



# Reports of Cases

## JUDGMENT OF THE COURT (Second Chamber)

21 September 2023\*

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\* Language of the case: German.

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(Failure of a Member State to fulfil obligations – Environment – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – 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)

In Case C-116/22,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 18 February 2022,

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

applicant,

v

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

defendant,

THE COURT (Second Chamber),

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

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 20 April 2023,

gives the following

### Judgment

1 By its application, the European Commission asks the Court to declare that the Federal Republic of Germany has failed to fulfil its obligations under:

- Article 4(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Habitats Directive'), 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 which were placed on the lists established by (i) Commission Decision 2004/69/EC of 22 December 2003 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Alpine biogeographical region (OJ 2004 L 14, p. 21), (ii) Commission Decision 2004/798/EC of

7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Continental biogeographical region (OJ 2004 L 382, p. 1), and (iii) Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region (OJ 2004 L 387, p. 1), updated respectively by Commission Decision 2008/218/EC of 25 January 2008 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Alpine biogeographical region (OJ 2008 L 77, p. 106), Commission Decision 2008/25/EC of 13 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Continental biogeographical region (OJ 2008 L 12, p. 383), and Commission Decision 2008/23/EC of 12 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Atlantic biogeographical region (OJ 2008 L 12, p. 1) ('the sites of Community importance at issue');

- 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
- 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.

## I. Legal context

### A. *European Union law*

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

'Whereas, the main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, this Directive makes a contribution to the general objective of sustainable development; whereas the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities;

...

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

...

Whereas an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future'.

3 Under Article 1 of that directive:

‘For the purpose of this Directive:

...

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

...’

4 Article 3(1) and (2) of the Habitats Directive provides:

‘1. A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to [Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (O) 1979 L 103, p. 1)].

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

5 Article 4 of that directive provides:

‘1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction. For aquatic species which range over wide areas, such sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction. Where appropriate, Member States shall propose adaptation of the list in the light of the results of the surveillance referred to in Article 11.

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

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the nine biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory

referred to in Article 2(1), the Commission shall establish, in agreement with each Member State, a draft list of sites of Community importance drawn from the Member States' lists identifying those which host one or more priority natural habitat types or priority species.

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

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

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

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

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

6 Under Article 6(1) to (3) of the Habitats Directive:

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

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.'

## ***B. German law***

- 7 Under Paragraph 22 of the Gesetz über Naturschutz und Landschaftspflege (Bundesnaturschutzgesetz) (Federal Law on nature protection and landscape conservation) of 29 July 2009 (BGBl. 2009 I, p. 2542; ‘the Federal Law on nature protection’):

‘(1) The placement under protection of parts of nature and the landscape shall take place by way of declaration. The declaration shall specify the subject of the protection, the protection purpose, the obligations and prohibitions necessary for the attainment of the protection purpose and, in so far as necessary, the management, development and restoration measures, or shall contain the authorisations necessary to that end. The areas of conservation may be divided into zones enjoying tiered protection depending on the respective protection purpose; in that regard, the surroundings necessary for the protection may also be included.

(2) Unless otherwise provided in subparagraphs 2a and 2b, the form and procedure of the placing under protection, the taking into account of formal and procedural irregularities and the possibility of remedying such irregularities, as well as the continued validity of existing declarations in respect of the protected part of nature and the landscape, shall be governed by the law of the *Land*. The placing under protection may also take place at a transregional level.

...’

- 8 Paragraph 33 of that law provides:

‘(1) Any change and any disturbance such as to lead to significant adverse effects for a Natura 2000 site in its components that are decisive for the conservation objectives or the protection purpose shall be prohibited. The authority that is competent in nature protection and landscape preservation matters may, subject to the conditions laid down in Paragraph 34(3) to (5), allow derogations from the prohibition referred to in the first sentence and from the prohibitions for the purposes of Paragraph 32(3).

(1a) In the Natura 2000 sites, the construction of installations for the following purposes shall be prohibited:

1. the fracturing of shale, clay rock or marlstone or coal seam rock by using hydraulic pressure in order to explore for or extract natural gas;
2. the underground storage of wastewater generated in the course of measures under point 1.

Paragraph 34 does not apply in that regard.

...’

- 9 Paragraph 34 of the Federal Law on nature protection provides:

‘(1) Before they are approved or implemented, projects must be assessed as regards their implications in view of the conservation objectives of a Natura 2000 site, where, individually or in combination with other projects or plans, they are likely to have a significant adverse effect on the site and are not directly used for the management of the site. ...

(2) If the assessment of the implications shows that the project may have a significant adverse effect on the site in its components that are decisive for the conservation objectives or the protection purpose, the project shall be prohibited.

(3) By way of derogation from subparagraph 2, a project may only be approved or implemented in so far as

1. it is necessary for imperative reasons of overriding public interest, including those of a social or economic nature, and

2. reasonable alternative means of achieving the purpose pursued with the project in a different place without any adverse effects or with less adverse effects are not available.

...'

10 Paragraph 65(1) of that law is worded as follows:

'Owners and other beneficial owners of land must tolerate nature protection and landscape conservation measures based on the provisions of this Law, legislation that has been adopted or remains valid on the basis of this Law, or nature protection laws of the *Länder*, in so far as this does not unreasonably interfere with use of the land. This is without prejudice to any further-reaching rules of the *Länder*.'

## II. Pre-litigation procedure

11 By Decisions 2004/69, 2004/798 and 2004/813, the Commission established lists of sites of Community importance in the Alpine, Continental and Atlantic biogeographical regions respectively. Those lists were updated by Decisions 2008/218, 2008/25 and 2008/23 respectively.

12 The date of expiry of the six-year period for designating those sites as special areas of conservation, in accordance with Article 4(4) of the Habitats Directive, was 25 January 2014.

13 By letters of 13 June 2012 and 17 February 2014, the Commission asked the Federal Republic of Germany for information on the status of the designation of the special areas of conservation, in accordance with Article 4(4) of the Habitats Directive, and on the adoption of the necessary conservation measures, in accordance with Article 6 of that directive.

14 In the light of the reply of the Federal Republic of Germany of 26 June 2014, the Commission took the view that that Member State had failed to fulfil its obligations under the provisions referred to in the preceding paragraph and sent it a letter of formal notice on 27 February 2015.

