria*. — Failure of a Member State to fulfil obligations — Conservation of natural habitats — Wild fauna and flora — Habitat of the corncrake — Wörschacher Moos special protection area. — Article 4 of the Birds Directive and Articles 6(3,4) and 7 of the Habitats Directive.

Summary

The question whether a Member State has failed to fulfil obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid

down in the reasoned opinion and the Court cannot take account of any subsequent changes.

An action for failure to fulfil obligations cannot in any case be regarded as being devoid of purpose when, on expiry of the time-limit fixed by the Commission for the Member State in question to comply with the reasoned opinion, the national decision regarded by the Commission as the source of the Member State's failure to fulfil its obligations and subsequently quashed by a court decision was still in force and, moreover, the extension to the golf course provided for by that decision had in the meantime been created.

It can be seen from Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, read in conjunction with Article 7 of that directive, that any plan or project not directly connected with or necessary to the management of a special protection area classified under Article 4 of Directive 79/409 on the conservation of wild birds but likely to have a significant effect on that special protection area, either individually or in combination with other plans or projects, is to be subject to appropriate assessment of its implications for that area in view of its conservation objectives. In the light of the conclusions of the assessment of the implications for the special protection area, the competent national authorities are to agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the special protection area concerned and, if appropriate, after having obtained the opinion of the general public.

A Member State which authorises a planned extension to a golf course despite the negative conclusions of an impact assessment on the habitat of the corncrake (*crex crex*) in a special protection area classified under Article 4 of Directive 79/409 fails to fulfil its obligations under Article 6(3) and (4) in conjunction with Article 7 of Directive 92/43.

46. Case C-79/03 — Commission of the European Communities v Kingdom of Spain, Article 8(1) and 9(1) of the Birds Directive.

Summary

A derogation under Article 8 of Directive 79/409 on the conservation of wild birds, which prohibits the use of all means, arrangements or methods used for large-scale or non-selective capture or hunting, may, according to Article 9(1) of the directive, be made only where there is no other satisfactory solution and for reasons exhaustively listed in Article 9(1)(a) and (c), including serious damage to crops.

The Commission of the European Communities requests the Court to declare that, by allowing hunting using limed twigs in the Community of Valencia (Spain) by means of the method known as ‘parany’, the Kingdom of Spain has failed to fulfil its obligations under Articles 8(1) and 9(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds. The ‘parany’ is a device used to capture birds. It consists of a structure of limed twigs arranged in a tree to which the hunted birds are lured with decoys. As soon as a bird comes into contact with a limed twig, it generally loses its ability to fly and may be caught and killed by the hunter.

47. Case C-98/03 — Judgment of the Court (Second Chamber) of 10 January 2006. Commission of the European Communities v Federal Republic of Germany. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Assessment of the implications of certain projects on a protected site — Protection of species. Articles 4(1), 6(3,4), 12(1), 13, 16 of Habitats Directive.

Summary

The Federal Republic of Germany has failed to fulfil its obligations under Article 6(3) and (4) and Articles 12, 13 and 16 of Habitats Directive by failing, in respect of certain projects carried out outside special areas of conservation (‘SACs’) within the meaning of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, to require compulsory assessment of the

impact on the site, in accordance with Article 6(3) and (4) of that directive, whether or not such projects are capable of significantly affecting an SAC; by authorising emissions in an SAC, irrespective of whether they are likely to have a significant effect on that area; by derogating from the scope of the provisions concerning the protection of species in the case of certain non-deliberate effects on protected animals; by failing to ensure compliance with the criteria for derogation set out in Article 16 of the directive in the case of certain activities compatible with the conservation of the area; by retaining provisions on the application of pesticides which do not take sufficient account of the protection of species; by failing to notify fishery catch legislation and/or to ensure that such legislation contains adequate bans on fishing.

48. Case C-117/03 — Judgment of the Court (Second Chamber) of 13 January 2005. *Società Italiana Dragaggi SpA and Others v Ministero delle Infrastrutture e dei Trasporti and Regione Autonoma Friuli Venezia Giulia*. Reference for a preliminary ruling: Consiglio di Stato — Italy. Conservation of natural habitats — Wild fauna and flora — National list of sites eligible for identification as sites of Community importance — Conservation measures. — Arts 4(5), and 6(2),(3) and (4) of Habitats Directive.

Summary

On a proper construction of Article 4(5) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, the protective measures prescribed in Article 6(2),(3) and (4) of that directive are required only as regards sites which, in accordance with the third subparagraph of Article 4(2) of the directive, are on the list of sites selected as sites of Community importance adopted by the Commission in accordance with the procedure laid down in Article 21 of the directive. Consequently, those measures do not apply to the sites included in the national lists transmitted to the Commission pursuant to Article 4(1) of the directive.

However, by virtue of that directive, the Member States are required, as regards the latter sites, which are eligible for identification as sites of Community importance, and in particular as regards those hosting priority natural habitat types or priority species, to take protective measures that are appropriate, from the point of view of the directive's conservation objective, for the purpose of safeguarding the relevant ecological interest which those sites have at national level.

49. Case C-441/03 – Judgment of the Court (Second Chamber) of 14 April 2005. Commission of the European Communities v Kingdom of the Netherlands. Failure by a Member State to fulfil its obligations – Directives 79/409/EEC and 92/43/EEC – Conservation of wild birds – Conservation of natural habitats – Failure to transpose within the prescribed periods. Article 4(1,2) of the Birds Directive and Article 1(a),(e) and (i), 2(2), 6(1) 6(2) to (4), 7, 11 and 15 of Habitat Directive.

Summary

It is clear from Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, that in every case of a plan or project not directly connected with or necessary to the management of a site, but likely to have a significant effect thereon, either individually or in combination with other plans and projects, the competent authorities are required to carry out an appropriate assessment in that respect. It is only on completion of that assessment, which must allow a detailed analysis which satisfies the conservation objectives of the site in question, and in the light of the conclusions on the implications for the site in question of the plan or project that the competent authorities adopt a decision on it. Those authorities, when taking their decision, agree to the plan or project only after having ascertained that the planned operation does not adversely affect the integrity of the site concerned. Furthermore, those authorities must, if appropriate, obtain the opinion of the general public on that subject.

However, the examination laid down in Article 6(4) must be undertaken only where the plan or project must, despite the

negative conclusions resulting from the assessment required under Article 6(3) and in the absence of alternative solutions, nevertheless be carried out for imperative reasons of overriding public interest.

Therefore, having regard to the particular characteristics of each of the stages referred to in Article 6, it must be held that the various requirements set out in Article 6(4) cannot constitute elements that the competent national authorities are obliged to take account of where they carry out an appropriate assessment provided for in Article 6(3).

50. Case C-407/03 — Judgment of the Court (Fifth Chamber) of 15 July 2004 in Case C-407/03: Commission of the European Communities against Republic of Finland (Failure of a Member State to fulfil its obligations — Conservation of natural habitats — Wild fauna and flora — Article 6(3) of Council Directive 92/43/EEC.

Summary

The Republic of Finland has failed to fulfil its obligations under Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora by failing to provide a sufficient degree of legal certainty in its national law relating to the obligation to carry out an appropriate assessment for every project, including those subject to an environmental impact assessment.

51. Case C-6/04 — Judgment of the Court (Second Chamber) of 20 October 2005. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora. Articles 6, 11, 12, 13, 14, 15 and 16 of the Habitats Directive.

Summary

While the transposition of a directive into domestic law does not necessarily require that the content of the directive be incorporated formally and verbatim in express, specific legislation

and, depending on its content, a general legal context may be adequate for the purpose, that is on condition that that context does indeed guarantee the full application of the directive in a sufficiently clear and precise manner. In that regard, it is important in each individual case to determine the nature of the provision, laid down in a directive, to which the action for infringement relates, in order to gauge the extent of the obligation to transpose imposed on the Member States.

However, faithful transposition becomes particularly important where management of the common heritage is entrusted to the Member States in their respective territories. It follows that, in the context of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which lays down complex and technical rules in the field of environmental law, the Member States are under a particular duty to ensure that their legislation intended to transpose that directive is clear and precise, including with regard to the fundamental surveillance and monitoring obligations, such as those imposed on national authorities by Articles 11, 12(4) and 14(2) of the directive.

In implementing Article 6(2) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which obliges the Member States to avoid, in special areas of conservation, the deterioration of natural habitats and the habitats of species, 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 those areas to deteriorate.

Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora makes the requirement for an appropriate assessment of the implications of a plan or project that is not directly connected with or necessary to the management of a site in a special area of conservation conditional on there being a probability or a risk that it will have a significant effect on the site concerned. In the light, in particular, of the precautionary principle, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned.

Article 16 of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which defines in a precise manner the circumstances in which Member States may derogate from the provisions relating to the protection of species laid down in Articles 12, 13, 14 and 15(a) and (b) thereof, must be interpreted restrictively. Furthermore, Articles 12, 13 and 16 of the directive form a coherent body of provisions intended to protect the populations of the species concerned, so that any derogation incompatible with the directive would infringe both the prohibitions set out in Articles 12 and 13 and the rule that derogations may be granted in accordance with Article 16.

52. Case C-135/04 — Judgment of the Court (Second Chamber) of 9 June 2005. Commission of the European Communities v Kingdom of Spain. — Conservation of wild fauna — Wild birds — Hunting periods — Hunting of woodpigeon during return journey in the province of Guipúzcoa. Article 7 of the Birds Directive.

Summary

Article 9(1)(c) of Directive 79/409 on the conservation of wild birds permits authorisation, in compliance with the conditions set out in that provision, for the hunting of species listed in Annex II to that directive during the periods referred to in Article 7(4) of that directive. The conditions which must be met for such a hunt to be authorised include the lack of any other satisfactory solution. That condition cannot be considered to have been satisfied when the hunting period under a derogation coincides, without need, with periods in which the directive aims to provide particular protection. There would be no such need if the sole purpose of the derogation authorising hunting were to extend the hunting periods for certain species of birds in territories which they already frequent during the hunting periods fixed in accordance with Article 7 of the Directive.

53. Case C-209/04 — Judgment of the Court (Second Chamber) of 23 March 2006. Commission of the European Com-

munities v Republic of Austria. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Corncrake — Special protection area in the Lauteracher Ried national nature reserve — Exclusion of the Soren and Gleggen-Köblern sites — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Procedure for a construction plan or project — Procedure for determining the road line of a dual carriageway — Procedure for environmental impact study — Procedural breaches relating to the project for the construction of the federal S 18 dual carriageway in Austria — Temporal application of Directive 92/43. Article 4(1) and (2) of Wild Birds Directive, and Article 6(3) and (4) of Habitats Directive.

Summary

The Member States' margin of discretion in choosing the most suitable territories for classification as special protection areas under Article 4(1) and (2) of Directive 79/409 on the conservation of wild birds concerns not the appropriateness of classifying as special protection areas the territories which appear the most suitable according to ornithological criteria, but only the application of those criteria for identifying the most suitable territories for conservation of the species listed in Annex I.

Moreover, when designating such an area and defining its boundaries, Member States may not take account of economic requirements as constituting a general interest superior to that represented by the ecological objective of the Birds Directive or as constituting imperative reasons of overriding public interest of the kind referred to in the first subparagraph of Article 6(4) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora. The principle that projects likely to have significant effects on the environment must be subjected to an environmental assessment does not apply where the application for authorisation for a project was formally lodged before the expiry of the time-limit for transposition of a directive.

That formal criterion is the only one which accords with the principle of legal certainty and preserves a directive's

effectiveness. The reason for that is that a directive such as Directive 92/43 on the conservation of natural habitats and of wild fauna and flora is primarily designed to cover large-scale projects which will most often require a long time to complete. It would therefore not be appropriate for the relevant procedures, which are already complex at national level and which were formally initiated prior to the date of the expiry of the period for transposing the directive, to be made more cumbersome and time-consuming by the specific requirements imposed by the directive and for situations already established to be affected by it.

54. Case C-221/04 — Judgment of the Court (Second Chamber) of 18 May 2006. Commission of the European Communities v Kingdom of Spain. Failure by a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Protection of species — Hunting using stopped snares in private hunting areas — Castilla y León. Article 12(1) of the Habitats Directive.

Summary

In an action for failure to fulfil obligations, the purpose of the pre-litigation procedure is to give the State concerned the opportunity, on the one hand, to comply with its obligations under Community law and, on the other hand, to avail itself of its right to defend itself against the complaints formulated by the Commission.

Therefore, in its action for failure to fulfil obligations, the Commission is permitted to limit the subject-matter of the proceedings. Even though the aim of letter of formal notice is to delimit the subject-matter of the dispute and the Commission is obliged to specify precisely in the reasoned opinion the grounds of complaint which it has already raised more generally in the letter of formal notice, that does not, however, prevent it, at the stage of the proceedings before the Court, from restricting the subject-matter of the dispute or expanding it to cover subsequent measures that are essentially the same as the measures challenged in the formal notice.

In an action for failure to fulfil obligations brought under Article 226 EC it is for the Commission to prove that the obligation has not been fulfilled without being able to rely on any presumption.

Thus, it is for the Commission, in the context of a failure to fulfil obligations relating to Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, to adduce proof of the presence of the protected animal species in the area concerned and not only evidence which proves at the very most that there is a possibility that they are to be found in that area.

A Member State fails to fulfil its obligations under Article 12(1)(b) and (d) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora where it does not take all the requisite specific measures to prevent the deliberate disturbance of the animal species concerned during its breeding period or the deterioration or destruction of its breeding sites.

The condition as to 'deliberate' action in Article 12(1)(a) of Directive 92/43 is met where it is proven that the author of the act intended the capture or killing of a specimen belonging to a protected animal species or, at the very least, accepted the possibility of such capture or killing.

It follows that a Member State does not fail to fulfil those obligations if it permits the hunting of an animal species which is different from those protected by the directive.

55. Case C-235/04 — Judgment of the Court (Second Chamber) of 28 June 2007. Commission of the European Communities v Kingdom of Spain. — Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Special protection areas — IBA 98 — Value — Quality of the data — Criteria — Margin of discretion — Manifest inadequacy as to number and size of areas classified. Commission of the European Communities v Kingdom of Spain, Article 4(1) and (2) of the Birds Directive.

Summary

Article 4 of Directive 79/409 on the conservation of wild birds lays down a regime which is specifically targeted and

reinforced both for the species listed in Annex I and for the migratory species, an approach justified by the fact that they are, respectively, the most endangered species and the species constituting a common heritage of the European Community. Furthermore, it is clear from the ninth recital in the preamble to that directive that the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds. The Member States are therefore required to adopt the measures necessary for the conservation of those species. For that purpose, the updating of scientific data is necessary to determine the situation of the most endangered species and the species constituting the common heritage of the Community in order to classify the most suitable areas as special protection areas (SPAs).

In assessing a failure to fulfil obligations under that directive, it is therefore necessary to use the most up-to-date scientific data available at the end of the period laid down in the reasoned opinion. In that regard, the national lists, including the ornithological inventory published in 1998 (IBA 98) and drawn up by the Sociedad Espanola de Ornitología (Spanish Ornithological Society), revised the first pan-European study carried out in the Inventory of Important Bird Areas in the European Community published in 1989 (IBA 89) and provided more exact and up-to-date scientific data.