15 On 26 January 2019, the Commission sent the Federal Republic of Germany an additional letter of formal notice.

- 16 On 13 February 2020, after having examined the reply provided by that Member State by letters of 26 April and 11 June 2019, the Commission issued a reasoned opinion, pursuant to the first paragraph of Article 258 TFEU, alleging that that Member State had failed to fulfil, in particular, its obligations under Article 4(4) and Article 6 of the Habitats Directive:
- by failing to designate 129 of the 4 606 sites of Community importance at issue as special areas of conservation, and
  - by failing to establish, in general and structural terms, conservation objectives and conservation measures that are sufficiently detailed, specifically designed for the sites of Community importance at issue, and necessary.
- 17 At the request of the Federal Republic of Germany, the Commission, by letter of 12 March 2020, extended the deadline for responding to the reasoned opinion until 13 June 2020.
- 18 By letter of 12 June 2020, the Federal Republic of Germany informed the Commission that all the special areas of conservation were designated, except for those in the Land of Lower Saxony, that the procedure would be concluded before the end of 2022 as regards the 88 missing sites in that *Land* and that the overdue conservation measures for 737 sites would be completed by 2023. As regards the legal requirements in respect of the conservation objectives and conservation measures, that Member State confirmed that it did not agree with the Commission’s assessment.
- 19 Taking the view that the Federal Republic of Germany had thus failed to take the measures required to comply with its obligations under Article 4(4) and Article 6(1) of the Habitats Directive, on 18 February 2022 the Commission brought the present action.

### III. The action

- 20 In support of its action, the Commission raises three complaints, the first two alleging infringement of Article 4(4) of the Habitats Directive and the third alleging infringement of Article 6(1) of that directive. It alleges (i) that 88 of the 4 606 sites of Community importance at issue have not been designated as special areas of conservation, (ii) that conservation objectives have not been set for those 88 sites and that, for the setting of conservation objectives, the Federal Republic of Germany pursues a general and structural practice that does not meet the requirements of Article 4(4) of the Habitats Directive, and (iii) that no sufficient conservation measures have been established for 737 of the 4 606 sites of Community importance at issue and that, in addition, the Federal Republic of Germany pursues, for the establishment of conservation measures, a general and structural practice that does not meet the requirements of Article 6(1) of the Habitats Directive.
- 21 The Federal Republic of Germany contends that the present action should be dismissed.



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

### *1. Arguments of the parties*

- 22 By its first complaint, the Commission criticises the Federal Republic of Germany for having failed to fulfil its obligations under Article 4(4) of the Habitats Directive by failing to designate as special areas of conservation, in the Land of Lower Saxony, 88 of the 4 606 sites of Community importance at issue.
- 23 That institution claims that the case-law of the Court, in particular the judgments of 27 February 2003, *Commission v Belgium* (C-415/01, EU:C:2003:118, paragraphs 22 and 23), and of 14 October 2010, *Commission v Austria* (C-535/07, EU:C:2010:602, paragraph 64), concerning the special protection areas provided for in Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Birds Directive'), can be applied to the present case, in view of the conservation objectives laid down in the Habitats and Birds Directives. Pursuant to that case-law, the special areas of protection must be designated with (i) unquestionable binding force and (ii) the specificity, precision and clarity necessary to satisfy the requirements of legal certainty.
- 24 In its defence, the Federal Republic of Germany contends that, between the date when the Commission sent the reasoned opinion and 31 March 2022, it had designated as special areas of conservation the last sites of Community importance at issue. Only five of those sites have still not been designated as special areas of conservation and are to be removed from the lists of sites in the next update of those lists, in accordance with Article 4(2) of the Habitats Directive.
- 25 As a supplementary point, the Federal Republic of Germany states that, in all its versions in force since 4 April 2002, Paragraph 33 of the Federal Law on nature protection has afforded legal protection in respect of all sites of Community importance which are notified to the Commission and placed on a list in accordance with Article 4(2) of the Habitats Directive, before they are specifically designated as special areas of conservation. That Member State maintains that, consequently, in the 88 sites referred to by the Commission as not having been designated as special areas of conservation, it was forbidden, in accordance with Paragraph 33 of that law, to make any change or cause any disturbance such as to lead to significant adverse effects for those sites, and that there was a requirement, in accordance with Paragraph 34 of that law, to assess the plans or projects, within the meaning of Article 6(3) of the Habitats Directive, having regard to their implications for the environment.

### *2. Findings of the Court*

- 26 As a preliminary point, it should be recalled that Article 3(2) of the Habitats Directive requires the Member States to contribute to the creation of the Natura 2000 network in proportion to the representation, within their respective territories, of the natural habitat types listed in Annex I to that directive and the habitats of species listed in Annex II thereto, and to designate, to that effect, at the end of the procedure established by that directive and in accordance with Article 4 thereof, sites as special areas of conservation.

- 27 The procedure governing the designation of sites as special areas of conservation, as provided for in Article 4 of the Habitats Directive, consists of four stages. Under paragraph 1 of that article, each Member State is to propose a list of sites indicating the natural habitat types and native species hosted by those sites, which it is to transmit to the Commission (first stage). Under paragraph 2 of that article, the Commission is to establish, in agreement with each Member State, a draft list of sites of Community importance drawn from the lists established by the Member States (second stage). On the basis of that draft list, the Commission is to adopt the list of selected sites (third stage). Under paragraph 4 of that article, once a site of Community importance has been adopted, the Member State concerned is to designate it as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type or a species and for the coherence of Natura 2000 (fourth stage) (judgment of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 45 and the case-law cited).
- 28 First, the Federal Republic of Germany does not dispute the fact that, at the date on which the deadline for responding to the reasoned opinion expired, namely 13 June 2020, of the 4 606 sites of Community importance at issue, the group of 88 sites had not been formally designated as special areas of conservation. Nevertheless, it argues that, between the date on which the Commission sent the reasoned opinion and 31 March 2022, it had designated as special areas of conservation the last sites of Community importance at issue, with the result that only five of those sites have still not been designated as special areas of conservation.
- 29 In that regard, it must be borne in mind, as is apparent from settled case-law, that the question whether there has been a failure to fulfil obligations must be examined on the basis of the position in which the Member State at issue found itself at the end of the period laid down in the reasoned opinion, and the Court cannot take account of any subsequent changes (judgment of 5 June 2023, *Commission v Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 82 and the case-law cited).
- 30 Second, the Federal Republic of Germany refers to the fact that Paragraphs 33 and 34 of the Federal Law on nature protection have afforded, since 2002, legal protection in respect of all sites of Community importance notified to the Commission and placed on a list in accordance with Article 4(2) of the Habitats Directive, before they are specifically designated as special areas of conservation.
- 31 By stating that protection is granted by the German legislation to all sites of Community importance notified to the Commission and placed on a list in accordance with Article 4(2) of the Habitats Directive, before they are specifically designated as special areas of conservation, the Federal Republic of Germany concedes that, on expiry of the deadline laid down in the reasoned opinion, it had still not designated those sites as special areas of conservation.
- 32 Furthermore, it must be borne in mind that, according to settled case-law, the provisions of a directive must be implemented with unquestionable binding force, and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (judgment of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 48 and the case-law cited).