In the absence of any contrary scientific evidence produced by a Member State tending particularly to show that the obligations flowing from Article 4(1) and (2) of Directive 79/409 could be satisfied by classifying as SPAs sites other than those appearing in that inventory and covering a smaller total area, the IBA 98, which provides an up-to-date list of the areas of importance for the conservation of birds in the Member State concerned, constitutes a basis of reference for assessing whether a Member State has classified areas of a sufficient number and size as SPAs to protect all the bird species listed in Annex I to Directive 79/409 and the migratory species not listed in that annex.

The Commission must, in the heads of claim in an application made under Article 226 EC, indicate the specific com-

plaints on which the Court is asked to rule. Those heads of claim must be set out unambiguously so that the Court does not rule *ultra petita* or indeed fail to rule on a complaint. Contradictions in the heads of claim put forward by the Commission in support of an action for failure to fulfil obligations do not satisfy the requirements of Article 21 of the Statute of the Court of Justice and Article 38(1)(c) of the Rules of Procedure.

56. Case C-239/04 — Judgment of the Court (Second Chamber) of 26 October 2006. Commission of the European Communities v Portuguese Republic. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(4) — Castro Verde special protection area — Lack of alternative solutions. — Article 6(3) and (4) of Habitats Directive.

Summary

Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora establishes a procedure intended to ensure, by means of a prior examination, that a plan or project which is not directly connected with or necessary to the management of a site concerned but likely to have a significant effect on it is authorized only to the extent that it will not adversely affect the integrity of that site. That authorization can thus be granted only on the condition that the competent national authorities are certain, at the time they authorize the plan or project, that it will not have adverse effects on the integrity of the site concerned. The fact that, after its completion, the project may not have produced such effects is immaterial to that assessment. It is at the time of adoption of the decision authorizing implementation of the project that there must be no reasonable scientific doubt remaining as to the absence of adverse effects on the integrity of the site in question.

Article 6(4) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which permits a plan or project which has given rise to a negative assessment under the first sentence of the same directive to be implemented on certain conditions, must, as a derogation from the criterion for

authorisation laid down in the second sentence of Article 6(3), be interpreted strictly. Thus, the implementation of a plan or project under Article 6(4) of that directive is, inter alia, subject to the condition that the absence of alternative solutions be demonstrated.

It follows that, where a Member State implements a project notwithstanding the negative environmental impact assessment and without having demonstrated the absence of alternative solutions, it fails to fulfil its obligations under Article 6(4) of Directive 92/43.

57. Case C-334/04 – Judgment of the Court (Second Chamber) of 25 October 2007. *Commission of the European Communities v Hellenic Republic*. Failure of a Member State to fulfil obligations – Directive 79/409/EEC – Annex I – Conservation of wild birds – Special protection areas – IBA 2000 – Value – Quality of the data – Criteria – Margin of discretion – Manifestly insufficient classification – Wetlands. Article 4(1) and (2) of the Birds Directive. SPA designation.

Summary

Article 4 of Directive 79/409 on the conservation of wild birds lays down a system which is specifically targeted and reinforced both for the species listed in Annex I to that directive and for migratory species not included in that annex, an approach justified by the fact that they are, respectively, the most endangered species and the species constituting a common heritage of the Community. Furthermore, it is clear from the ninth recital in the preamble to that directive that the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds. The Member States are therefore required to adopt the measures necessary for the conservation of those species and thus to classify as special protection areas (SPAs) all the sites which, applying ornithological criteria, appear to be the most suitable for conservation of the species in question.

For that purpose, the updating of scientific data is necessary to determine the situation of the most endangered species

and the species constituting the common heritage of the Community. The Inventory of Important Bird Areas in the European Community (IBA 2000) provides an up-to-date inventory of the areas of importance for the conservation of birds which, in the absence of scientific evidence to the contrary, constitutes a basis of reference for assessing whether that Member State has classified as SPAs areas sufficient in number and size to offer protection to all the species of birds listed in Annex I to Directive 79/409 and also to the migratory species not included in that annex.

In the absence of the submission of scientific studies capable of disproving the results of the IBA 2000, a Member State fails to fulfil its obligations under Article 4(1) and (2) of Directive 79/409 if it classifies as SPAs territories the number and overall size of which fall clearly short of the number and overall size of the territories fulfilling the preconditions for classification as SPAs, fails to designate SPAs to offer protection to certain species, and classifies as SPAs areas in which other species are insufficiently represented.

Although the Member States bear sole responsibility for the classification of SPAs and must base that classification on the best scientific knowledge available, that does not mean that such an obligation does not apply as long as the competent authorities have not evaluated and verified the new scientific knowledge. Such an obligation to classify has existed since the expiry of the period for transposition of Directive 79/409.

58. Case C-418/04 — Judgment of the Court (Second Chamber) of 13 December 2007. *Commission of the European Communities v Ireland*. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Articles 4 and 10 — Transposition and application — IBA 2000 — Value — Quality of the data — Criteria — Margin of discretion — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6 — Transposition and application. 4(1) and (2), (4) and 10 of the Birds Directive, Article 6(2) to (4), and 7 of the Habitats Directive. SPA designation.

Summary

In choosing the areas most appropriate for classification as special protection areas (SPAs) in accordance with Article 4(1) and (2) of Directive 79/409 on the conservation of wild birds, as amended by Directive 97/49, Member States have a certain margin of discretion, which is limited by the fact that the classification of those areas is subject exclusively to the ornithological criteria determined by that directive. The economic requirements mentioned in Article 2 of that directive may therefore not be taken into account when selecting an SPA and defining its boundaries.

It follows, first, that SPA classification cannot be the result of an isolated study of the ornithological value of each of the areas in question but must be carried out in the light of the natural boundaries of the wetland ecosystem and, second, that the ornithological criteria which form the foundation of the classification must have a scientific basis. The use of flawed, allegedly ornithological criteria might lead to an incorrect demarcation of the boundaries of SPAs.

Article 4 of Directive 79/409 on the conservation of wild birds, as amended by Directive 97/49, lays down a protection regime which is specifically targeted and reinforced both for the species listed in Annex I and for migratory species, an approach justified by the fact that they are, respectively, the most endangered species and the species constituting a common heritage of the Community. Furthermore, it is clear from the ninth recital in the preamble to that directive that the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds. The Member States are therefore required to adopt the measures necessary for the conservation of those species.

For that purpose, the updating of scientific data is necessary to determine the situation of the most endangered species and the species constituting the common heritage of the Community in order to classify the most suitable areas as SPAs. In order to assess whether there has been a failure to fulfil obligations under the directive, it is therefore necessary to use the most up-to-date scientific data available at the end of the period laid

down in the reasoned opinion. In that regard, in the absence of scientific studies capable of rebutting the results of the Inventory of Important Bird Areas in the European Community ('IBA 2000'), that inventory is the most up-to-date and accurate reference for identifying the most suitable sites in number and in size for the conservation of the regularly occurring migratory species not listed in Annex I.

Article 4(1) and (2) of Directive 79/409 on the conservation of wild birds, as amended by Directive 97/49, requires the Member States to provide SPAs with a legal protection regime that is capable, in particular, of ensuring both the survival and reproduction of the bird species listed in Annex I to the directive and the breeding, moulting and wintering of migratory species not listed in Annex I which are, nevertheless, regular visitors. The protection of SPAs may not be limited to avoiding harmful human effects but must also include positive measures to preserve or improve the state of the area, as the case may be.

The protective aims formulated by of Directive 79/409 on the conservation of wild birds, as amended by Directive 97/49, as expressed in the ninth recital in the preamble thereto, could not be achieved if Member States were obliged to comply with the obligations under Article 4(4) of that directive only in cases where a special protection area (SPA) had previously been designated. The text of Article 7 of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora states that Article 6(2) to (4) of that directive replaces the first sentence of Article 4(4) of Directive 79/409 as from the date of implementation of Directive 92/43 or the date of classification by a Member State under Directive 79/409, where the latter date is later. Areas which have not been classified as SPAs but which should have been so classified continue to fall under the regime governed by the first sentence of Article 4(4) of Directive 79/409.

Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora makes the requirement for an appropriate assessment of the implications of a plan or project not directly connected with or necessary to the management of a site in a special conservation area conditional

on there being a probability or a risk that that plan or project will have a significant effect on the site concerned. In the light, in particular, of the precautionary principle, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned. It follows that that directive requires that any plan or project undergo an appropriate assessment of its implications if it cannot be excluded on the basis of objective information that that plan or project will have a significant effect on the site concerned. Such an assessment implies that, prior to its approval, all aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field.

The competent national authorities are to authorize an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.

59. Case C-507/04 — Judgment of the Court (Fourth Chamber) of 12 July 2007. *Commission of the European Communities v Republic of Austria*. — Failure of a Member State to fulfil obligations — Conservation of wild birds — Directive 79/409/EEC — Measures transposing the directive. Article 1, 5, 6, 7(4), 8, 9(1)(a,c) and (2), and 11 of the Birds Directive.

Summary

The transposition of Community legislation into national law does not necessarily require the relevant provisions to be enacted in precisely the same words in a specific express legal provision and that a general legal context may be sufficient for the purpose if it actually ensures the full application of the directive in a sufficiently clear and precise manner.

However, faithful transposition is particularly important in the case of Directive 79/409 on the conservation of wild birds, where management of the common heritage is entrusted to the Member States in their respective territories.

Article 11 of Directive 79/409 on the conservation of wild birds, which does no more than lay down a specific obligation requiring the Member States to see that the introduction of species of birds which do not occur naturally in the wild state in the European territory of the Member States does not prejudice the local flora and fauna, cannot be regarded as a legal basis justifying derogation from the obligations of protection which the Member States owe under Article 1 of the directive and relate to all species of birds naturally occurring in the wild state in the European territory of the Member States, that is to say, as regards each of those States, both to native species and to species which occur only in other Member States. The importance of complete and effective protection of wild birds throughout the Community, irrespective of the areas they stay in or pass through, causes any national legislation which delimits the protection of wild birds by reference to national fauna to be incompatible with the directive.

Whilst it is true that the prevention of damage to vines can in principle justify the taking of derogating measures, pursuant to the third indent of Article 9(1)(a) of Directive 79/409 on the conservation of wild birds, that provision does not provide a legal basis for a species being entirely removed — even if the removal is temporally limited — from the system of protection laid down by the directive. Removing a species of bird entirely from that system, even for a defined period, could jeopardize the very existence of that species. Thus, the Member States are authorized to derogate from the system of protection for wild birds only if they observe the requirements set out in Article 9(2) of the directive.

The system of protection against hunting laid down in Article 7(4) of Directive 79/409 on the conservation of wild birds is defined broadly, by reference to the specific biological characteristics of the species concerned, given that it concerns, in addition to the rearing season, the various stages of reproduction and rearing. Only such a view corresponds to the objective of Article 7(4), which is to secure a complete system of protection in the periods during which the survival of wild birds is particularly under threat. Any action during the periods that are

connected with the reproduction of birds is liable to affect their reproduction, even if only a part of their population is concerned. That is also true of the mating season, during which the species concerned are particularly exposed and vulnerable. That season thus forms part of the period during which, in principle, all hunting is prohibited.

Article 9(1)(c) of Directive 79/409 on the conservation of wild birds allows a Member State to derogate from the opening and closing dates for hunting which result from the taking into account of the objectives listed in Article 7(4) of the directive. In that regard, the hunting of wild birds for recreational purposes during the periods mentioned in Article 7(4) of the directive may, subject to compliance with the requirements laid down in Article 9(2), constitute a 'judicious use' within the meaning of Article 9(1)(c). However, the burden of proof regarding compliance with these requirements in respect of each derogation rests with the national authority taking the decision.

Moreover, when adopting measures transposing the latter provision, Member States must ensure that, in all cases of application of the derogation provided for therein and for all the protected species, authorized hunting does not exceed a ceiling consistent with the restriction on that hunting to small numbers, and that ceiling must be determined on the basis of strict scientific data. In order for the directive to be transposed in accordance with Community law, the authorities competent to authorize derogations in respect of birds of a given species must be able to rely on criteria which are sufficiently precise as to the quantitative ceilings to be complied with. It is therefore the task of the competent authorities of the Member State concerned to ensure, with sufficient legal precision and on the basis of recognized scientific data, that the quantitative ceiling is not in any event exceeded and, therefore, that the species covered are fully protected.

The fact that, in a Member State, particular hunting methods or destructive practices prohibited by Directive 79/409 on the conservation of wild birds are unknown does not release the Member State in question from its obligation to adopt laws or

regulations in order to ensure that the provisions of the directive are adequately transposed. The principle of legal certainty requires that the prohibitions which it imposes must be reproduced in mandatory legal instruments.

60. Case C-508/04 — Judgment of the Court (Fourth Chamber) of 10 May 2007. Commission of the European Communities v Republic of Austria. — Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Measures transposing the directive. Article 1, 6(1), 12, 13, 14, 15(a) and (b), 16 and 22 of the Habitats Directive.

Summary

As is apparent from the 4th and 11th recitals in the preamble to Directive 92/43 on the conservation of natural habitats and of wild flora and fauna, the habitats and species covered by the Directive form part of the Community's natural heritage and the threats to them are often of a transboundary nature, so that the adoption of conservation measures is a common responsibility of all Member States. In this field, where management of the common heritage is entrusted to the Member States in their respective territories, faithful transposition is particularly important.

Directive 92/43 on the conservation of natural habitats and of wild flora and fauna lays down complex and technical rules in the field of environmental law and that, accordingly, the Member States are under a particular duty to ensure that their legislation intended to transpose the Directive is clear and precise. The argument put forward by the government of a Member State that, in any event, a provision of domestic law is interpreted in a manner consistent with the Directive where conservation measures are necessary cannot be upheld. Such interpretation of provisions of domestic law in a manner consistent with a directive cannot in itself achieve the clarity and precision needed to meet the requirement of legal certainty.

Moreover, mere administrative practices, which by their nature are alterable at will by the authorities and are not given

the appropriate publicity, cannot be regarded as constituting fulfilment of the obligations owed by the Member States in the context of transposition of a directive.

By means of the words used in Article 6(1) of Directive 92/43 on the conservation of natural habitats and of wild flora and fauna, the Community legislature sought to impose on the Member States the obligation to take the necessary conservation measures that correspond to the ecological requirements of the natural habitat types and species covered by Annex I and Annex II to the Directive respectively, 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.

Articles 12 to 14 and 15(a) and (b) of Directive 92/43 on the conservation of natural habitats and of wild flora and fauna form a coherent body of provisions which require the Member States to establish strict regimes of protection for the animal and plant species concerned.

Article 16 of the Directive, which defines in a precise manner the criteria on the basis of which the Member States may provide for derogations from the prohibitions set out in Articles 12 to 15, is a provision constituting an exception to the system of protection which the Directive imposes. Consequently, Article 16 must be interpreted restrictively.