- 33 In the present case, it must be stated that the national legislation relied on by the Federal Republic of Germany is not such as to satisfy the specific obligation, laid down in Article 4(4) of the Habitats Directive, formally to designate sites of Community importance as special areas of conservation.
- 34 Such a designation is an indispensable stage in the system of protection of habitats and species under that directive.
- 35 That obligation is in addition to the obligations to determine the conservation objectives, in accordance with Article 4(4) of the Habitats Directive, and to establish conservation measures, in accordance with Article 6(1) of that directive (judgment of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 53 and the case-law cited).
- 36 The obligation on Member States to adopt the necessary conservation measures in order to protect special areas of conservation, which is laid down in Article 6 of the Habitats Directive, is distinct from the formal obligation on Member States, laid down in Article 4(4) thereof, to designate sites of Community importance as special areas of conservation (judgment of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 54).
- 37 In those circumstances, it must be found that, by failing to designate as special areas of conservation 88 of the 4 606 sites of Community importance at issue, the Federal Republic of Germany has failed to fulfil its obligations under Article 4(4) of the Habitats Directive.
- 38 Accordingly, the first complaint must be upheld.

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

### *1. Arguments of the parties*

- 39 By its second complaint, the Commission criticises the Federal Republic of Germany for having failed to publish detailed conservation objectives for 88 of the 4 606 sites of Community importance at issue, in breach of Article 4(4) of the Habitats Directive. Furthermore, that institution submits that, in general and structural terms, the German authorities' practice of setting conservation objectives is contrary to the requirements laid down in that provision in so far as, first, those objectives do not contain quantitative and measurable elements, second, the Federal Republic of Germany does not distinguish between the objective of 'restoration' and that of 'maintenance' of the assets to be protected, and third, the conservation objectives set by that Member State are not legally binding vis-à-vis third parties.
- 40 In the first place, the Commission infers the existence of an obligation to set detailed conservation objectives for each site of Community importance within six years at most from the interpretation, by the Court, of Article 4(4) of the Habitats Directive in the judgment of 17 December 2020, *Commission v Greece* (C-849/19, EU:C:2020:1047, paragraphs 46 to 52).
- 41 The Commission submits that, because the Federal Republic of Germany does not set those conservation objectives before a site is designated as a special area of conservation, that Member State has failed to set those objectives for the group of sites of Community importance at issue which were not designated as special areas of conservation. In the Commission's submission, that

Member State has confirmed that, for the sites of the Land of Lower Saxony, general conservation objectives are defined in connection with protecting the sites by means of their designation as special areas of conservation and are subsequently, where appropriate, given concrete expression in the management planning in respect of those sites.

- 42 In the second place, as regards the general and structural failure to fulfil the obligations relating to the setting of conservation objectives, the Commission asserts, first, that conservation objectives set by the Federal Republic of Germany do not contain quantitative and measurable elements, showing in numbers the specific contribution that the protected site must make to the attainment of a favourable conservation status at national level for the habitat or species in question. According to the Commission, the same is true for the conservation objectives set out in the management plans to which the Federal Republic of Germany referred during the pre-litigation stage of the procedure.
- 43 In that regard, the Commission states, by way of example, that for many sites of the Land of Bavaria where the habitat type 6510 ‘Lowland hay meadows’ (*Alopecurus pratensis*, *Sanguisorba officinalis*) is present, for the site DE 5630-371 which includes the habitat type ‘Rodachau mit Bischofsau westlich Bad Rodach’, and for the site DE 8020-341 ‘Ablach, Baggerseen und Waltere Moor’ which hosts the species 1032 ‘Thick shelled river mussel’ (*Unio crassus*), the domestic legislation determines the conservation objectives for the habitats and the species concerned in very general terms, without indicating any quantitative or measurable elements.
- 44 In the Commission’s submission, the Habitats Directive provides the definition of favourable conservation status of species and habitat types on the basis of characteristics to be determined in quantitative terms, such as the surface ‘area’ a natural habitat covers, in accordance with the first indent of Article 1(e) of that directive, or the ‘population dynamics’ of the species, in accordance with the first indent of Article 1(i) thereof.
- 45 The Member States have thus agreed with the Commission, within the framework of the committee referred to in Article 20 of the Habitats Directive, to set reference values indicating the threshold above which a favourable conservation status of a habitat type or a species is attained at national level.
- 46 It is against those reference values that it is then for the conservation objectives to define the specific contribution that a given site must make in order for the national reference value to be attained.
- 47 The Commission states, by way of illustration, that, in its national report for 2012, drawn up pursuant to Article 17 of the Habitats Directive, the Federal Republic of Germany set the favourable conservation status of the plant species ‘Elbe water dropwort’ (*Oenanthe coniooides*), as regards the size of the population at national level, at a reference value of at least 5 025 individuals. However, that Member State did not lay down quantified conservation objectives for any of the nine sites where that species is present. Consequently, a favourable conservation status for that species is not ensured, in breach of Article 4(4) of the Habitats Directive.
- 48 According to the Commission, that conclusion is borne out by the fact that the data for the period from 2013 to 2018 sent by the Federal Republic of Germany to the Commission in accordance with Article 17 of the Habitats Directive show that approximately 80% of habitat types and

species protected in Germany still have an unfavourable conservation status, even though they are largely located in protected areas. As regards protected species, the proportion of species with an unfavourable conservation status has even been continuously increasing since 2001.

- 49 Furthermore, conservation measures adopted in accordance with Article 6(1) of the Habitats Directive should correspond to quantified and measurable objectives.
- 50 The assessment, pursuant to Article 6(3) of the Habitats Directive, of the implications of a project for the environment should also be carried out having regard to quantified conservation objectives. Negative effects on conservation objectives cannot be excluded with certainty unless those objectives are given sufficiently specific expression by way of quantitative factors.
- 51 Moreover, the conservation objectives set by the Federal Republic of Germany, which provide solely for improving the quality of the conservation status of the asset to be protected on the site in question, would not allow the taking into account of the fact that, in order to attain the national reference value, that site must make specific contributions, namely – for instance – certain quantified increases in the surface area.
- 52 In that regard, besides the example regarding the plant species ‘Elbe water dropwort’ (*Oenanthe conioides*), the Commission refers to the habitat [type] 6510 ‘Lowland hay meadows’ (*Alopecurus pratensis*, *Sanguisorba officinalis*), which has an unfavourable conservation status. The German reference value for that habitat anticipates the need to ensure a larger protected surface area, that is to say, that that surface area increase by at least 10%. However, the German assessment framework does not mention surface area as an assessment criterion, referring solely to qualitative criteria, which is not sufficient to ensure that increase in the protected surface area.
- 53 As regards the assessment, pursuant to Article 6(3) of the Habitats Directive, of the implications of a project for the environment, the Commission refers to two examples, namely the species ‘Lady’s slipper’ (*Cypripedium calceolus*), present on the site DE 5232-301 ‘Edelmannsberg’, and the habitat type 6110 ‘Rupicolous calcareous or basophilic grasslands’, present on the site DE 5231-301.
- 54 In that regard, an assessment of the implications of a project for the environment, based on a potentially unfavourable conservation status of the species or habitat concerned on the site in question, would lead to the conclusion that a project that does not exacerbate the unfavourable status could be accepted. This would, nevertheless, go against the objective of the Habitats Directive if the conservation status is, overall, unfavourable at national level and the site in question should be making a specific positive contribution to the attainment of a favourable status at national level, that contribution being compromised by the project concerned. In such a case, only a quantified conservation objective would be able to ensure a conservation status that is, overall, favourable at national level.
- 55 That requirement to set conservation objectives in quantified and measurable terms is not, according to the Commission, disproportionate. Member States have done precisely that. In particular, the Flemish Region (Belgium) set a reference value of 2 150 additional hectares for the habitat type 1130 ‘Estuaries’ in order to attain a favourable conservation status in that regard. As regards the sites in question, those quantified reference values are reflected in quantified conservation objectives.

- 56 Second, the Commission submits that the conservation objectives set in Germany do not distinguish between the objective of ‘restoration’ and that of ‘maintenance’ in respect of the assets to be protected and illustrates that lack of distinction by referring to certain sites, namely the site DE 7537-301 ‘Isarauen von Unterföhring bis Landshut’, the site DE 2751-302 ‘Große Hölle’ and the site DE 2710-331 ‘Wolfmeer’ for the habitat type 91D0 ‘Bog woodland’.
- 57 The Commission claims that, having regard to the judgment of 17 December 2020, *Commission v Greece* (C-849/19, EU:C:2020:1047, paragraph 57), that distinction is necessary in order to ensure that the conservation objectives are sufficiently specific.
- 58 In that regard, the Commission states that conservation measures that aim to preserve the status of the asset to be protected are fundamentally different from those that aim to restore such an asset. The former ensure that the status quo is preserved in respect of the asset to be protected, whereas the latter require efforts that are considerably more intensive in order to restore the asset to be protected, namely – for instance – the creation of new surface areas for the habitat type in question. Consequently, conservation objectives, on the basis of which the conservation measures must be formulated, should indicate clearly whether the objective pursued is the restoration or the maintenance of the asset to be protected.
- 59 The distinction between the objective of ‘restoration’ and that of ‘maintenance’ of the asset to be protected is also decisive for assessing, pursuant to Article 6(3) of the Habitats Directive, the implications of projects for the environment. The question of whether a project is likely to have a significant effect on a site depends in particular on whether the conservation objectives of the site relate to its restoration or to its maintenance.
- 60 Furthermore, the requirement to draw such a distinction is not disproportionate, some Member States, in particular the Kingdom of Belgium, having made such a distinction in their national legislation.
- 61 Third, the Commission alleges that conservation objectives which are specified only at the level of management plans are not legally binding vis-à-vis third parties. By way of example, Paragraph 4(2) of the Bayerische Natura 2000-Verordnung (Natura 2000 Regulation of the Land of Bavaria) of 12 July 2006 (GVBl. p. 524) provides that management plans do not create any obligations for private property owners and beneficial owners. Thus, it is apparent from the integrated management plan for the Elbe estuary (Germany) that that plan has no binding legal force vis-à-vis private property owners and that it does not impose any direct obligation on individuals. Likewise, the authorities of the Länder of Saxony and Brandenburg have confirmed that the management plans adopted on their territories are not binding on individuals.
- 62 The Commission refers to the general requirement to implement the provisions of a directive with (i) unquestionable binding force and (ii) the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (judgment of 27 February 2003, *Commission v Belgium*, C-415/01, EU:C:2003:118, paragraph 21).
- 63 The Commission states that, since the Member States have a significant margin of discretion in that regard, nothing precludes those objectives from being set, as a first step, in a general manner in a national act designating a special area of conservation and being subsequently given concrete expression in a management plan. However, in order to meet the requirement of legal certainty, the legal instruments specifying the conservation objectives at each of those stages must be binding vis-à-vis third parties.

- 64 It is also necessary for the legal instruments determining the conservation objectives to be binding in order to ensure that the assessment of the implications of a project for the environment, in accordance with Article 6(3) of the Habitats Directive, is implemented effectively. If those instruments have no binding force, the national authorities are not able to state as a reason for the rejection of an application for the authorisation of a project the risk that the conservation objectives will be adversely affected.
- 65 In its defence, the Federal Republic of Germany contends, in the first place, that, between the date on which the Commission sent the reasoned opinion and 31 March 2022, it had designated the sites of Community importance at issue as special areas of conservation and set specific conservation objectives for those sites, with the exception of some sites which are to be removed from the lists of sites. In those circumstances, the transposition of the Habitats Directive has, in that regard, now been completed.
- 66 In the second place, the steps taken by the Federal Republic of Germany in connection with the transposition of that directive at national level do not constitute a failure to comply in general and structural terms.
- 67 In that regard, first, Article 4(4) of the Habitats Directive, to which the Commission refers, does not contain any reference to conservation objectives. Those objectives are only referred to in [the eighth and tenth recitals] of that directive. That article merely requires Member States to establish priorities in the light of (i) the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type or species concerned and for the coherence of Natura 2000, and (ii) the threats of degradation or destruction to which those sites are exposed.
- 68 In so far as the Habitats Directive is addressed to all the Member States, the most liberal interpretation thereof must prevail, provided that it is sufficient to achieve its objectives (see, to that effect, judgment of 12 November 1969, *Stauder*, 29/69, EU:C:1969:57, paragraphs 3 and 4).
- 69 In that Member State's submission, so far as concerns conservation objectives, it is apparent from the case-law of the Court that the protective legal status which the special areas of protection referred to by Directive 79/409 must obtain does not mean that those objectives have to be specified for each species considered separately (judgment of 14 October 2010, *Commission v Austria*, C-535/07, EU:C:2010:602, paragraph 65 and the case-law cited).
- 70 The Federal Republic of Germany does not dispute that, in accordance with Article 4(4) of the Habitats Directive, a link must be established between the conservation objectives, on the one hand, and the species and habitat types present in the special area of conservation that is of interest, on the other. It argues that the German legislation establishes such a link.
- 71 By contrast, while, in its judgment of 17 December 2020, *Commission v Greece* (C-849/19, EU:C:2020:1047, paragraph 55), the Court ruled, having regard to the requirement of legal certainty, that the conservation objectives must be sufficiently specific, it does not follow from this that they must be quantifiable and measurable.
- 72 According to the Federal Republic of Germany, while it is possible to carry out a determination in quantitative and measurable terms of the conservation objectives in respect of some species and some habitat types, such a determination is nevertheless not appropriate as a general requirement.