Under Article 16(1) of Directive 92/43 on the conservation of natural habitats and of wild flora and fauna any measure adopted at national level which derogates from the prohibitions laid down by the Directive must be conditional on there being no satisfactory alternative. It follows that national provisions under which the grant of derogations from the prohibitions established by Articles 12 to 14 and 15(a) and (b) of the Directive is subject not to all the criteria and conditions set out in Article 16 of the Directive but, incompletely, to certain elements of them, cannot constitute a regime consistent with Article 16.

61. Case C-518/04 — Judgment of the Court (Fifth Chamber) of 16 March 2006. Commission of the European Communities v Hellenic Republic. — Failure of a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Protection of Species. Article 12(1)(b) and (d) of the Habitats Directive.

Summary

The Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora by failing to adopt, within the prescribed period, the measures necessary to establish and implement an effective system of strict protection for the viper *Vipera schweizeri* on the island of Milos prohibiting deliberate disturbance of that species, particularly during the period of breeding, rearing and hibernation and deterioration or destruction of breeding sites or resting places of that species.

62. Case C-60/05 — Judgment of the Court (Second Chamber) of 8 June 2006. WWF Italia and Others v Regione Lombardia. Reference for a preliminary ruling: Tribunale amministrativo regionale per la Lombardia — Italy. Conservation of wild birds — Directive 79/409/EEC — Derogations from the system of protection. Article 9(1)(c) of the Birds Directive.

Summary

Article 9(1)(c) of Directive 79/409 on the conservation of wild birds requires the Member States, irrespective of the internal allocation of powers prescribed by the national legal system, upon adoption of measures implementing that provision to ensure that, in all cases of application of the derogation provided for therein and for all the protected species, authorised hunting does not exceed a ceiling consistent with the restriction on that hunting to small numbers imposed by that provision, and that ceiling must be determined on the basis of strict scientific data. Irrespective of the internal allocation of powers prescribed by the national legal system, the Member States are

required to provide for a legislative and regulatory framework ensuring that the hunting of birds is carried out only in compliance with the condition relating to 'small numbers' laid down in Article 9(1)(c) of the directive, and on the basis of strict scientific data, irrespective of the species concerned.

In order to permit the competent authorities to resort to the derogations laid down in Article 9 of Directive 79/409 on the conservation of wild birds only in a manner which complies with Community law, the national legislative and regulatory framework must be designed in such a way that the application of the derogating provisions set out there is consonant with the principle of legal certainty.

In particular, those national implementing provisions concerning the 'small numbers' referred to in Article 9(1)(c) of that directive must enable the authorities responsible for authorising hunting derogations in respect of birds of a given species to rely on criteria which are sufficiently precise as to the quantitative ceilings to be complied with.

Furthermore, by the provisions implementing Article 9(1)(c), the Member States are required to ensure that, irrespective of the number and identity of the authorities within their territory responsible for applying that provision, the amount of authorised hunting derogations in respect of each protected species by each of those authorities does not exceed the ceiling compatible with the restriction on that hunting to 'small numbers', fixed for that species for the entire national territory. Accordingly, where the application of the provision in question is delegated to entities within a State, the applicable legislative and regulatory framework must ensure that the amount of hunting of birds which may be authorised by those entities remains, for the entire national territory, within the limit of 'small numbers' imposed by that provision.

Finally, that obligation on the Member States to ensure that hunting of birds is carried out only in 'small numbers', in accordance with Article 9(1)(c), requires that the administrative procedures provided for are organised in such a way that both the decisions of the competent authorities authorising hunting derogations and the manner in which those decisions are

applied are subject to effective control exercised in a timely manner. The national procedural framework must also guarantee that the conditions attached to those decisions are complied with. A control mechanism under which annulment of a decision authorising a hunting derogation adopted in breach of Article 9 of the directive or declaration of a breach of the conditions attached to a decision authorising such hunting would take effect only on expiry of the period laid down for carrying out that hunting would render redundant the system of protection established by the directive.

63. Case C-183/05 — Judgment of the Court (Second Chamber) of 11 January 2007. *Commission of the European Communities v Ireland*. — Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Articles 12(1) and (2), 13(1)(b) and 16 — Conservation of natural habitats and of wild fauna and flora — Protection of species. Article 12(1)(b) and (d) and 16 of the Habitats Directive.

Summary

In an action under Article 226 EC, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion, and any subsequent changes cannot be taken into account. The transposition of Article 12(1) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which provides that the Member States are to take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) to that directive in their natural range, requires those Member States not only to adopt a comprehensive legislative framework but also to implement concrete and specific protection measures. Similarly, the system of strict protection presupposes the adoption of coherent and coordinated measures of a preventive nature. In an action for failure to fulfil obligations brought under Article 226 EC it is for the Commission to prove that the obligation has not been fulfilled, without being able to rely on any presumption.

64. Case C-191/05 — Judgment of the Court (Second Chamber) of 13 July 2006. Commission of the European Communities v Portuguese Republic. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Special protection area — Alteration without scientific basis. Article 4(1) and (2) of the Birds Directive.

Summary

The ornithological criteria laid down in paragraphs (1) and (2) of Article 4 of Directive 79/409 on the conservation of wild birds are to guide the Member States in designating and defining the boundaries of Special Protection Areas (SPAs). Accordingly, although the areas of an SPA may not provide a habitat for steppe-land birds, but do provide a habitat for other species of wild birds listed in Annex I to the Directive for whose protection that SPA has been designated, a Member State may not reduce the surface area of an SPA or alter its boundaries unless the areas excluded from the SPA are no longer the most suitable territories for the conservation of species of wild birds within the meaning of Article 4(1) of the Directive.

65. Case C-244/05 — Judgment of the Court (Second Chamber) of 14 September 2006. Bund Naturschutz in Bayern eV and Others v Freistaat Bayern. — Reference for a preliminary ruling: Bayerischer Verwaltungsgerichtshof — Germany. Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Protection regime before the inclusion of a habitat in the list of sites of Community importance. Article 3(1) and 4(1) of the Habitats Directive.

Summary

Before a site is placed on the list of sites of Community importance adopted by the Commission in accordance with Article 4(2) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, Member States must take appropriate protective measures in order to maintain the ecological characteristics of the sites which appear on the national list transmitted to the Commission under Article 4(1) of that directive.

That appropriate protection scheme not only requires Member States not to authorise interventions which incur the risk of seriously compromising the ecological characteristics of those sites, but also to take, in accordance with the provisions of national law, all the measures necessary to avoid such interventions.

The Commission must be sure of having available an exhaustive list of sites eligible as special areas of conservation, the drawing up of which is aimed at a coherent European ecological network. It follows from this that, at the time of the decision which the Commission is called upon to take, the sites identified by the Member States must reflect the situation on the basis of which the scientific evaluations of potential sites of Community importance have been carried out. If that were not the case, the Community decision-making process which is not only based on the integrity of the sites as notified by the Member States, but is also characterized by the ecological comparisons between the different sites proposed by the Member States, would run the risk of being distorted and the Commission would no longer be in a position to fulfil its duties in the area concerned.

Furthermore, in so far as, in accordance with the first part of Annex III to the directive, the ecological characteristics of a site identified by the competent national authorities must reflect a number of assessment criteria which are expressly listed there, Member States cannot authorize interventions which may pose the risk of seriously compromising the ecological characteristics of a site, as defined by those criteria. This is particularly the case when an intervention poses the risk either of significantly reducing the area of a site, or of leading to the disappearance of priority species present on the site, or, finally, of having as an outcome the destruction of the site or the destruction of its representative characteristics.

66. Case C-304/05 — Judgment of the Court (Fourth Chamber) of 20 September 2007. Commission of the European Communities v Italian Republic. Failure of a Member State to fulfil

obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Directive 79/409/EEC — Conservation of wild birds — Assessment of the environmental impact of works to modify ski runs. Article 6(2–4) and 7 of the Habitats Directive and Article 4 of the Birds Directive.

Summary

Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora provides for an assessment procedure intended to ensure, by means of a prior examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorized only to the extent that it will not adversely affect the integrity of that site. The concept of ‘appropriate assessment’ within the meaning of that provision, which does not define any particular method for the carrying out of such an assessment, must be understood in such a way that the competent national authorities can be certain that a plan or project will not have adverse effects on the integrity of the site concerned, given that, where doubt remains as to the absence of such effects, the competent authority will have to refuse authorisation.

A study on the assessments which might be considered appropriate within the meaning of Article 6(3) of Directive 92/43 which itself highlights the summary and selective nature of the examination of the environmental repercussions of the works concerned and mentions a large number of matters which were not taken into account, recommending, in particular, additional morphological and environmental analyses and a new examination of the impact of the works, in their global context, on the wild fauna in general and on the situation of certain protected species in particular in the area of forest to be felled, and taking the view that the carrying out of the proposed works, desirable from an economic point of view, must comply with a large number of conditions and protection requirements, does not constitute an appropriate assessment on which the national authorities can rely for granting authorisation for works pursuant to the said Article 6(3).

A report on the assessments which might be considered appropriate within the meaning of Article 6(3) of Directive 92/43, designed as an opportunity to introduce other proposals for improvement of the environmental impact of the operations proposed, referring to the importance of assessments to be carried out progressively, in particular on the basis of knowledge and details likely to come to light during the process of implementation of the project and, as regards the birds for which the site has been designated as a special protection area, not containing an exhaustive list of the wild birds present in that area, does not constitute an appropriate assessment on which the national authorities can rely for granting authorisation for works pursuant to the said Article 6(3).

Reports and studies which are characterized by gaps and lack complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the special protection area concerned cannot be regarded as appropriate assessments within the meaning of that article. Such precise and definitive findings and conclusions are essential in order that the competent authorities may gain the necessary level of certainty to take the decision to authorized the works.)

Article 6(4) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which provides that, if, in spite of a negative assessment carried out in accordance with the first sentence of Article 6(3) of the directive, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, and there are no alternative solutions, the Member State is to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected, must, as a derogation from the criterion for authorisation laid down in the second sentence of Article 6(3), be interpreted strictly.

Article 6(4) of Directive 92/43 can apply only after the implications of a plan or project have been studied in accordance with Article 6(3) of that directive. Knowledge of those implications in the light of the conservation objectives relating to

the site in question is a necessary prerequisite for application of Article 6(4) since, in the absence thereof, no condition for application of that derogating provision can be assessed. The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration. In addition, in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified.

Activities affecting a special protection area can infringe both Article 6(3) and (4) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, and Article 6(2) of that directive. Where authorizations for a plan or project has been granted without complying with Article 6(3) of Directive 92/43, which requires an appropriate prior assessment of the impact of that plan or project, a breach of Article 6(2), which lays down an obligation to take appropriate protective measures, may be found where deterioration of a habitat or disturbance of the species for which the area in question was designated has been established.

Such deterioration is established where, in an afforested part of a protected area, which constitutes the habitat of protected species, tree felling takes place which results in the destruction of the breeding sites of those species. Those works and their repercussions on that special protection area are incompatible with the protective legal status from which that area should have benefited pursuant to Article 6(2) of Directive 92/43. In proceedings under Article 226 EC for failure to fulfil obligations, it is for the Commission to prove the allegation that an obligation has not been fulfilled. It is the Commission's responsibility to place before the Court all the information needed to enable the Court to establish that the obligation has not been fulfilled, and in so doing the Commission may not rely on any presumption.

Where the management of an area classified as a special protection area in accordance with the provisions of Article 4 of Directive 79/409 on the conservation of wild birds is subject to regulation under a number of instruments of national law,

it is for the Commission to prove that the legal framework determined by those various instruments is not such as to confer an appropriate protective status on that area. Mere reference to adoption by the administrative authority of a decision giving authorization contrary to Article 6(2) to (4) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora is not sufficient to establish the incompatibility of that legal framework with Article 4 of Directive 79/409.

67. Case C-342/05 — Judgment of the Court (Second Chamber) of 14 June 2007. Commission of the European Communities v Republic of Finland. — Failure of a Member State to fulfil its obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Wolf hunting. Article 12, 13, 14, 15(a) and (b), and 16(1) of the Habitats Directive.

Summary

Since Article 16(1) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora provides for a system which is in derogation from the prohibitions laid down by Articles 12, 13, 14 and 15(a) and (b), which must be interpreted strictly and must impose on the authority taking the decision the burden of proving that the necessary conditions are present for each derogation, the Member States are required to ensure that all action affecting the protected species is authorized only on the basis of decisions containing a clear and sufficient statement of reasons which refers to the reasons, conditions and requirements laid down in Article 16(1) of that directive.

Whilst Article 16(1) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which provides for a system which is in derogation from the prohibitions laid down by Articles 12, 13, 14 and 15(a) and (b), makes the favorable conservation status of the populations of the species concerned in their natural range a necessary precondition in order for the derogations for which it provides to be granted, the grant of such derogations remains possible by way of exception where it is duly established that they are not such as to worsen the unfavorable conservation status of those

populations or to prevent their restoration to a favorable conservation status. Following the example of the views formulated by the Commission, in particular in paragraphs 47 to 51 of Section III of its Guidance document on the strict protection of animal species of Community interest under Directive 92/43, it is possible that the killing of a limited number of specimens may have no effect on the objective envisaged in Article 16(1) of that directive, which consists in maintaining the population of the species concerned at a favorable conservation status in its natural range. Such a derogation would therefore be neutral for that species.

A failure to fulfil obligations under Article 226 EC may arise due to the existence of an administrative practice which infringes Community law, if that practice is to some degree consistent and general, even if the applicable national legislation itself complies with that law.

A Member State which authorizes the hunting on a preventive basis of the wolf (*Canis lupus*), an animal species appearing in Annex IV(a) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, without it being established that the hunting is such as to prevent serious damage within the meaning of Article 16(1)(b) of that directive, fails to fulfil its obligations under Articles 12(1) and 16(1)(b) of that directive.

68. Case C-388/05 — Judgment of the Court (Second Chamber) of 20 September 2007. *Commission of the European Communities v Italian Republic*. Failure of a Member State to fulfil obligations — Conservation of natural habitats — Wild fauna and flora — Special Protection Area ‘Valloni e steppe pedegarganiche’. Article 4 of the Birds Directive, Article 6(2) and 7 of the Habitats Directive.

Summary

Article 4(4) of Directive 79/409 on the conservation of wild birds requires Member States to take, in respect of special protection areas, appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far

as these would be significant having regard to the objectives of that article.

Member States must comply with the obligations arising *inter alia* under that provision, even where the area in question has not been classified as a special protection area, provided that it should have been so classified.

The Inventory of Important Bird Areas, although not legally binding on the Member States concerned, contains scientific evidence making it possible to assess whether a Member State has complied with its obligation to classify as special protection areas the most suitable territories in number and size for conservation of the protected species.

Since the ‘Valloni e steppe pedegarganiche’ area was classified as a special protection area on 28 December 1998, the provision applicable to that area since that date is Article 6(2) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, and not the first sentence of Article 4(4) of Directive 79/409 on the conservation of wild birds.

So far as concerns areas classified as special protection areas, Article 7 of Directive 92/43 provides that the obligations arising under Article 4(4) of Directive 79/409 are replaced, *inter alia*, by the obligations arising under Article 6(2) of Directive 92/43 as from the date of implementation of the latter directive or the date of classification under Directive 79/409, where the latter date is later.