- 73 First of all, a purely quantitative approach, based on the surface area of the habitat types, cannot reflect the status of the areas in question and should therefore go hand in hand with the use of qualitative criteria.
- 74 Next, a quantitative approach is not suitable, in particular, for complex habitat types or for conservation areas with a dynamic character, where certain components of the complex habitats or different habitat types present within a conservation area are constantly changing by nature and interacting with each other.
- 75 Lastly, quantitative conservation objectives as regards an individual special area of conservation do not meet the requirement for coherence of Natura 2000 and fail to take account of the ecological links within the network.
- 76 According to the Federal Republic of Germany, this is apparent precisely from the national reference values set for the plant species ‘Elbe water dropwort’ (*Oenanthe conioides*), which is a species endemic to the Elbe estuary, with a complex and highly dynamic habitat. The sites where that species grows can be permanently adapted and the population of that species is subject to significant fluctuations in its natural evolution, without, however, endangering its conservation status. In addition, the range of that species is covered by several special areas of conservation, which are connected to each other and whose populations interact with each other. Thus, the quantitative contribution of each special area of conservation to the conservation of that species as a whole is also subject to considerable variation, without the conservation status varying overall.
- 77 Quantified reference values for the species ‘Elbe water dropwort’ (*Oenanthe conioides*) can thus be set only for the biogeographical region as a whole, and not for individual special areas of conservation.
- 78 As regards the reports referred to in Article 17 of the Habitats Directive and the committee provided for in Article 20 thereof, the Federal Republic of Germany contends that the setting, by the Member States, of reference values for the purpose of attaining a favourable conservation status is not binding on those States.
- 79 That directive does not lay down an obligation to set such reference values.
- 80 Furthermore, the report drawn up by a Member State in accordance with Article 17 of the Habitats Directive does not relate specifically to the situation in the various special areas of conservation, but to the situation in the whole of the territory of the Member State concerned.
- 81 The Federal Republic of Germany adds that the favourable conservation status to be attained in accordance with Article 4(4) of the Habitats Directive relates not to the various special areas of conservation present in the territory of the Member States but to the whole of the European territory where EU law applies.
- 82 As regards Article 6(1) of the Habitats Directive, that provision, unlike Article 2(1) and Article 4 of that directive, is based not on the general objective of maintaining or restoring, at a favourable conservation status, the species or habitat types concerned, but in concrete terms on the ecological requirements of the natural habitat types listed in Annex I to that directive and the species listed in Annex II thereto. Those requirements should be determined mainly in qualitative terms and, solely in individual cases, also in quantitative terms.



- 83 The Commission's argument alleging that an assessment, pursuant to Article 6(3) of the Habitats Directive, of the implications of a project for the environment that relates solely to general conservation objectives or to the information contained in the standard data form is not in line with the objective of the Habitats Directive is at odds with the case-law of the Court deriving from the judgments of 29 January 2004, *Commission v Austria* (C-209/02, EU:C:2004:61, paragraph 24), and of 10 November 2016, *Commission v Greece* (C-504/14, EU:C:2016:847, paragraphs 9 and 10).
- 84 Moreover, in the judgment of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 116), the Court determined the criteria for that assessment in an abstract manner, and not according to quantified individual objectives.
- 85 Second, the question of whether the conservation objectives are attained by the maintenance or restoration, at a favourable conservation status, of a natural habitat type or a species depends on the respective actual status of a special area of conservation, which is subject to natural fluctuations and external human influence and depends more specifically on previous maintenance or restoration measures.
- 86 While, as the Commission states, conservation objectives themselves should be distinguished depending on whether they must be attained by the maintenance or by the restoration of the assets to be protected, whenever there is an actual change to the degree of conservation of the species and natural habitats present in a special area of conservation, the corresponding conservation objective should be changed, for each species and for each habitat type.
- 87 In particular, in dynamic habitats such as the Elbe estuary, where the plant species 'Elbe water dropwort' (*Oenanthe conioides*) is present, the conservation objectives are at risk of having to be adapted repeatedly as the environmental conditions evolve.
- 88 Accordingly, the Federal Republic of Germany argues that the German practice transposing the Habitats Directive, which consists in prescribing a target status and obliges the authorities to attain that status on a case-by-case basis by way of maintenance or restoration measures, fully ensures the effectiveness of that directive, and in particular of the objective laid down in Article 2(2) thereof, seeking to ensure the maintenance or restoration, at a favourable conservation status, of natural habitats and species of wild fauna and flora of Community importance.
- 89 The question of whether a project is likely to have a significant effect on a site for the purposes of Article 6(3) of the Habitats Directive depends not on a formal choice made in the past, attributing to the conservation objectives in respect of the site the purpose of restoration or of maintenance, but on the specific conditions prevailing at the site at the time when the implications of that project for the environment are being assessed.
- 90 Third, in response to the Commission's argument that the conservation objectives must be incorporated in legal acts that are binding vis-à-vis third parties, the Federal Republic of Germany contends that those objectives are, by their nature, addressed to the competent national authorities.
- 91 In any event, in Germany, conservation objectives in the strict sense are contained in the regulations relating to areas of conservation and thus in substantive laws which are legally binding *erga omnes*. In addition, those objectives are also specified in the management and

development plans and imposed in a manner which is sufficiently binding vis-à-vis third parties. In accordance with Paragraph 34 of the Federal Law on nature protection, which transposes into German law Article 6(3) of the Habitats Directive, third parties cannot implement any plan or project or undertake any action capable of adversely affecting the conservation objectives. In addition, third parties who own land situated in a special area of conservation must tolerate maintenance or restoration measures, as referred to in Article 6(1) and (2) of the Habitats Directive, when public bodies implement those measures.

- 92 In so far as a special area of conservation requires not only prohibition measures in order for the conservation objective referred to at the time of its designation to be attained, but also effective measures to maintain or restore the conservation status of the protected element, the regulations relating to areas of conservation correspondingly authorise, in accordance with the second sentence of Paragraph 22(1) of the Federal Law on nature protection, the competent authorities to implement those measures, while Paragraph 65 of that law obliges private third parties to tolerate such measures.
- 93 Consequently, even if a management or development plan is not in itself binding on third parties, the conservation objectives set out in more detail in that plan are, on account of that legal situation, indirectly binding also on third parties and may be relied on against those parties.
- 94 In its reply, the Commission submits that the Federal Republic of Germany erroneously limited its conservation measures, to a large extent, to maintaining the status quo and failed fully to make use of the potential of conservation areas to establish a favourable conservation status. Sixty-seven of the 82 habitat types listed in Annex I to the Habitats Directive, present in Germany in the Continental biogeographical region, have an ‘unfavourable-inadequate’ or ‘unfavourable-bad’ conservation status. According to the Commission, one of the reasons for this development, which is contrary to the objective of that directive, is the fact that the Federal Republic of Germany has systematically failed to set quantified conservation objectives. In so far as it is necessary for the surface area or for populations to increase, only conservation objectives that clearly quantify an area’s contributions in that regard ensure that the measures taken in each area make a reliable contribution to the establishment of a favourable conservation status.
- 95 The Commission submits that it is in no way claiming that the characteristics to be quantified, such as surface area or population structure, are the only criteria enabling conservation objectives to be established. Qualitative objectives, such as certain parameters relating to the value of new surface areas to be created, should be taken into account on a supplementary basis. As regards the coherence of the protection network, it is precisely quantified conservation objectives that reliably ensure that each site contributes to the whole of the network.
- 96 As regards Member States that have laid down quantified conservation objectives, the Commission provides an example of the practice in Bulgaria, Lithuania and Romania.
- 97 The Commission states that conservation objectives that are as vague as those established in Germany, which do not even establish whether they are aiming to restore or maintain, at a favourable conservation status, a protected element, do not ensure the effectiveness of the Habitats Directive. In any event, it should at least be required that the conservation objectives set the purpose sought, namely the restoration or maintenance of the conservation status of the assets to be protected, and to state the precise parameters in that regard.

- 98 As regards the obligation, on the part of third parties, to tolerate management measures, in accordance with Paragraph 65 of the Federal Law on nature protection, that obligation concerns, according to the Commission, solely the enforcement of conservation measures which have been provided for in legislation. As the Federal Republic of Germany concedes, management plans do not precisely constitute legislation for the purposes of that paragraph. Furthermore, the enforcement of those measures is conditional, in accordance with that law, upon there being no unreasonable interference with the use of the land. That restriction does not ensure that the conservation objectives laid down in the management plans are implemented.
- 99 As regards nature protection by contractual means, the conclusion of contracts cannot be imposed on third parties, with the result that attaining the conservation objectives depends on the sole willingness of property owners to conclude such contracts.
- 100 In its rejoinder, the Federal Republic of Germany contends that the attainment of a favourable conservation status of a natural habitat or a species and the application of the conservation measures necessary for that purpose are long-term processes, and some time can thus pass before there are clearly visible improvements. Even if, as the Commission states, the status of the sites of Community importance and special areas of conservation has deteriorated in Germany, no inferences can be drawn from this as regards the legal requirements relating to conservation objectives.
- 101 Furthermore, the alleged stark increase in the proportion of species with an unfavourable conservation status in Germany is a consequence of a change in the number of assets to be protected, as assessed in the context of the report drawn up by that Member State.
- 102 The Federal Republic of Germany contends that the conservation objectives laid down in the management plans and the instruments for contractual nature protection serve to provide further details about and further specify the already binding conservation objectives referred to in the regulations relating to protected areas. Those objectives are binding at administrative level and specify the criteria laid down in relation to conservation objectives in the regulations relating to protected areas, applicable in the context of assessing the implications for the environment of projects submitted by third parties. In addition, in the context of nature protection by contractual means, those objectives are also binding on the contracting parties.
- 103 As regards Paragraph 65 of the Federal Law on nature protection, contrary to the Commission's assertions, that paragraph does not refer solely to the application of measures defined in legislation, but to the application of measures 'based on the provisions of [that] Law, legislation that has been adopted or remains valid on the basis of [that] Law, or nature protection laws of the *Länder*'. That paragraph lays down an obligation, which has a broad scope, to comply with measures deriving from legislation, without it being necessary that those measures themselves be directly provided for by legislation.
- 104 The national regulations relating to protected areas do not merely provide for prohibition measures for the purpose of attaining the protection objective pursued by the designation of those areas as protected areas, but also authorise the competent authorities to take the necessary effective conservation or restoration measures. Those regulations relating to protected areas constitute, in turn, 'nature protection laws of the *Länder*', within the meaning of the first sentence of Paragraph 65(1) of the Federal Law on nature protection, or, as regards regulations

relating to protected areas for the German exclusive economic zone, legal provisions adopted on the basis of that law. Consequently, the conservation objectives and the conservation measures taken by the competent authorities are indisputably binding in nature.

## 2. Findings of the Court

### *(a) The argument alleging failure to adopt detailed conservation objectives for 88 of the 4 606 sites of Community importance at issue*

105 Although Article 4(4) of the Habitats Directive does not explicitly mention the obligation to set conservation objectives, that provision nevertheless requires the competent authorities of the Member State concerned, when designating the special area of conservation, to establish priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a habitat type. Establishing those priorities implies that those conservation objectives have been set in advance (judgment of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 64 and the case-law cited).

106 Thus, and taking into account also the context and purpose of paragraph 4 of Article 4 of the Habitats Directive, the Court has considered that, although it is apparent from that provision that the designation of special areas of conservation and the determination of conservation priorities must be carried out as soon as possible and in any event within six years at most from the moment when a site of Community importance has been selected in the context of the procedure provided for in paragraph 2 of that article, the establishment of the conservation objectives cannot exceed that period, either, given that those objectives are necessary for the setting of those priorities and must, therefore, precede it (judgment of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 65 and the case-law cited).

107 It must be added that, in order to be regarded as ‘conservation objectives’ for the purposes of the Habitats Directive, the objectives set must be specific and precise (judgment of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 66 and the case-law cited).

108 In the present case, the Federal Republic of Germany concedes that, when the deadline for responding to the reasoned opinion expired, namely 13 June 2020, it had failed to set in its domestic law detailed conservation objectives relating to 88 of the 4 606 sites of Community importance at issue, referred to in the second complaint raised by the Commission.

109 In those circumstances, it must be found that, by failing to define detailed conservation objectives for that group of 88 sites, the Federal Republic of Germany has failed to fulfil its obligations under Article 4(4) of the Habitats Directive.

### *(b) The argument alleging a general and structural practice of setting conservation objectives in a manner that is contrary to the requirements laid down in Article 4(4) of the Habitats Directive*

110 As regards the Commission’s argument that the Federal Republic of Germany has adopted a general and structural practice consisting in setting conservation objectives in a manner that is contrary to the requirements of Article 4(4) of the Habitats Directive, it must be borne in mind

that, without prejudice to the Commission's obligation to satisfy the burden of proof which it bears, in principle nothing prevents the Commission from finding in parallel that provisions of the Habitats Directive have not been complied with by reason of the conduct of a Member State's authorities with regard to particular specifically identified situations and that those provisions have not been complied with because those authorities have adopted a general practice contrary thereto, which the particular situations illustrate where appropriate (judgments of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 27, and of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 165).