69. Case C-179/06 — Judgment of the Court (Fourth Chamber) of 4 October 2007. *Commission of the European Communities v Italian Republic*. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Environmental impact assessment. Article 6(3) of the Habitats Directive.

Summary

Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora provides that the obligation to carry out an appropriate assessment of the impact of a plan or project on a protected site is conditional on the

plan or project in question being likely to have a significant effect on that site. For that protection mechanism to come into operation, it is necessary for there to be a probability or a risk that a plan or project will have significant effects on the site concerned. The significant nature of the effect on a site of a plan or project must be linked to the site's conservation objectives. Consequently, where a plan or project has an effect on that site but is not likely to undermine its conservation objectives, that plan or project cannot be considered likely to have a significant effect on the site. That risk must be assessed in the light, *inter alia*, of the characteristics and specific environmental conditions of the site concerned by that plan or project.

In an action against a Member State for failure to fulfil obligations, it is for the Commission to establish the existence of the failure alleged. It is the Commission which 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. Moreover, the burden of proof borne by the Commission in such an action must be determined according to the types of obligations which directives impose on the Member States and therefore in the results which must be achieved by them.

Thus, in an action for failure to fulfil obligations which relates to the obligations laid down in Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, the Commission cannot simply allege the mere existence of framework agreements for industrial construction projects within a special protection area, but must also provide sufficiently specific evidence to show that they are more than at the stage of preliminary administrative reflection and carry a degree of precision in the planning in question which calls for an environmental assessment of their effects. The Commission must also prove that, in the light of the characteristics and the specific environmental conditions of the site affected by a plan or project, that plan or project is likely to have a significant effect on that site, in the light of the conservation objectives fixed for the site.

70. Case C-186/06 — Judgment of the Court (Second Chamber) of 18 December 2007. Commission of the European Communities v Kingdom of Spain. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Irrigable area of the Segarra-Garrigues Canal (Lleida). Article 4(4) of the Birds Directive, Article 6(2) and 7 of Habitats Directive.

Summary

In an action under Article 226 EC, the letter of formal notice sent by the Commission to the Member State and then the reasoned opinion issued by the Commission delimit the subject-matter of the dispute, so that it cannot thereafter be extended. The opportunity for the Member State concerned to be able to submit its observations, even if it chooses not to avail itself thereof, constitutes an essential guarantee intended by the Treaty, adherence to which is an essential formal requirement of the procedure for finding that a Member State has failed to fulfil its obligations. Consequently, the reasoned opinion and the proceedings brought by the Commission must be based on the same complaints as those set out in the letter of formal notice initiating the pre-litigation procedure. If that is not the case, that irregularity cannot be regarded as having been cured by the fact that the defendant Member State subsequently submitted observations on the reasoned opinion. Consequently, an action for failure to fulfil obligations is inadmissible in so far as it is based on complaints which did not appear in the letter of formal notice.

The reasoned opinion and the action referred to in Article 226 EC must be based on the same pleas and grounds and set out the complaints coherently and precisely in order that the Member State and the Court may appreciate exactly the scope of the infringement of Community law complained of, a condition which is necessary in order to enable the Member State to avail itself of its right to defend itself and the Court to determine whether there is a breach of obligations as alleged.

An action for failure to fulfil obligations is therefore inadmissible as regards a plea the grounds of which have been

changed in comparison to those stated in the context of the pre-litigation procedure and which does not therefore meet the requirements of coherence and precision referred to.

The first sentence of Article 4(4) of Directive 79/409 on the conservation of wild birds requires Member States to take appropriate steps to avoid in special protection areas (SPAs) pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of that article.

Member States must comply with the obligations arising under that provision even where the areas in question have not been classified as SPAs, provided that they should have been so classified.

In so far as concerns land classified as SPAs, Article 7 of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora provides that the obligations arising under the first sentence of Article 4(4) of Directive 79/409 are replaced, *inter alia*, by the obligations arising under Article 6(2) of Directive 92/43 as from the date of implementation of the latter or the date of classification under Directive 79/409, where the latter date is later. Thus, areas which have not been classified as SPAs but should have been so classified continue to fall under the regime governed by the first sentence of Article 4(4) of Directive 79/409.

The 'Important Bird Areas' directory of 1998, which provides an up-to-date list of the areas of importance for the conservation of birds in a Member State, constitutes, in the absence of scientific proof to the contrary, a basis of reference permitting an assessment to be made as to whether that Member State has classified areas of a sufficient number and size as SPAs to protect all the bird species listed in Annex I to Directive 79/409 on the conservation of wild birds and the migratory species not listed in that annex.

A Member State will be in breach of its obligation under the first sentence of Article 4(4) of Directive 79/409 on the conservation of wild birds if it authorizes an irrigation project of an extent such as that at issue without taking appropriate measures to avoid, in the areas affected by that project which

ought to have been classified as SPAs, the prohibited disturbances. That obligation exists before any reduction is observed in the number of birds or any risk of a protected species becoming extinct has materialized. That finding cannot be called into question by the mere fact that the project is of considerable importance to the economic and social development of the area which it affects. The Member States' ability significantly to harm areas which ought to have been classified as SPAs and which fall within the scheme laid down in the first sentence of Article 4(4) of Directive 79/409 cannot, in any event, be justified by economic and social requirements.

71. Case C-362/06 — Judgment of the Court (Second Chamber) of 23 April 2009. *Markku Sahlstedt and Others v Commission of the European Communities*. Appeals — Conservation of natural habitats — List, adopted by a Commission decision, of sites of Community importance for the Boreal biogeographical region — Admissibility of an action for annulment brought by natural or legal persons against that decision.

Summary

The rule laid down in the fourth paragraph of Article 230 EC that proceedings for annulment brought by a natural or legal person against a decision addressed to another person are admissible only if the decision is of direct and individual concern to the former raises an absolute bar to proceeding which the Community judicature may consider at any time, even of its own motion.

Under the fourth paragraph of Article 230 EC, a natural or legal person may institute proceedings against a decision addressed to another person only if the decision is of 'direct and individual' concern to them. Persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors distinguishes them individually just as in the case of the person addressed by such a decision.

Thus, a Commission decision, adopting, pursuant to Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, a list of sites of Community importance, which concerns a number of areas of land which are classified as sites of Community importance in order to enable the establishment of a coherent European ecological network of special areas of conservation, is, vis-à-vis any person concerned, of general application inasmuch as it applies to all economic operators who, in whatever capacity, carry on or are likely to carry on activities in the areas concerned which could jeopardise the conservation objectives of that directive.

However, the fact that a provision is, by its nature and scope, a provision of general application inasmuch as it applies to the economic operators concerned in general, does not of itself prevent that provision from being of individual concern to some. Where the decision affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons may be individually concerned by that measure inasmuch as they form part of a limited class of economic operators.

However, the fact that it is possible to determine more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that that measure must be regarded as being of individual concern to those persons where it is established that that application takes effect by virtue of an objective legal or factual situation defined by the measure in question.

A Commission decision adopting a list of sites of Community importance is of concern to the owners of the lands covered by some of the sites only in so far as they have rights in those lands, that is to say, by virtue of an objective legal or factual situation defined by the measure in question and not in accordance with criteria specific to the category of landowners.

Individuals are entitled to effective judicial protection of the rights they derive from the Community legal order. The judicial protection of natural or legal persons who are unable, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 230 EC, to challenge directly Community

measures must be guaranteed effectively by a right of action before the national courts. Those courts are under a duty, in accordance with the principle of cooperation in good faith laid down by Article 10 EC, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables those persons to challenge before the courts the legality of any decision or other national measure relative to the application to them of a Community act such as that at issue, by pleading the illegality of such an act and by asking those courts to make a reference to the Court of Justice for a preliminary ruling on legality.

72. Case C-503/06 — Judgment of the Court (Sixth Chamber) of 15 May 2008. *Commission of the European Communities v Italian Republic*. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Derogations from the system of protection of wild birds — Region of Liguria. Article 9 of Birds Directive.

Summary

Failure of a Member State to fulfil obligations — Adoption and application by the Region of Liguria of legislation authorising derogations from the system of protection for wild birds which fails to satisfy the conditions laid down in Article 9 of Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds.

The Court: Declares that, by adopting and applying, for the region of Liguria, legislation authorizing derogations from the system of protection for wild birds which fails to satisfy the conditions laid down in Article 9 of Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds, the Italian Republic has failed to fulfil its obligations under that directive.

73. Case C-293/07 — Judgment of the Court (Second Chamber) of 11 December 2008. *Commission of the European Communities v Hellenic Republic*. Failure of a Member State to fulfil

obligations — Directives 79/409/EEC and 92/43/EC — Conservation of wild birds — Special protection areas — Insufficient measures of protection. Article 4(1,2,4) of the Birds Directive, Article 6(2) to (4) of the Habitats Directive.

Summary

The Hellenic Republic has failed to fulfil its obligations under Article 4(1) and (2), in conjunction with the first sentence of Article 4(4) of Wild Birds Directive, as amended by Article 6(2) to (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora by failing to take all the measures necessary to establish and apply a coherent, specific and integrated legal regime capable of ensuring sustainable management and effective protection of areas designated as Special Protection Areas, in the light of the conservation objectives of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds.

74. Case C-535/07 — Judgment of the Court (Second Chamber) of 14 October 2010. European Commission v Republic of Austria. Failure of a Member State to fulfil obligations — Directives 79/409/EEC and 92/43/EEC — Conservation of wild birds — Incorrect designation and inadequate legal protection of special protection areas. Article 4(1,2) of the Birds Directive, Article 6(2) and 7 of the Habitats Directive. SPA designation.

Summary

In an action under Article 226 EC, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes.

Since the legal regimes of Directive 79/409 on the conservation of wild birds and Directive 92/43 on the conservation of natural habitats and of wild fauna and flora are separate, a Member State cannot exonerate itself from its obligations under Article 4(1) and (2) of Directive 79/409 by relying on

measures other than those prescribed by that directive. Furthermore, the fact that a site in respect of which a Member State is subject to a classification obligation under that directive has not suffered any deterioration is not capable of affecting the obligation imposed on Member States to classify sites as special protection areas

The subject-matter of an action for failure to fulfil obligations is determined by the Commission's reasoned opinion, so that the action must be based on the same grounds and pleas as the reasoned opinion. The letter of formal notice sent by the Commission to the Member State and then the reasoned opinion issued by the Commission delimit the subject-matter of the dispute, so that it cannot thereafter be extended. The opportunity for the Member State concerned to submit its observations, even if it chooses not to avail itself thereof, constitutes an essential guarantee intended by the Treaty, adherence to which is an essential formal requirement of the procedure for finding that a Member State has failed to fulfil its obligations. Consequently, the reasoned opinion and the proceedings brought by the Commission must be based on the same complaints as those set out in the letter of formal notice initiating the pre-litigation procedure. If that is not the case, that irregularity cannot be regarded as having been cured by the fact that the defendant Member State submitted observations on the reasoned opinion.

The reasoned opinion and the action must set out the complaints coherently and precisely in order that the Member State and the Court may appreciate exactly the scope of the infringement of European Union law complained of, a condition which is necessary in order to enable the Member State to avail itself of its right to defend itself and the Court to determine whether there is a breach of obligations as alleged.

While the reasoned opinion must contain a cogent and detailed exposition of the reasons which led the Commission to the conclusion that the Member State concerned had failed to fulfil one of its obligations under the Treaty, the Commission is not, however, obliged to set out in that opinion the steps to be taken to remedy the infringement complained of. Nor, likewise,

is the Commission obliged to set out such steps in its application. Whilst it is true that faithful transposition becomes particularly important in the case of Directive 79/409 on the conservation of wild birds, where management of the common heritage is entrusted to the Member States in their respective territories, it cannot, in any event, require the Member States to include the obligations and prohibitions flowing from Article 4(1) and (2) of that directive and Article 6(2) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora in legal measures laying down for each special protection area (SPA) the protected species and habitats and the conservation objectives.

As regards those obligations, the adoption of positive measures to preserve and improve the state of an SPA is not systematic in nature, but depends on the specific situation in the SPA concerned. Whilst it is true, for example, that protection of SPAs against the activities of individuals requires that the latter be prevented in advance from engaging in potentially harmful activities, it does not appear that attainment of that objective necessarily requires prohibitions specific to each area or to each particular species to be laid down.

As regards identification of the protected species and habitats in each SPA, just as the delimitation of an SPA must be invested with unquestionable binding force, the identification of the species which have warranted classification of that SPA must satisfy the same requirement. If that were not the case, the protective objective arising from Article 4(1) and (2) of Directive 79/409 and from Article 6(2), read in conjunction with Article 7, of Directive 92/43 might not be fully attained.

So far as concerns conservation objectives, the protective legal status which SPAs must obtain does not mean that those objectives have to be specified for each species considered separately. Nor can it be held in any event that the conservation objectives must be contained in the same legal measure as that relating to the protected species and habitats of a particular SPA.

As to the protective legal status of SPAs linked to an existing nature reserve or classified site of another type that is

protected by national or regional measures, Article 4 of Directive 79/409 lays down a regime which is specifically targeted and reinforced, both for the species listed in Annex I to the directive and for migratory species. That is the particular nature of the protection regime which SPAs must enjoy, in contrast to the general, less strict, protection regime laid down in Article 3 of that directive for all the species of birds covered by the directive. It does not follow, however, that only a specifically defined legal regime established for each SPA might protect this kind of site effectively.

75. Case C-76/08 – Judgment of the Court (Second Chamber) of 10 September 2009. *Commission of the European Communities v Republic of Malta*. Failure of a Member State to fulfil obligations – Admissibility – Conservation of wild birds – Directive 79/409/EEC – Spring hunting – Prohibition – Derogation from the system of protection – Condition that there be no ‘other satisfactory solution’ – Legitimate expectations. Article 9 of the Birds Directive.

Summary

Article 9(1) of Directive 79/409 on the conservation of wild birds, as amended, in respect of 2004 to 2006, by Regulation No 807/2003, and, in respect of 2007, by Directive 2006/105, does not have the effect – and could not legally have the object – of making the Commission’s ability to bring an action for infringement subject to the submission, by the Member State concerned, of the annual report required under that provision. On the contrary, Article 9(4) of the Directive requires the Commission, on the basis of the information available to it, and in particular the information communicated to it pursuant to Article 9(3), at all times to ensure that the consequences of these derogations are not incompatible with the Directive.

Furthermore, making the initiation by the Commission of proceedings for a declaration of failure to fulfil obligations subject to the prior communication of a report by the Member State concerned would be likely to harm the role of the Commission as guardian of the Treaties, by virtue of which it

alone is empowered to decide whether it is appropriate to bring such proceedings and to determine the grounds on which they should be initiated.

One condition which must be met in order for the Member States to be able to apply the derogation laid down in Article 9(1) of Directive 79/409 on the conservation of wild birds, as amended, in respect of 2004 to 2006, by Regulation No 807/2003, and, in respect of 2007, by Directive 2006/105, is that there should be no other satisfactory solution. That condition is not satisfied when the hunting season under a derogation coincides, without need, with periods in which the Directive aims to provide particular protection. There is no such need, in particular, if the sole purpose of the derogation authorizing hunting is to extend the hunting seasons for certain species of birds in territories which they already frequent during the hunting seasons fixed in accordance with Article 7 of the Directive. There is also no such need when the species concerned are actually present in autumn in the areas open for spring hunting, even if they are present in considerably smaller numbers than in the spring, provided that those numbers are not inconsiderable.

Nevertheless, the sole finding that those species are in fact present in autumn in the areas open for spring hunting is not sufficient for it to be held that there is another 'satisfactory solution' within the meaning of Article 9(1) of the Directive. The Community legislature, by using the expression 'other satisfactory solution', did not intend to prevent use of the derogation laid down in Article 9(1)(c) of the Directive where any opportunity whatsoever exists of hunting during the open seasons authorised under Article 7 of the Directive, but sought to permit derogations from that provision, only so far as necessary, where hunting opportunities during those periods, in the present case in the autumn, are so limited as to upset the balance sought by the Directive between the protection of species and certain leisure activities.

It is apparent, however, from the provisions of Article 9 of the Directive, which refer to the strictly supervised conditions for that derogation and the selective basis on which birds are

captured, and, moreover, from the general principle of proportionality, that the derogation of which a Member State intends to make use must be proportionate to the needs which justify it. It follows that the finding that there is no other satisfactory solution in the present case, since there are insufficient hunting opportunities in autumn, far from opening up, without limit, the possibility of authorising hunting in spring, does so only so far as it is strictly necessary and provided that the other objectives pursued by the Directive are not jeopardized, in particular if it is ensured that the population of the species concerned is maintained at a satisfactory level and that, if that condition is not fulfilled, hunting of birds cannot, in any event, be considered judicious and, accordingly, acceptable exploitation for the purposes of the 11th recital in the preamble to the Directive.

76. Case C-241/08 — Judgment of the Court (Second Chamber) of 4 March 2010. *European Commission v French Republic*. Failure of a Member State to fulfil ‘Non-obligations — Directive 92/43/EEC — Article 6(2) and (3) — Incorrect transposition — Special areas of conservation — Significant effect of a project on the environment — disturbing’ nature of certain activities — Assessment of the effects on the environment. Article 6(2–4) of the Habitats Directive.

Summary

A national law which provides, generally, that fishing, aquaculture, hunting and other hunting-related activities practiced under the conditions and in the areas authorised by the laws and regulations in force do not constitute activities causing disturbance or having such an effect, without ensuring that those activities cause no disturbance likely significantly to affect the objectives of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, cannot be considered to be consistent with Article 6(2) of that directive.

A Member State has failed to fulfil its obligations under Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, when it systematically

exempts works and developments provided for in Natura 2000 contracts from the procedure of assessment of their implications for the site, since it cannot be ruled out that, while they may have as their objective the conservation or restoration of a site, the works or developments provided for in those contracts may, nevertheless, not be directly connected with or necessary for the management of that site.

Determining the conservation and restoration objectives in the context of Natura 2000 may require the reconciliation of various conflicting objectives. In order to ensure fully the attainment of the conservation objectives referred to in Directive 92/43, it is therefore necessary, in accordance with Article 6(3) of that directive, that each plan or project, not directly connected with or necessary for the management of the site, which is likely significantly to affect the site be subject to an individual assessment of its implications for the site concerned in view of the site's conservation objectives.

By systematically exempting works and development programmes and projects which are subject to a declaratory system from the procedure of assessment of their implications for a site, a Member State fails to fulfil its obligations under Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora.

The appropriate assessment of the implications for a site, which must be carried out pursuant to Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, implies that all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of the relevant site must be identified in the light of the best scientific knowledge in the field. Such an assessment does not therefore involve an examination of the alternatives to a plan or project. The examination of alternative solutions, which is provided for in Article 6(4) of that directive, can only be undertaken where the findings of the assessment of the implications undertaken pursuant to Article 6(3) of that directive are negative and where the plan or project must nevertheless be carried out for imperative reasons of overriding public interest. It cannot constitute

a factor which the competent national authorities are obliged to take into account when they undertake the appropriate assessment provided for in Article 6(3) of that directive.

77. Case C-259/08 — Judgment of the Court (Sixth Chamber) of 15 January 2009. Commission of the European Communities v Hellenic Republic. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Preservation and maintenance of habitats — Classification of special protection areas — Prohibition of hunting and capture — Incorrect transposition. Article 3(1, 2), 4(1), 5 and 8(1) of the Birds Directive.

Summary

The Hellenic Republic has failed to fulfil its obligations under provisions of articles 3(1) and (2), 4(1), 5 and 8(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, by failing to take all the measures necessary to transpose fully and/or correctly the obligations under Articles 3(1) and (2), 4(1), 5 and 8(1) of Council Directive 79/409/EEC.

78. Case C-308/08 — Judgment of the Court (Fourth Chamber) of 20 May 2010. European Commission v Kingdom of Spain. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Protection arrangements before a habitat is placed on the list of sites of Community importance — Project for upgrading a country road — Articles 3(1) and 4(1), 12(4) of Habitats Directive.

Summary

Under Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, Member States must take appropriate protective measures to preserve the characteristics of sites which host priority natural habitat types and/or priority species and which have been identified by Member States with a view to their inclusion in the Community list. Member States may not therefore authorise intervention that may well seriously

compromise ecological characteristics of those sites. That is particularly so where there is a risk that intervention will bring about the extinction of priority species present on the sites concerned.

In proceedings under Article 226 EC for failure to fulfil obligations it is incumbent upon the Commission to prove the alleged failure. It is the Commission's responsibility to place before the Court the information needed to enable the Court to establish that the obligation has not been fulfilled, and in so doing the Commission may not rely on any presumption whatsoever.

Under Article 12(4) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, read together with Annex IV(a) thereto, Member States are to establish a system to monitor, inter alia, the accidental killing of Iberian lynx. In the light of the information gathered, Member States are to undertake further research, or take the conservation measures required, to ensure inter alia that accidental killing does not have a significant, adverse impact on the species concerned.

The fact that, in the course of carrying out a project for upgrading a rural road, the national authorities continue to study new measures capable of further improving the conditions for conservation and improvement of the species concerned cannot in itself lead to a finding that the measures adopted are inappropriate in relation to the aim underlying Article 12(4) of that directive.

79. Case C-491/08 — Judgment of the Court (Fourth Chamber) of 10 June 2010. *European Commission v Italian Republic*. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Sites of Community importance — Tourism complex 'Is Arenas'. Articles 3(1), and 4(1), 6(2) of the Habitats Directive.

Summary

The Italian Republic by failing to adopt, before 19 July 2006, the date on which the site 'Is Arenas' was included in the list

of sites of Community importance, preservation measures that, having regard to the conservation aim of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, are suitable for the purpose of preserving the relevant ecological interest represented at national level by the proposed site of Community importance, and in particular by failing to prevent an activity likely seriously to endanger the ecological characteristics of the site; and by failing to adopt, after 19 July 2006, appropriate measures to prevent the deterioration of natural habitats in respect of which that site of Community importance was designated, has failed to fulfil its obligations under Council Directive 92/43 and, more specifically Article 6(2) thereof.

80. Case C-560/08 — Judgment of the Court (Fifth Chamber) of 15 December 2011. *European Commission v Kingdom of Spain. Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Directive 92/43/EEC — Conservation of natural habitats — Projects for the widening and/or upgrading of the M-501 road in Spain — ZEP ES0000056 ‘Encinares del río Alberche y río Cofio’ ZEP ES0000056 — Proposed SCI ES310005 ‘Cuenca del río Guadarrama’ and proposed SCI ES3110007 ‘Cuenca de los ríos Alberche y Cofio’.* Articles 6(3) and (4), 7 and 12(1)(b) and (d) of Habitats Directive.

Summary

The Kingdom of Spain has failed to fulfil its obligations laid down by Articles 2(1), 3, 4(1) or (2), as the case may be, and 5 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, in relation to separate projects for widening and/or upgrading sections 1, 2 and 4 of the M-501 road and by Articles 6(2) and 8 of Directive 85/337, as amended by Directive 2003/35, as regards separate projects for widening and/or upgrading of sections 2

and 4 of that road, by Article 9 of Directive 85/337, as amended by Directive 2003/35, in relation to separate projects for widening and/or upgrading sections 1, 2 and 4 of that road; by Article 6(3) and (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, read in conjunction with Article 7 of that directive, in relation to separate projects for widening and/or upgrading sections 1, 2 and 4 of the M-501 road, as regards special protection area ‘Encinares del río Alberche y río Cofio’ and by Article 12(1)(b) and (d) of that directive, in relation to separate projects for widening and/or upgrading section 1 of the M-501 road, as regards proposed site of Community importance ES3110005 ‘Cuenca del río Guadarrama’, and sections 2 and 4 of that road, as regards proposed site of Community importance ES3110007 ‘Cuencas de los ríos Alberche y Cofio’.

81. Case C-573/08 — Judgment of the Court (Third Chamber) of 15 July 2010. *European Commission v Italian Republic*. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Measures transposing the directive. Articles 2, 3, 4, 5, 6, 7, 9, 10, 11, 13 and 18 of Birds Directive.

Summary

The Italian Republic has failed to fulfil its obligations under Articles 2 to 7, 9 to 11, 13 and 18 of Wild Birds Directive by failing to transpose Council Directive 79/409/EEC of 2 April 1979, on the conservation of wild birds, into Italian law in a manner which is wholly in compliance with that directive, and by failing to transpose Article 9 of that directive in a manner which ensures that the derogations adopted by the competent Italian authorities comply with the conditions and requirements referred to in that article.

82. Case C-164/09 — Judgment of the Court (Fourth Chamber) of 11 November 2010. *European Commission v Italian Republic*. Failure of a Member State to fulfil obligations — Con-

servation of wild birds — Directive 79/409/EEC — Derogations from the system of protection for wild birds — Hunting. Article 7, 9(1) of the Birds Directive.

Summary

The Italian Republic has failed to fulfil its obligations under wild birds directive by adopting and applying, for the region of Liguria, legislation authorising derogations from the system of protection for wild birds that fails to satisfy the conditions laid down in Article 9 of Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds.

83. Case C-383/09 — Judgment of the Court (Fourth Chamber) of 9 June 2011. European Commission v French Republic. Failure of a Member State to fulfil obligations — Habitats Directive — Inadequacy of measures taken to protect the species *Cricetus cricetus* (European hamster) — Deterioration of habitats. Article 12(1)(d) of Habitats Directive.

Summary

Article 12(1)(d) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 2006/105, requires Member States to take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) to that directive in their natural range, prohibiting deterioration or destruction of breeding sites or resting places.

The transposition of that provision requires the Member States not only to adopt a comprehensive legislative framework but also to implement concrete and specific protection measures. Similarly, the system of strict protection presupposes the adoption of coherent and coordinated measures of a preventive nature. Such a system of strict protection must therefore enable the effective avoidance of deterioration or destruction of breeding sites or resting places of the animal species listed in Annex IV(a) to that directive.

Thus, by failing to establish a programme of measures ensuring strict protection of the European hamster (*Cricetus*

cricetus) and making it possible actually to avoid deterioration or destruction of the breeding sites or resting places of that species, a Member State fails to fulfil its obligations under Article 12(1)(d) of Directive 92/43.

84. Case C-404/09 — Judgment of the Court (Fourth Chamber) of 24 November 2011. European Commission v Kingdom of Spain. Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Open-cast coal mines — Alto Sil’ site — Special protection area — Site of Community importance — Brown bear (*Ursus arctos*) — Capercaillie (*Tetrao urogallus*). Article 6(2)-(4) of the Habitats Directive.

Summary

A Member State that authorises open-cast mines but fails to subject the grant of the authorisations relating thereto to an assessment making it possible to identify, describe and assess appropriately the direct, indirect and cumulative effects of the existing open-cast mining projects, save, in relation to one of those mines, as regards the brown bear (*Ursus arctos*), fails to fulfil its obligations under Articles 2, 3 and 5(1) and (3) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11.

From the date on which a site is designated as a special protection area under Directive 79/409 on the conservation of wild birds, as amended by Directive 97/49, a Member State that authorizes open-cast mining operations in or in the immediate proximity of the site concerned, without making the grant of the authorisations relating thereto subject to the carrying out of an appropriate assessment of the possible effects of those projects, and, in any event, without satisfying the conditions in which a project may be realized despite the risk posed by that project for the capercaillie (*Tetrao urogallus*), which constitutes one of the natural assets which motivated the classifica-

tion of the site in question as a special protection area, namely the absence of alternative solutions, the existence of imperative reasons of major public interest and communication to the Commission of the necessary compensatory measures to ensure the overall coherence of the Natura 2000 network, fails to fulfil its obligations in relation to that site under Article 6(2) to (4) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora in conjunction with Article 7 of that Directive.

From the date on which a site is designated as a special protection area under Directive 79/409 on the conservation of wild birds, as amended by Directive 97/49, a Member State that fails to adopt the necessary measures to prevent the deterioration of habitats including the habitats of species, and to prevent significant disturbance of the capercaillie, the presence of which on the site concerned was the reason for the designation of that area as a special protection area, caused by open-cast mining operations in or in the immediate proximity of that site, fails to fulfil its obligations in relation to the said site under Article 6(2) to (4) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora in conjunction with Article 7 of that Directive.

From the date on which Decision 2004/813, adopting, pursuant to Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, the list of sites of Community importance for the Atlantic biogeographical region was adopted, a Member State that fails to adopt the necessary measures to prevent the deterioration of habitats, including the habitats of species, and disturbance of species by certain mining operations in or in the immediate proximity of that site, fails to fulfil its obligations, in relation to a site designated as a site of Community importance, under Article 6(2) of that Directive.

85. Case C-508/09 — Judgment of the Court (Eighth Chamber) of 3 March 2011. *European Commission v Italian Republic*. Failure of a Member State to fulfil obligations — Conservation of wild birds — Directive 79/409/EEC — Derogations from the

system of protection for wild birds. Articles 5(a) and 9(1) and (2) of Birds Directive.

Summary

The Italian Republic has failed to fulfil its obligations under Article 9 of wild birds directive as the region of Sardinia having adopted, and applying, legislation relating to the authorisation of derogations from the rules for the protection of wild birds that does not satisfy the conditions laid down in Article 9 of birds directive.

86. Case C-522/09 — Judgment of the Court (Fourth Chamber) of 14 April 2011. *European Commission v Roumanie*. Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Special protection areas — Areas designated insufficient in number and size — Irregularity of the pre-litigation procedure — Inadmissibility of the action. Article 4(1) and (2) of Birds Directive.

Summary

In the context of an action for failure to fulfil obligations, the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under European Union law and, on the other, to avail itself of its right to defend itself against the complaints formulated by the Commission. The opportunity for the Member State concerned to submit its observations, even if it chooses not to avail itself thereof, constitutes an essential guarantee intended by the FEU Treaty, adherence to which is an essential formal requirement of the procedure for finding that a Member State has failed to fulfil its obligations.