- 111 Where the Commission adduces sufficient evidence to show that a Member State's authorities have developed a repeated and persistent practice which is contrary to the provisions of a directive, it is incumbent on that Member State to challenge in substance and in detail the information produced and the consequences flowing therefrom (judgments of 26 April 2005, *Commission v Ireland*, C-494/01, EU:C:2005:250, paragraph 47, and of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 166).
- 112 At the same time, in view of its obligation to prove the alleged failure by a Member State to fulfil its obligations, the Commission cannot, under the guise of claiming that the Member State concerned has generally and persistently failed to fulfil its obligations under EU law, avoid complying with that obligation to prove the alleged failure on the basis of concrete evidence of the infringement of the specific provisions which it invokes, and rely on simple presumptions or schematic causations (judgments of 5 September 2019, *Commission v Italy (Bacterium Xylella fastidiosa)*, C-443/18, EU:C:2019:676, paragraph 80, and of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 167).
- 113 In the present case, the Commission claims, in the first place, that the Federal Republic of Germany has adopted a practice consisting in setting conservation objectives without specifying the quantitative and measurable elements making it possible to establish the specific contribution that the protected site must make in order for a favourable conservation status to be attained at national level for the habitat or species in question.
- 114 In that regard, it must be stated that, admittedly, as is apparent from the case-law referred to in paragraph 107 of the present judgment, the conservation objectives must not be stated in a general manner, but must be specific and precise.
- 115 The conservation objectives must, consequently, be established having regard to information based on a scientific examination of the situation of the species and their habitats on the site in question. Since, according to Article 4(1) of the Habitats Directive, in the procedure governing the designation of sites as special areas of conservation, Member States must propose sites on the basis of the criteria set out in Annex III to that directive and relevant scientific information, that information is also such as to ensure that the conservation objectives are specific and precise.
- 116 At the same time, as was noted by the Advocate General in point 53 of her Opinion, while the conservation objectives set by a Member State must allow for verification as to whether the conservation measures based on those objectives are appropriate for attaining the desired conservation status of the site in question, the fact remains that the need to formulate those objectives in quantitative and measurable terms must be examined in each specific case and cannot be considered to be a general obligation on the part of the Member States.

- 117 As the Federal Republic of Germany has stated, in essence, in its defence, the quantitative and measurable approach to determining conservation objectives can prove ill-suited to some complex habitats and some conservation areas with a dynamic character, whose features vary considerably depending on external environmental factors or interact significantly with other habitats and areas of conservation.
- 118 Accordingly, it is, in principle, for the Commission to adduce evidence that, in each specific case, the Member State concerned is required to formulate the conservation objectives in quantitative and measurable terms in order to ensure the desired conservation status of the site in question.
- 119 In the present case, the Commission has indeed presented specific examples of sites for which the conservation objectives in respect of the habitats and species in question are not formulated in quantitative and measurable terms.
- 120 Having said that, first, those examples have been presented by the Commission by way of illustration of the general and structural practice of the Federal Republic of Germany, which is, according to that institution, contrary to Article 4(4) of the Habitats Directive.
- 121 Thus, in the form of order sought in its application, the Commission has not asked the Court to find that the Federal Republic of Germany has failed to fulfil its obligations under that provision on the ground that the conservation objectives have not been set in quantitative and measurable terms in respect of the habitats and species present on the sites referred to by that institution by way of illustration in the application.
- 122 Second, the present action concerns the 4 606 sites of Community importance at issue situated in the Alpine, Continental and Atlantic biogeographical regions.
- 123 Those regions include a large number of sites referred to in the Commission's second complaint and, as is apparent from the file before the Court, are characterised by a significant degree of diversity of species and habitats.
- 124 In those circumstances, in the light of the case-law referred to in paragraph 112 of the present judgment, it was for the Commission to show that the examples of species and habitats submitted by that institution, in support of the complaint seeking a finding of a general and structural failure to fulfil obligations under the Habitats Directive, are representative for all the sites of Community importance at issue (see, by analogy, judgment of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 170).
- 125 However, even assuming that the Commission had actually shown that the conservation objectives in respect of the sites to which it referred by way of illustration must be formulated in quantitative and measurable terms in order to ensure the desired conservation status of those sites, it is sufficient to point out that that institution has failed to show to the requisite legal standard, in either the application or its reply, by means of sufficiently precise, clear and detailed arguments and data, that the examples of those sites it has referred to are representative of all the sites of Community importance at issue as regards the unjustified lack of quantitative measures.
- 126 In those circumstances, it should be concluded that the Commission's argument that the Federal Republic of Germany has failed to fulfil its obligations under Article 4(4) of the Habitats Directive by adopting a general practice consisting in setting conservation objectives without specifying quantitative and measurable elements must be rejected.

- 127 In the second place, the Commission submits that the Federal Republic of Germany's practice consisting in setting conservation objectives without distinguishing between the restoration of the assets to be protected, on the one hand, and the maintenance thereof, on the other, is contrary to Article 4(4) of the Habitats Directive.
- 128 In that regard, as has been recalled in paragraph 106 of the present judgment, Article 4(4) of the Habitats Directive requires the competent authorities of the Member State concerned, when designating the special area of conservation, to set conservation objectives and establish priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a habitat type.
- 129 While, as has been recalled in paragraph 107 of the present judgment, the conservation objectives must be specific and precise, the fact remains that there is nothing in the Habitats Directive to permit the inference that Member States are required, in all cases, to distinguish between the restoration of the assets to be protected, on the one hand, and the maintenance thereof, on the other, already at the stage when those objectives are being formulated.
- 130 As the Advocate General stated, in essence, in points 94 and 95 of her Opinion, that distinction may be relevant at the stage when specific conservation measures are being set, without there being a need for it to be drawn in the context of the determination of conservation objectives.
- 131 Having regard to the foregoing, it is necessary to reject the Commission's argument that the Federal Republic of Germany has failed to fulfil its obligations under Article 4(4) of the Habitats Directive by adopting a general practice consisting in setting conservation objectives without distinguishing between the restoration of the assets to be protected, on the one hand, and the maintenance thereof, on the other.
- 132 In the third place, the Commission criticises the Federal Republic of Germany for setting conservation objectives that are not legally binding vis-à-vis third parties, in breach of Article 4(4) of the Habitats Directive.
- 133 In that regard, it must be stated that, as was noted by the Advocate General in point 105 of her Opinion, conservation objectives are, by nature, intended to be implemented by way of concrete conservation measures.
- 134 In order effectively to ensure the protection of the environment and, more specifically, as set out in Article 2(2) of the Habitats Directive, in order to ensure the maintenance or, where appropriate, the restoration, at a favourable conservation status, of natural habitats and species of wild fauna and flora of interest to the European Union, those concrete conservation measures must be adopted by the Member States as legal instruments with binding force, if necessary in particular vis-à-vis third parties.
- 135 By contrast, there is nothing in the Habitats Directive to permit the inference that, in order to ensure the effectiveness of conservation measures, the objectives on which those measures are based must themselves be legally binding vis-à-vis third parties. It must be added that the absence of such binding force in no way precludes those objectives from indirectly producing binding effects vis-à-vis third parties, in particular inasmuch as they serve as an assessment criterion, pursuant to Article 6(3) of the Habitats Directive, for assessing the implications that a

plan or project may have for a protected site, as such an assessment may in fact lead to the prohibition of that plan or project (see, to that effect, judgment of 25 July 2018, *Grace and Sweetman*, C-164/17, EU:C:2018:593, paragraph 32).