87. Case C-538/09 — Judgment of the Court (First Chamber) of 26 May 2011. *European Commission v Kingdom of Belgium*. Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Article 6(3) — Special areas of conservation — Appropriate assessment of the implications of a plan or project which is likely to have a significant effect

on a protected site — Exemption from assessment of plans or projects which are subject to a declaratory scheme — Incorrect transposition. Article 6(3) of Habitat Directive.

Summary

Article 6(3) of Directive 92/43, on the conservation of natural habitats and of wild fauna and flora, makes the requirement for an appropriate assessment of the implications of a plan or project conditional on there being a probability or a risk that it will have a significant effect on the site concerned. In the light, in particular, of the precautionary principle, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned.

The assessment of that risk must be made in the light *inter alia* of the characteristics and specific environmental conditions of the site concerned by such a plan or project.

88. Case C-90/10 — Judgment of the Court (Fourth Chamber) of 22 September 2011. *European Commission v Kingdom of Spain*. Failure of a Member State to fulfil obligations — ‘Habitats’ directive — Conservation of natural habitats — Wild fauna and flora — Articles 4(4) and 6(1) and (2) — Establishment of priorities for special areas of conservation and of adequate protection thereof — Failure to ensure adequate legal protection of the special areas of conservation in the Canary Islands. Articles 4(4) and 6(1) and (2) of Habitats Directive.

Summary

The Kingdom of Spain has failed to fulfil its obligations under Article 4(4) and Article 6(1) and (2) of Directive 92/43 of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora by failing to establish, in accordance with Article 4(4) of Directive conservation priorities in relation to the special areas of conservation corresponding to the sites of Community importance for the Micronesian biogeographical region within Spanish territory and identified by Commission Decision 2002/11/EC of 28 December 2001 adopting the

list of sites of Community importance for the Micronesian biogeographical region, pursuant to Council Directive 92/43, and by failing to adopt and apply, in accordance with Article 6(1) and (2) of Directive 92/43, the appropriate conservation measures and a protection system to prevent the deterioration of habitats and significant disturbance of species, by ensuring the legal protection of the special areas of conservation covering the sites referred to in Decision 2002/11 situated in Spanish territory.

89. Case C-340/10 — Judgment of the Court (Fourth Chamber) of 15 March 2012. *European Commission v Republic of Cyprus*. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Articles 4(1) and 12(1) — Failure to include Paralimni Lake as a site of Community importance within the time-limit laid down — System of protection for the species *Natrix natrix cyprica* (Cypriot grass snake). Articles 3(1) and 4(1), 12(1) of Habitats Directive.

Summary

In the case of sites eligible for identification as sites of Community importance, included in the national lists transmitted to the Commission and, in particular, sites hosting priority natural habitat types or priority species, the Member States are, by virtue of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 2006/105, required to take protective measures appropriate, from the point of view of the directive's conservation objective, for the purpose of safeguarding the relevant ecological interest of those sites at national level.

The appropriate protection scheme applicable to the sites appearing in a national list transmitted to the Commission under Article 4(1) of that directive requires Member States not to authorized interventions which incur the risk of seriously compromising the ecological characteristics of those sites. This is particularly the case when an intervention poses the risk of significantly reducing the area of a site, or of leading to the disappearance of priority species present on the site, or, lastly,

of having as an outcome the destruction of the site or the destruction of its representative characteristics.

If that were not the case, the European Union decision-making process, which is not only based on the integrity of the sites as notified by the Member States, but is also characterized by the ecological comparisons between the different sites proposed by the Member States, would run the risk of being distorted and the Commission would no longer be in a position to fulfil its duties in the area concerned, namely, in particular, to draw up the list of selected sites as sites of Community importance in order to form a coherent European ecological network.

The above considerations also apply, *mutatis mutandis*, to the sites which the Member State concerned does not dispute satisfy the ecological criteria in Article 4(1) of Directive 92/43 and which, therefore, should have been included in the national list of proposed sites of Community importance sent to the Commission. It is not permissible, under that directive and the objectives which it pursues, for a site, which the Member State concerned does not dispute must be included in that list, not to enjoy any protection.

Consequently, a Member State that tolerates activities seriously compromising the ecological characteristics of such a site and does not take the protective measures necessary to maintain the population of the species concerned, which constitutes the ecological interest of that site, fails to fulfil its obligations under Directive 92/43.

Article 12(1) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 2006/105, requires the Member States to take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) of the same directive, which must enable the effective avoidance of all forms of deliberate capture or killing of specimens of these species in the wild, deliberate disturbance of those species, particularly during the period of breeding, rearing, hibernation and migration, deliberate destruction or taking of eggs from the wild as well as deterioration or destruction of breeding sites or resting places.

Consequently, a Member State that does not take the measures necessary in order to establish and apply a system of strict protection for that animal species fails to fulfil its obligations under Article 12(1) of Directive 92/43.

90. Case C-46/11 — Case C-46/11: Judgment of the Court (Eighth Chamber) of 15 March 2012 — European Commission v Republic of Poland. Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Inadequate protection of certain species, including the otter (*Lutra lutra*). Article 12, 13 and 16 of the Habitats Directive.

Summary

The Court declares that, by failing to transpose correctly the conditions governing derogations laid down in Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the Republic of Poland has failed to comply with its obligations under that provision.

91. Case C-192/11 — Judgment of the Court (Seventh Chamber) of 26 January 2012. European Commission v Republic of Poland. Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Scope of the system of protection — Derogations from the prohibitions laid down by the directive. Article 1, 5 and 9(1,2) of the Birds Directive.

Summary

The Republic of Poland has failed to fulfil its obligations under Articles 1, 5 and 9(1) and (2) of Directive on the conservation of wild birds by failing to apply national conservation measures to all species of birds naturally occurring in the wild state in the European territory of the Member States and entitled to protection under Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, and likewise by failing to define

correctly the conditions to be met in order to be able to derogate from the prohibitions laid down by that directive.

92. Case C-258/11 — Judgment of the Court (Third Chamber) of 11 April 2013 (request for a preliminary ruling from the Supreme Court — Ireland) *Peter Sweetman and Others v An Bord Pleanála* — Environment — Directive 92/43/EEC — Article 6 — Conservation of natural habitats — Special areas of conservation — Assessment of the implications for a protected site of a plan or project — Criteria to be applied when assessing the likelihood that such a plan or project will adversely affect the integrity of the site concerned — Lough Corrib site — N6 Galway City Outer Bypass road scheme. Article 6(3) of the Habitats Directive.

Summary

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of sites of Community importance, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.

93. Case C-517/11 — Judgment of the Court (Fourth Chamber) of 7 February 2013 — *European Commission v Hellenic Republic* (Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Article 6(2) — Deterioration and pollution of Lake Koroneia — Protection — Inadequacy of the measures taken — Directive 91/271/EEC — Urban waste-water treatment — Articles 3 and 4(1) and (3) — Agglomeration of Langada — System

for the collection and treatment of urban waste-water — ‘Absence’. Article 6(2) of the Habitats Directive.

Summary

By not having taken all the required steps to avoid the deterioration of the natural habitats and the habitats of species for which the special area of conservation GR 1220009 was designated and by not having set up a system for the collection and treatment of urban waste water for the agglomeration of Langada, the Hellenic Republic has failed to fulfil its obligations under Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, read in conjunction with Article 7 of that Directive, as well as its obligations under Articles 3 and 4(1) and (3) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.

94. Case C-301/12 — Judgment of the Court (Second Chamber) of 3 April 2014 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Cascina Tre Pini s.s. v Ministero dell’Ambiente e della Tutela del Territorio e del Mare, Regione Lombardia, Presidenza del Consiglio dei Ministri, Consorzio Parco Lombardo della Valle del Ticino, Comune di Somma Lombardo (Request for a preliminary ruling Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Sites of Community importance — Review of status in the event of pollution or degradation of the environment — National legislation not providing for persons concerned to request such a review — Attribution to the competent national authorities of a discretionary power to undertake of their own motion a review procedure of that status. Articles 4(1), 9 and 11 of Habitats Directive.

Summary

Articles 4(1), 9 and 11 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 the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic

of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, must be interpreted as meaning that the competent authorities of the Member States are required to propose to the European Commission the declassification of a site on the list of sites of Community importance, where those authorities have received a request from the owner of land included in that site, alleging an environmental degradation of the site, provided that that request is based on the fact that, despite compliance with the provisions of Article 6(2) to (4) of that directive, that site can definitively no longer contribute to the conservation of natural habitats and of the wild fauna and flora or the setting up of the Natura 2000 network.

Articles 4(1), 9 and 11 of Directive 92/43, as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, must be interpreted as not precluding national legislation under which a power is conferred on the regional and local authorities alone to propose the adaptation of the list of the sites of Community importance, but not on the State, even to act in lieu of the regional or local authorities in the event that they fail to act, provided that that allocation of power does not prevent the proper application of the provisions of that directive.

95. Case C-521/12 — Judgment of the Court (Second Chamber) of 15 May 2014 (request for a preliminary ruling from the Raad van State (Netherlands)) — T.C. Briels and Others v Minister van Infrastructuur en Milieu (Environment — Directive 92/43/EEC — Article 6(3) and (4) — Conservation of natural habitats — Special areas of conservation — Assessment of the implications for a protected site of a plan or project — Authorisation for a plan or project on a protected site — Compensatory measures — Natura 2000 site Vlijmens Ven,

Moerputten & Bossche Broek — Project on the route of the A2's-Hertogenbosch-Eindhoven motorway). Article 6(3,4) of Habitats Directive.

Summary

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site of Community importance, which has negative implications for a type of natural habitat present thereon and which provides for the creation of an area of equal or greater size of the same natural habitat type within the same site, has an effect on the integrity of that site. Such measures can be categorized as 'compensatory measures' within the meaning of Article 6(4) only if the conditions laid down therein are satisfied.

96. Case C-600/12 — Judgment of the Court (Fifth Chamber) of 17 July 2014 — European Commission v Hellenic Republic. Failure to fulfill obligations — Environment — Waste management — Directives 2008/98/EC, 1999/31/EC and 92/43/EEC — Discharge of waste on the island of Zakynthos — Zakynthos national marine park — Natura 2000 site — *Caretta caretta* sea turtle — Extension of the validity period of environmental clauses — Lack of conditioning plan — Operation of a landfill site — Faults — Saturation of the landfill site — Infiltration of leachate — Insufficient coverage and dispersion of waste — Extension of the landfill site. Article 6(3) of Habitats Directive.

Summary

The Hellenic Republic has failed to fulfil its obligations under provisions of Articles 13 and 36(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, and Articles 8, 9, 11(1)(a), 12 and 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, and Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conserva-

tion of natural habitats and of wild fauna and flora by keeping in operation on the island of Zakynthos, at Griparaiika, in the area of Kalamaki (Greece), a landfill site which is malfunctioning, which is full and which does not observe the conditions and requirements of the environmental legislation of the European Union laid down in Articles 13 and 36(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, and Articles 8, 9, 11(1)(a), 12 and 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, and by renewing the landfill permit for the site in question without complying with the procedure that is laid down by Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

97. Case C-141/14 — Judgment of the Court (Third Chamber) of 14 January 2016. *European Commission v Republic of Bulgaria*. Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Kaliakra and Belite Skali special protection areas — Directive 92/43/EEC — Conservation of natural habitats and wild species — Kompleks Kaliakra site of Community importance — Directive 2011/92/EU — Assessment of the effects of certain projects on the environment — Temporal applicability of the system of protection — Deterioration of natural habitats of species and disturbance of species — Wind power — Tourism. Article Article 4(1) and (2), (4) of Birds Directive, Article 6(2–4) of Habitats Directive.

Summary

Article 6(2) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora also applies to installations the project for which was approved by the competent authority before the protection provided for in that directive became applicable to the protection area concerned. Although such projects are not subject to the requirements relating to the procedure for prior assessment of the implications of the project for the site concerned, laid down by the Directive 92/43,

their implementation nevertheless falls within the scope of Article 6(2) of that directive.

The implementation of a wind-power-installation construction project and the activity generated by the installations resulting from those projects are therefore covered by Article 6(2) of Directive 92/43, even though they were authorised before the accession of the Member State in question and before Directive 92/43, and Directive 2009/147 on the conservation of wild birds, applied to those authorisations.

An activity complies with Article 6(2) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora only if it is guaranteed that it will not cause any disturbance likely significantly to affect the objectives of that directive, particularly its conservation objectives. However, in order to establish failure to comply with that provision, the Commission does not have to establish the existence of a cause-and-effect relationship between the operation of installations resulting from a project and significant disturbance caused to the species concerned. It is sufficient for that institution to establish that there is a probability or risk that that operation might cause such disturbances.

As regards Article 4(4) of Directive 2009/147 on the conservation of wild birds, which requires Member States to take appropriate steps to avoid, within special protection areas, pollution or deterioration of habitats or any disturbances affecting the birds, breach of that provision must to be deemed to exist where the Commission establishes that there is a probability or risk that a project will cause deterioration to the habitats of protected species of birds or cause significant disturbance to those species. In that regard, where it is established that the operation of wind-power installations may lead to significant disturbances and deterioration of the habitats of protected bird species, the fact that such birds still use the areas in question and that, when the wind conditions are favourable, migratory birds are concentrated in the Kaliakra site does not stand in the way of that finding. The obligations to protect exist before any reduction in the number of birds has been observed or before the risk of a protected species becoming extinct has materialised.

As regards the setting of thresholds or criteria in order to make it possible to determine whether projects listed in Annex II to Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment are to be made subject to an environmental impact assessment, it is true that Article 4(2)(b) of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35, indeed confers a measure of discretion on the Member States. However, that discretion is limited by the obligation, set out in Article 2(1) of that directive, to make projects likely, by virtue, *inter alia*, of their nature, size or location, to have significant effects on the environment subject to an impact assessment. Thus, the criteria and thresholds referred to in Article 4(2)(b) of Directive 85/337 are designed to facilitate the examination of the actual characteristics of any given project in order to determine whether it is subject to the requirement to carry out an environmental impact assessment. It follows that the competent national authorities, when they receive a request for development consent for a project relating to Annex II to that directive, must carry out a specific evaluation as to whether, taking account of the criteria set out in Annex III to that directive, an environmental impact assessment should be carried out.

Furthermore, a national authority, in ascertaining whether a project has to be made subject to an environmental impact assessment, must examine its potential impact jointly with other projects. Having regard to the combined application of Article 4(2) and (3) of Directive 2011/92 and of point 1(b) of Annex III thereto, the characteristics of a project must be assessed, *inter alia*, in relation to its cumulative effects with other projects.

98. Case C-399/14 — Judgment of the Court (Third Chamber) of 14 January 2016. *Grüne Liga Sachsen eV and Others v Freistaat Sachsen*. Request for a preliminary ruling from the *Bundesverwaltungsgericht*. Reference for a preliminary ruling — Directive 92/43/EEC — Article 6(2) to (4) — Site included

in the list of sites of Community importance after a project was authorised but before it began to be carried out — Review of the project after the site was included in that list — Rules governing that review — Consequences of the completion of the project for the choice of alternatives. Article 6(2) to (4) of Habitats Directive.

Summary

Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site, and authorised, following a study that did not meet the requirements of Article 6(3) of that directive, before the site in question was included in the list of SCIs must be the subject of a subsequent review, by the competent authorities, of its implications for that site if that review constitutes the only appropriate step for avoiding that the implementation of the plan or project referred to results in deterioration or disturbance that could be significant in view of the objectives of that directive. It is for the referring court to verify whether those conditions are met.

Article 6(2) of the Habitats Directive must be interpreted as meaning that if, in circumstances such as those in the main proceedings, a subsequent review of the implications for the site concerned of a plan or project which began to be put in hand after that site was included in the list of SCIs proves necessary, that review must be carried out in accordance with the requirements of Article 6(3) of that directive. Such a review must take into account all factors existing at the date of that inclusion and all implications arising or likely to arise following the partial or total implementation of the plan or project on the site in question after that date as well.

The Habitats Directive must be interpreted as meaning that, where a new assessment of the implications for a site carried out in order to rectify errors identified in relation to the prior assessment conducted before the inclusion of that site in the list of SCIs or in relation to the subsequent review under

Article 6(2) of the Habitats Directive, even though the plan or project has already been implemented, the requirements of a check made in the context of such a review may not be amended on account of the fact that the planning decision approving that plan or project was immediately enforceable, that an application for interim measures had been dismissed and that that dismissal decision was no longer open to appeal. Moreover, that review must take into account the risks of deterioration or disturbance that could be significant, within the meaning of Article 6(2) of that directive, which may have arisen because the plan or project has been carried out.

Article 6(4) of the Habitats Directive must be interpreted as meaning that the requirements of the check made in the context of the review of alternative solutions may not be amended on account of the fact that the plan or project has already been implemented.

99. Case C-461/14 — Judgment of the Court (Fifth Chamber) of 24 November 2016. *European Commission v Kingdom of Spain*. Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Special protection areas — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Directive 92/43/EEC — Conservation of natural habitats. Article 6(2) of Habitats Directive and article 4(4) of Birds Directive.

Summary

The Kingdom of Spain by failing to take appropriate steps to avoid, in the special protection area ‘Campiñas de Sevilla’, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which that area was established, failed to fulfil its obligations under Article 4(4) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and has failed to fulfil its obligations under Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

100. Case C-504/14 — Judgment of the Court (Fourth Chamber) of 10 November 2016. European Commission v Hellenic Republic. Failure of a Member State to fulfil obligations — Environment — Nature conservation — Directive 92/43/EEC — Article 6(2) and (3) and Article 12(1)(b) and (d) — Wild fauna and flora — Conservation of natural habitats — Sea turtle *Caretta* — Protection of sea turtles in the Gulf of Kyparissia — ‘Dunes of Kyparissia’ Site of Community importance — Protection of species. Articles 4(2), 6(2), (3) and (4) and 12(1)(b) and (d) of Habitats Directive.

Summary

The Hellenic Republic has failed to fulfil its obligations under those provisions of Directive 92/43 by failing to take the measures referred to in Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, so as to prevent deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the area has been designated, by permitting (without carrying out any assessment of the implications as referred to in Article 6(3) of Directive 92/43) activities which, either individually or in combination with other plans or projects, are likely to have a significant effect on the site at issue, reducing and destroying the nesting area of the priority species *Caretta caretta*, which is present there, causing disturbance to the species concerned and, ultimately, reducing and destroying the sand dune habitats 2110, 2220 and the priority habitat 2250, and by failing to take the measures required by Article 12(1)(b) and (d) of Directive 92/43 to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* (a priority species) in the Gulf of Kyparissia (Greece) so as to avoid any disturbance of the species concerned during its breeding period and any activity which can cause deterioration or destruction of its breeding sites.

101. Case C-387/15 — Judgment of the Court (Seventh Chamber) of 21 July 2016. Hilde Orleans and Others v Vlaams Gewest. Requests for a preliminary ruling from the Raad van

State (Belgium). Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats — Special areas of conservation — Natura 2000 site ‘Scheldt and Durme estuary from the Dutch border to Ghent’ — Development of a port area — Assessment of the implications of a plan or project for a protected site — Occurrence of adverse effects — Prior but not yet completed development of an area of an equivalent type to the part destroyed — Completion subsequent to the assessment — Article 6(3) and (4) of Habitats Directive.

Summary

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that measures, contained in a plan or project not directly connected with or necessary to the management of a site of Community importance, providing, prior to the occurrence of adverse effects on a natural habitat type present thereon, for the future creation of an area of that type, but the completion of which will take place subsequently to the assessment of the significance of any adverse effects on the integrity of that site, may not be taken into consideration in that assessment. Such measures can be categorized as ‘compensatory measures’, within the meaning of Article 6(4), only if the conditions laid down therein are satisfied.

102. Case C-557/15 — Judgment of the Court (Third Chamber) of 21 June 2018. European Commission v Republic of Malta. Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Live-capturing and keeping — Species belonging to the finch family — Prohibition — National derogation regime — Member States’ power of derogation — Conditions. Articles 5(a) and (e), 8(1) and 9(1) and (2) of Birds Directive.

Summary

By adopting a derogation regime allowing the live-capturing of seven species of wild finches (Chaffinch *Fringilla coelebs*, Linnet *Carduelis cannabina*, Goldfinch *Carduelis carduelis*,

Greenfinch *Carduelis chloris*, Hawfinch *Coccothraustes coccothraustes*, Serin *Serinus serinus* and Siskin *Carduelis spinus*), the Republic of Malta has failed to fulfil its obligations under Article 5 (a) and (e), and 8(1) in connection with point (a) of Annex IV of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, read in conjunction with Article 9(1) of that directive.

103. Case C-281/16 – Judgment of the Court (Fourth Chamber) of 19 October 2017. *Vereniging Hoekschewaards Landschap v Staatssecretaris van Economische Zaken*. Request for a preliminary ruling from the Raad van State Reference for a preliminary ruling – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Implementing Decision (EU) 2015/72 – List of sites of Community importance for the Atlantic biogeographical region – Reduction of the size of a site – Scientific error – Validity. Articles 2(1), 3(1), 4(1) of Habitats Directive.

Summary

This request for a preliminary ruling concerns the validity of Commission Implementing Decision (EU) 2015/72 of 3 December 2014 adopting an eighth update of the list of sites of Community importance for the Atlantic biogeographical region.

The request has been made in proceedings between the Vereniging Hoekschewaards Landschap and the Staatssecretaris van Economische Zaken (State Secretary for Economic Affairs, Netherlands) ('the State Secretary') concerning the legality of a decision to reduce the size of a special area of conservation ('the SAC').

104. Case C-683/16 – Judgment of the Court (Third Chamber) of 13 June 2018. *Deutscher Naturschutzring – Dachverband der deutschen Natur- und Umweltschutzverbände e.V. v Bundesrepublik Deutschland*. Request for a preliminary ruling from the Verwaltungsgericht Köln. Reference for a preliminary ruling – Common Fisheries Policy – Regulation (EU) No 1380/2013 – Article 11 – Conservation of marine biological

resources — Protection of the environment — Conservation of natural habitats and of wild fauna and flora — Exclusive competence of the European Union. Articles 3(1), 4(4) and 6(2) of the Habitats Directive.

Summary

Article 11 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC must be interpreted as meaning that it precludes a Member State from adopting, with respect to the waters under their sovereignty or jurisdiction, the measures which are necessary in order for it to meet its obligations under Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and which completely prohibit, in Natura 2000 areas, commercial fishing using gear which touches the sea bed and fixed nets, since such measures affect fishing vessels flying the flag of other Member States.

Article 11(1) of Regulation No 1380/2013 must be interpreted as meaning that it precludes the adoption, by a Member State, of measures such as those at issue in the main proceedings, with respect to the waters under its sovereignty or its jurisdiction, which are necessary in order for it to meet its obligations deriving from Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

105. Case C-97/17 — Judgment of the Court (Second Chamber) of 26 April 2018. *European Commission v Republic of Bulgaria*. Failure of a Member State to fulfil obligations — Protection of nature — Directive 2009/147/EC — Conservation of wild birds — Special Protection Area (SPA) — Classification as SPAs of the most suitable territories in number and size for the conservation of the bird species listed in Annex I to

Directive 2009/147 — Important Bird Area (IBA) — IBA Rila — Partial classification of IBA Rila as an SPA. Article 4(1) of the Birds Directive.

Summary

The European Commission requests the Court to declare that, by failing to include the entire Important Bird Area ('IBA') covering the Rila Mountains (Bulgaria) ('IBA Rila') as a Special Protection Area ('SPA'), the Republic of Bulgaria did not classify as SPAs the most suitable territories in number and size for the conservation of the species listed in Annex I to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on wild birds ('the Birds Directive'), and consequently failed to fulfil its obligations under Article 4(1) of that directive.

106. Case C-441/17 — Judgment of the Court (Grand Chamber) of 17 April 2018. *European Commission v Republic of Poland*. Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(1) and (3) — Article 12(1) — Directive 2009/147/EC — Conservation of wild birds — Articles 4 and 5 — 'Puszcza Białowieska' Natura 2000 site — Amendment of the forest management plan — Increase in the volume of harvestable timber — Plan or project not directly necessary to the management of the site that is likely to have a significant effect on it — Appropriate assessment of the implications for the site — Adverse effect on the integrity of the site — Actual implementation of the conservation measures — Effects on the breeding sites and resting places of the protected species. Articles 1(1)(l), 6(1),(3) and (4), 12(1)(a) and (d) of the Habitats Directive, Articles 4(1) and (2), 5(b) and (d) of the Birds Directive.

Summary

The Republic of Poland has failed to fulfil its obligations under Article 6(3) 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, by adopting an appendix to the forest management plan for the Białowieża Forest District without ascertaining that that appendix would not adversely affect the integrity of the site of Community importance and special protection area PLC200004 Puszcza Białowieska, Article 6(1) of Directive 92/43, as amended by Directive 2013/17, and Article 4(1) and (2) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, as amended by Directive 2013/17, by failing to establish the necessary conservation measures corresponding to the ecological requirements of (i) the natural habitat types listed in Annex I to Directive 92/43, as amended by Directive 2013/17, and the species listed in Annex II to that directive, and (ii) the species of birds listed in Annex I to Directive 2009/147, as amended by Directive 2013/17, and the regularly occurring migratory species not listed in that annex, for which the site of Community importance and special protection area PLC200004 Puszcza Białowieska were designated; Article 12(1)(a) and (d) of Directive 92/43, as amended by Directive 2013/17, by failing to guarantee the strict protection of certain saproxylic beetles, namely the goldstreifiger beetle (*Buprestis splendens*), the flat bark beetle (*Cucujus cinnaberinus*), the false darkling beetle (*Phryganophilus ruficollis*) and *Pytho kolwensis*, listed in Annex IV to that directive, that is to say, by failing effectively to prohibit the deliberate killing or disturbance of those beetles or the deterioration or destruction of their breeding sites in the Białowieża Forest District; and Article 5(b) and (d) of Directive 2009/147, as amended by Directive 2013/17, by failing to guarantee the protection of the species of birds referred to in Article 1 of that directive, including, in particular, the pygmy owl (*Glaucidium passerinum*), the boreal owl (*Aegolius funereus*), the white-backed woodpecker (*Dendrocopos leucotos*) and the three-toed woodpecker (*Picoides tridactylus*), that is to say, by failing to ensure that they will not be killed or disturbed during the period of breeding and rearing and that their nests or eggs will not be deliberately destroyed, damaged or removed in the Białowieża Forest District.

107. Case C-461/17 — Judgment of the Court (Second Chamber) of 7 November 2018. Brian Holohan and Others v An Bord Pleanála. Request for a preliminary ruling from the High Court (Ireland). Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural habitats — Conservation of wild fauna and flora — Road construction project — Appropriate assessment of effects on the environment — Extent of the obligation to state reasons — Directive 2011/92/EU — Assessment of the implications of certain projects — Annex IV, Point 3 — Article 5(3)(d) — Meaning of the concept of ‘main alternatives’. Articles 6(3) of Habitats Directive.

Summary

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that an ‘appropriate assessment’ must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.

Article 6(3) of Directive 92/43 must be interpreted as meaning that the competent authority is permitted to grant to a plan or project consent which leaves the developer free to determine subsequently certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site.

Article 6(3) of Directive 92/43 must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the ‘appropriate assessment’ must include an explicit and detailed statement of reasons capable of dispel-

ling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.

Article 5(1) and (3) of, and Annex IV to, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, must be interpreted as meaning that the developer is obliged to supply information that expressly addresses the significant effects of its project on all species identified in the statement that is supplied pursuant to those provisions.

Article 5(3)(d) of Directive 2011/92 must be interpreted as meaning that the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage.

108. Case C-674/17 — Judgment of the Court (Second Chamber) of 10 October 2019. *Luonnonsuojeluyhdistys Tapiola Pohjois-Savo — Kainuu ry v Risto Mustonen and Others*. Request for a preliminary ruling from the Korkein hallinto-oikeus. Reference for a preliminary ruling — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 12(1) — System of strict protection of animal species — Annex IV — *Canis lupus* (wolf) — Article 16(1)(e) — Derogation allowing the taking of certain specimens in limited numbers — Hunting for population management purposes — Evaluation of the conservation status of populations of the species concerned. Article 12(1) and 16(1)(e) of the Habitats Directive.

Summary

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

hunting for population management purposes, the objective of which is to combat poaching, where:

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

109. Case C-161/19 – Judgment of the Court (First Chamber) of 23 April 2020. *European Commission v Republic of Austria*. Failure of a Member State to fulfil obligations – Directive 2009/147/EC – Conservation of wild birds – Authoriza-

tions for spring hunting of male specimens of the ‘woodcocks’ bird species (*Scolopax rusticola*) in Lower Austria (Austria) — Articles 7(4) and (9)(1)(c) — No ‘other satisfactory solution’ — Notion of ‘small numbers’. Articles 7(4) and 9(1c) of Birds Directive.

Summary

By authorising the spring hunting of male Eurasian woodcock (*Scolopax rusticola*) in Lower Austria (Austria), the Republic of Austria has failed to fulfil its obligations under Article 7(4) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

110. Case C-217/19 — Judgment of the Court (First Chamber) of 23 April 2020. *European Commission v Republic of Finland*. Action for failure to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Authorizations for spring hunting of male specimens of the ‘common eider’ bird species (*Somateria mollissima*) in the province of Åland (Finland) — Article 7(4) and Article 9(1)(c) — Concepts of ‘judicious use’ and ‘small numbers’. Articles 7(4) and 9(1)(c) of Birds Directive.

Summary

By recurrently granting authorizations for spring hunting of male common eiders (*Somateria mollissima*) in the province of Åland since 2011 and up to and including 2019, the Republic of Finland failed to fulfil its obligations under Article 7(4) and Article 9(1)(c) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

111. Case C-473/19 — Judgment of the Court (Second Chamber) of 4 March 2021. *Föreningen Skydda Skogen and Others v Länsstyrelsen i Västra Götalands län and Others*. Requests for a preliminary ruling from the Vänersborgs tingsrätt, mark- och miljödomstolen. Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Conservation of natural

habitats and of wild fauna and flora — Article 12(1) — Directive 2009/147/EC — Conservation of wild birds — Article 5 — Forestry — Prohibitions intended to ensure the conservation of protected species — Plan for final felling of trees — Site hosting protected species. Articles 5, 12(1)(a) to (d) of Birds Directive.