136 Accordingly, it is necessary to reject the Commission’s argument referred to in paragraph 132 of the present judgment.

137 Consequently, the second complaint is well founded only in so far as the Federal Republic of Germany has failed to adopt detailed objectives for the group of 88 sites among the 4 606 sites of Community importance at issue, in breach of Article 4(4) of the Habitats Directive.

### ***C. Third complaint: failure to establish the necessary conservation measures***

#### *1. Arguments of the parties*

138 The Commission submits, in its application, that the Federal Republic of Germany has infringed 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 inasmuch as it pursues, for the establishment of conservation measures, a general practice that does not meet the requirements of that provision.

139 That Member State’s practice, which consists in basing conservation measures on conservation objectives that themselves do not meet the requirements of the Habitats Directive, should be penalised by a finding of a general and structural failure to fulfil obligations under Article 6(1) of that directive.

140 According to the Commission, the requirement that conservation measures should be based on conservation objectives that are sufficiently specific is confirmed by the judgment of 17 December 2020, *Commission v Greece* (C-849/19, EU:C:2020:1047, paragraphs 48 to 52), and is justified by both the scheme and the purpose of the Habitats Directive.

141 In its defence, the Federal Republic of Germany contends that, since the notification of the reasoned opinion, it has made significant progress and that, as at 31 March 2022, it had set the necessary conservation measures for 99% of the special areas of conservation. For the 45 missing areas of the Länder of Brandenburg, Lower Saxony and Rhineland-Palatinate, the conservation measures were, with some exceptions, defined in the course of 2022.

142 Furthermore, the alleged general and structural failure on the part of the Federal Republic of Germany to fulfil obligations under Article 6(1) of the Habitats Directive a priori does not concern any precise conservation measure in Germany, but is merely a complaint that is subsequent to the second complaint raised. Therefore, in that Member State’s submission, given that the second complaint is unfounded, the third complaint is equally unfounded.

#### *2. Findings of the Court*

143 Pursuant to Article 6(1) of the Habitats Directive, for every special area of conservation the Member States must establish the necessary conservation measures which correspond to the ecological requirements of the natural habitat types listed in Annex I to that directive and the



species listed in Annex II to that directive present on the site concerned (judgment of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 137 and the case-law cited).

- 144 The obligations on Member States under Article 6 of the Habitats Directive, including the obligation to adopt the necessary conservation measures laid down in paragraph 1 of that article, must be implemented effectively and by complete, clear and precise measures (judgment of 29 June 2023, *Commission v Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 138 and the case-law cited).
- 145 In the present case, it must be pointed out that the Federal Republic of Germany does not dispute that, as at 13 June 2020, a date which corresponds to the deadline set for responding to the Commission’s reasoned opinion, it had not formally adopted conservation measures for the 737 sites in question.
- 146 As regards the argument raised by the Commission, according to which the Federal Republic of Germany has infringed Article 6(1) of the Habitats Directive by adopting, in general and structural terms, conservation measures based on conservation objectives that do not themselves meet the requirements of that directive, it must be stated that that argument is thus linked to the subject matter of the second complaint relating to the conservation objectives, as has been indicated by that Member State, and must therefore lead to the same conclusion.
- 147 As is apparent from paragraph 137 of the present judgment, the second complaint is well founded only in so far as the Federal Republic of Germany has failed to adopt detailed objectives for 88 of the 4 606 sites of Community importance at issue, in breach of Article 4(4) of the Habitats Directive, the other arguments of the Commission presented in the context of the second complaint and relating to the characteristics of the conservation objectives adopted by that Member State having been rejected.
- 148 Accordingly, it must be concluded that the third complaint is well founded only in so far as the Federal Republic of Germany has failed to adopt conservation measures for the group of 737 sites among the 4 606 sites of Community importance at issue, in breach of Article 6(1) of the Habitats Directive.
- 149 In the light of all the foregoing considerations, it must be found that:
- by failing to designate as special areas of conservation 88 of the 4 606 sites of Community importance at issue, the Federal Republic of Germany has failed to fulfil its obligations under Article 4(4) of the Habitats Directive;
  - by failing to adopt detailed conservation objectives for the group of 88 sites among the 4 606 sites of Community importance at issue, the Federal Republic of Germany has failed to fulfil its obligations under Article 4(4) of the Habitats Directive; and
  - by failing to adopt the necessary conservation measures for the group of 737 sites among the 4 606 sites of Community importance at issue, the Federal Republic of Germany has failed to fulfil its obligations under Article 6(1) of that directive.
- 150 The action is dismissed as to the remainder.

## Costs

- 151 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Federal Republic of Germany has essentially been unsuccessful, the latter must be ordered to pay the costs.

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

- 1. Declares that, by failing to designate as special areas of conservation 88 of the 4 606 sites of Community importance which were placed on the list established by Commission Decision 2004/69/EC of 22 December 2003 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Alpine biogeographical region, the list established by Commission Decision 2004/798/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Continental biogeographical region, and the list established by Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region, updated respectively by Commission Decision 2008/218/EC of 25 January 2008 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Alpine biogeographical region, Commission Decision 2008/25/EC of 13 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Continental biogeographical region, and Commission Decision 2008/23/EC of 12 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Atlantic biogeographical region, the Federal Republic of Germany has failed to fulfil its obligations under Article 4(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2013/17/EU of 13 May 2013;**
- 2. Declares that, by failing to adopt detailed conservation objectives for the group of 88 sites among the 4 606 sites of Community importance referred to in point 1 of the operative part, the Federal Republic of Germany has failed to fulfil its obligations under Article 4(4) of Directive 92/43, as amended by Directive 2013/17;**
- 3. Declares that, by failing to adopt the necessary conservation measures for the group of 737 sites among the 4 606 sites of Community importance referred to in point 1 of the operative part, the Federal Republic of Germany has failed to fulfil its obligations under Article 6(1) of Directive 92/43, as amended by Directive 2013/17;**
- 4. Dismisses the action as to the remainder;**
- 5. Orders the Federal Republic of Germany to bear its own costs and to pay those incurred by the European Commission.**

[Signatures]