Summary

Article 5 of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds must be interpreted as precluding a national practice whereby the prohibitions laid down in that provision cover only the species which are listed in Annex I to that directive, those which are at some level at risk or those which are suffering a long-term decline in population.

Article 12(1)(a) to (c) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, first, it precludes a national practice whereby, should the purpose of a human activity, such as forestry work or land development, be manifestly different from the killing or disturbance of animal species, the prohibitions laid down in that provision apply only in the event of a risk of adverse effects on the conservation status of the species concerned and, secondly, the protection afforded by that provision does not cease to apply to species which have achieved a favorable conservation status.

Article 12(1)(d) of Directive 92/43 must be interpreted as precluding a national practice whereby, if the continuous ecological functionality of the natural habitat of the species concerned in a particular area is, in spite of precautionary measures, lost by harm, destruction or deterioration, whether directly or indirectly, by the effect of the activity at issue, taken individually or cumulatively with others, the prohibition laid down in that provision is applied only if the conservation status of the species concerned is likely to deteriorate.

112. Case C-477/19 — Judgment of the Court (Seventh Chamber) of 2 July 2020. *IE v Magistrat der Stadt Wien*. Request for a preliminary ruling from the *Verwaltungsgericht Wien*.

Reference for a preliminary ruling — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — Article 12(1) — System of strict protection for animal species — Annex IV — *Cricetus cricetus* (European hamster) — Resting places and breeding sites — Deterioration or destruction — Areas which have been abandoned. Article 12(1) of Habitats Directive.

Summary

Article 12(1)(d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that the term ‘resting places’ referred to in that provision also includes resting places which are no longer occupied by one of the protected animal species listed in Annex IV(a) to that directive, such as the *Cricetus cricetus* (European hamster), where there is a sufficiently high probability that that species will return to such places, which is a matter for the referring court to determine.

113. Case C-432/21 — Judgment of the Court (Second Chamber) of 2 March 2023. Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(1) to (3), Article 12(1)(a) to (d), Article 13(1)(a) and Article 16(1) — Directive 2009/147/EC — Conservation of wild birds — Article 4(1), Article 5(a), (b) and (d) and Article 9(1) — Forest management based on good practice — Forest management plans — Aarhus Convention — Access to justice — Article 6(1)(b) and Article 9(2) — Examination of the lawfulness, as regards the substance and procedure, of forest management plans — Right of environmental organisations to bring an action.

Summary

The Republic of Poland failed to fulfill its obligations relating the environmental protection. By failing to adopt all the legislative provisions necessary to ensure that environmental organisations are able to apply to a court for effective review of the substantive and procedural legality of forest management

plans, within the meaning of the provisions of the Law on forests, the Republic of Poland has failed to fulfil its obligations under art. 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, read in conjunction with art. 6(1)(b) and art. 9(2) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25.06.1998.

114. Case C-444/21 – Judgment of the Court of 29 June 2023. *European Commission v Ireland*. 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.

Summary

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, a second updated list of sites of Community importance for the Atlantic biogeographical region, 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 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.

115. Case C-116/22 – Judgment of the Court (Second Chamber) of 21 September 2023. *European Commission v Federal Republic of Germany*. Failure of a Member State to fulfil obligations – Environment – Directive 92/43/EEC –

Conservation of natural habitats and of wild fauna and flora – Article 4(4) and Article 6(1) – Failure to designate special areas of conservation – Failure to determine conservation objectives – Absence or insufficiency of conservation measures – Administrative practice.

Summary

The Court declared that the Federal Republic of Germany has failed to fulfil its obligations under Article 4(4) of the Habitats Directive, by failing to designate, as special areas of conservation, 88 of the 4 606 sites of Community importance situated in the Alpine, Continental and Atlantic biogeographical regions; under Article 4(4) of the Habitats Directive, inasmuch as, for 88 of the 4 606 sites of Community importance at issue, it has failed to establish any conservation objectives whatsoever and, furthermore, inasmuch as it pursues, for the setting of conservation objectives, a general and structural practice that does not meet the legal requirements of that provision; and under Article 6(1) of the Habitats Directive, inasmuch as, for 737 of the 4 606 sites of Community importance at issue, it has failed to establish any conservation measures whatsoever and, furthermore, inasmuch as it pursues, for the establishment of conservation measures, a general and structural practice that does not meet the legal requirements laid down in that provision.

116. Case C-601/22 – Judgment of the Court (First Chamber) of 11 July 2024. *Umweltverband WWF Österreich and Others v Tiroler Landesregierung*. Request for a preliminary ruling from the *Landesverwaltungsgericht Tirol*. Reference for a preliminary ruling – Validity and interpretation – Conservation of natural habitats and of wild fauna and flora – Directive 92/43/EEC – Article 12(1) – System of strict protection for animal species – Annex IV – *Canis lupus* (wolf) – Equal treatment between Member States – Article 16(1) – National authorisation to take a specimen of a wild animal of the *canis lupus* species – Evaluation of the conservation status of populations

of the species concerned — Geographical scope — Determination of the damage — Satisfactory alternative solution.

Summary

Article 16(1) of the Habitats Directive must be interpreted as meaning that the condition laid down therein, according to which the derogation granted under that provision must not be detrimental to the maintenance of the populations of the species concerned with a favourable conservation status in their natural range, may be assessed by taking account, in the light of the available data, of the level of the biogeographical region, which extends beyond national borders, only where it has been established in advance that that derogation does not adversely affect the maintenance of such a favourable conservation status at the level of the local and national territory of the Member State concerned.

Article 16(1)(b) of the Habitats Directive must be interpreted as meaning that the concept of ‘serious damage’, set out in that provision, does not cover future indirect damage which is not attributable to the specimen of the animal species which is the subject of the derogation granted under that provision.

Article 16(1) of the Habitats Directive must be interpreted as meaning that, in the context of determining whether there is a ‘satisfactory alternative’ within the meaning of that provision, the competent national authorities are required to assess, on the basis of the best available scientific and technical knowledge, the other possible solutions, taking account, in particular, of their economic implications, without those implications being decisive, and balancing them with the general objective of maintaining or restoring the animal species concerned at a favourable conservation status.

117. Case C-436/22 — Judgment of the Court (First Chamber) of 29 July 2024. *Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL) v Administración de la Comunidad de Castilla y León*. Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla y León. Reference for a preliminary ruling — Conservation of natural habitats and of

wild fauna and flora — Directive 92/43/EEC — Articles 2, 4, 11, 12, 14, 16 and 17 — System of strict protection for animal species — *Canis lupus* (wolf) — Cyngetic exploitation — Assessment of the conservation status of populations of the species concerned — Conservation status of that species ‘unfavourable-poor’ — Exploitation incompatible with the maintenance or restoration of the species at a favourable conservation status — Taking into account of all the most recent scientific data.

Summary

Article 14 of the Habitats Directive must be interpreted as precluding legislation of a Member State under which the wolf is designated as a species whose specimens may be hunted in a part of the territory of that Member State where it is not covered by the strict protection provided for in Article 12(1) of that directive, whereas the conservation status of that species in that Member State is classified as ‘unfavourable-poor’. It is appropriate to take into account, in that regard, the report drawn up every six years pursuant to Article 17 of that directive, all the most recent scientific data, including those obtained from the surveillance provided for in Article 11 of that directive, and the precautionary principle enshrined in Article 191(2) TFEU.

118. Case C-66/23 — Judgment of the Court (First Chamber) of 12 September 2024. *Elliniki Ornithologiki Etaireia and Others v Ypourgos Esoterikon and Others*. Request for a preliminary ruling from the *Symvoulio tis Epikrateias*. Reference for a preliminary ruling — Environment — Directive 92/43/EEC — Directive 2009/147/EC — Conservation of wild birds — Conservation of natural habitats and of wild fauna and flora — Classification of a territory as a Special Protection Area — ‘Classification’ species — Temporary horizontal measures applied uniformly to all Special Protection Areas — Failure to adopt individualised management plans.

Summary

Article 4(1) and (2) of the Birds Directive and Article 6(2) to (4) of the Habitats Directive must be interpreted as requiring

Member States to establish, for each special protection area, individual conservation objectives and measures for all bird species listed in Annex I to Directive 2009/147 and regularly occurring migratory species not listed in that annex and their habitat. In doing so, Member States are responsible for defining priorities according to the significance of those measures for achieving conservation objectives in respect of all those species. Article 4(1) and (2) of the Birds Directive and Article 6(2) to (4) of the Habitats Directive must be interpreted as meaning that the requirement to carry out an environmental assessment of a project under Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, does not affect the scope of the obligations under those provisions.

119. Case C-47/23 — Judgment of the Court (Third Chamber) of 14 November 2024. *European Commission v Federal Republic of Germany*. Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6(2) — Appropriate steps to avoid, in special areas of conservation, the deterioration of natural habitats — Habitat types 6510 (lowland hay meadows) and 6520 (mountain hay meadows) protected by the Natura 2000 network — Loss of area — No specific surveillance of natural habitats — General and structural failure — Article 4(1) — Proposal by each Member State of a list of sites indicating which natural habitat types and native species the sites host — Regular updating of information relating to those sites.

Summary

By failing, in a general and structural manner, to take appropriate steps to avoid the deterioration of habitat types 6510 (lowland hay meadows) and 6520 (mountain hay meadows) protected by the Natura 2000 network, listed in Annex I to the Habitats Directive, in the sites designated for those habitat types, and by failing, in a general and structural manner, to transmit to the Commission updated data relating to habitat

types 6510 and 6520 in the sites designated for those habitat types, the Federal Republic of Germany has failed to fulfil its obligations under Article 6(2) and the second subparagraph of Article 4(1) of the Habitats Directive, respectively.

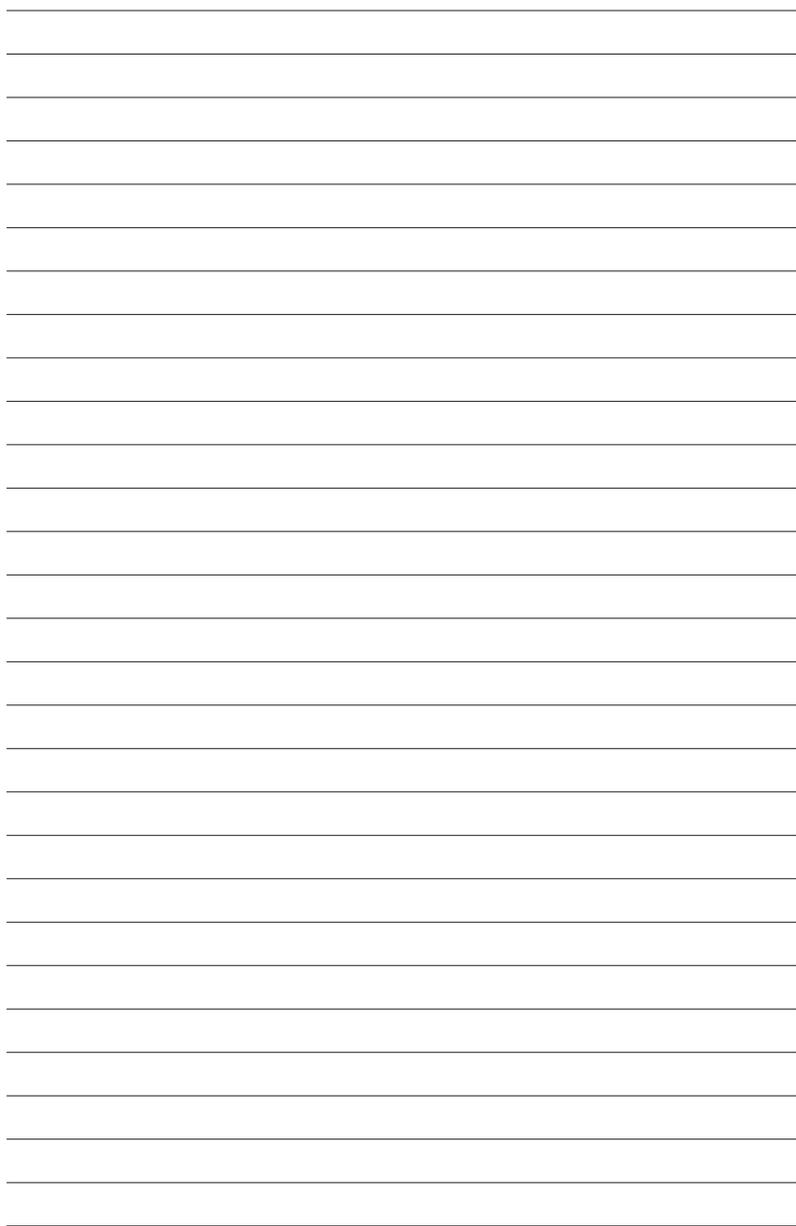
120. Case C-629/23 — Judgment of the Court (Fifth Chamber) of 12 June 2025. *MTÜ Eesti Suurkiskjad v Keskkonnaamet*. Request for a preliminary ruling from the Riigikohus. Reference for a preliminary ruling — Conservation of natural habitats and of wild fauna and flora — Directive 92/43/EEC — First subparagraph of Article 1(i) — Conservation status of a species — Concept — Article 14 — Management measures — Taking in the wild and exploitation compatible with the maintenance or restoration of the species at a favourable conservation status — Second subparagraph of Article 1(i) — Assessment whether the conservation status of the species concerned is favourable — Cumulative conditions — *Canis lupus* (wolf) — Classification in the ‘vulnerable’ category of the International Union for Conservation of Nature’s ‘Red List’ — Animal species forming part of a population whose natural range extends beyond the territory of a Member State — Taking account of exchanges with populations of the same species present in neighbouring Member States or in third countries — Article 2(3) — Taking account of economic, social and cultural requirements and regional and local characteristics.

Summary

Article 1(i) of the Habitats Directive must be interpreted as meaning that classification in the ‘vulnerable’ (VU) category of the Red List of endangered species of the IUCN of the population of an animal species present within the territory of a Member State does not preclude the conservation status of that species, within the territory of that Member State, from being taken as ‘favourable’ within the meaning of that provision. The favourable conservation status of that species must exist and be assessed, in the first place and necessarily, at local and national level. However, in the context of the assessment, with a view to the adoption of management measures, of whether the

conservation status of an animal species that is part of a population whose natural range extends beyond the territory of that Member State is 'favourable' within the meaning of Article 1 (i), that Member State may take into consideration the exchanges between, on the one hand, the population of the species concerned present within its territory and, on the other, the populations of that species present in the neighbouring Member States or third countries.

Article 1 (i) of the Habitats Directive must be interpreted as meaning that, in the context of the assessment of the conservation status of an animal species with a view to the adoption of management measures, account may be taken of economic, social and cultural requirements and regional and local characteristics, since those requirements and characteristics may affect the long-term distribution and abundance of its populations.



Навчальне видання

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