

OPINION OF ADVOCATE GENERAL
LÉGER

delivered on 25 April 2002¹

1. In this action the Commission of the European Communities is seeking a declaration from the Court that the Republic of Finland has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409/EEC.² The Commission claims that that Member State did not, within the prescribed period, definitively and fully classify the special protection areas³ which, under the above provisions, ought to have been so classified.

3. Article 2 of the Birds Directive provides that ‘Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.’

4. Article 4 of the Birds Directive concerns the special protection measures applying specifically to the species mentioned in Annex I and to migratory species not listed in that Annex.

I — Legal framework

2. The Birds Directive, according to the first sentence of Article 1(1) thereof, ‘relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies’.

5. That article provides:

‘1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

1 — Original language: French.

2 — Council Directive of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1, hereinafter ‘the Birds Directive’).

3 — Hereinafter ‘SPAs’.

In this connection, account shall be taken of:

- (a) species in danger of extinction;
- (b) species vulnerable to specific changes in their habitat;
- (c) species considered rare because of small populations or restricted local distribution;
- (d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as [SPAs] for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

3. Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 above form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this directive applies.⁷

II — Procedural background

A — *The pre-litigation phase*

6. Taking the view that the Republic of Finland had failed to fulfil its obligations under Article 4(1), (2) and (3) of the Birds

Directive, the Commission, acting in accordance with Article 169 of the EC Treaty (now Article 226 EC), gave it formal notice on 10 July 1998 to submit its observations in this respect. In its letter of formal notice, the Commission pointed out that the list of SPAs supplied by the Finnish authorities on 11 October 1996 was patently incomplete and did not meet the requirements laid down in the Birds Directive. The Commission gave various examples of sites, such as the Kemihaara bogs, that ought, in its view, to have been classified as SPAs in accordance with the criteria set out in Article 4 of the Birds Directive.

designated in accordance with Article 4(1) and (2) of the Birds Directive, having an aggregate surface area of about 2.81 million hectares. The Government added that the Commission, which had been informed of the decision of the Council of Ministers on a provisional basis by letter of 3 September 1998; would be notified of that decision on expiry of the period during which, under Finnish law, appeals may be lodged against decisions of the Council of Ministers, which was to say in November 1998 at the earliest. It stated further that the Kemihaara bogs had not been included in the proposal concerning the Natura 2000 programme.

7. Replying to the Commission's letter on 9 October 1998, the Finnish Government informed the Commission that the Finnish Council of Ministers had, on 20 August 1998, adopted a decision concerning the Finnish Natura 2000 proposal,⁴ in accordance with Directive 92/43/EEC.⁵ That decision contained a list of 439 SPAs

8. On 15 December 1998, the Finnish Government informed the Commission that, within the period of appeal provided for under Finnish law, some 850 applications for the amendment of 610 different points had been made to the Korkein hallinto-oikeus⁶ (Finland). The Finnish Government therefore reserved the right to amend, along the lines indicated by the Korkein hallinto-oikeus when the latter ruled on the applications, the list that had been communicated to the Commission of areas forming part of the Natura 2000 network. It followed that the Finnish proposal did not concern the areas that were the subject of the applications pending before the Korkein hallinto-oikeus. In other words, the SPAs prescribed by the Birds Directive could not form part of the Natura 2000 network until the Korkein hallinto-oikeus had ruled on the applications lodged with it.

4 — Hereinafter 'the decision of the Council of Ministers'.

5 — Council Directive of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna (OJ 1992 L 206, p. 7, hereinafter 'the Habitats Directive'). The aim of this Directive is to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies. To this end, it provides for a coherent European ecological network of special areas of conservation (hereinafter 'SACs') to 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 and also comprising the SPAs, is to 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 (Article 3(1) of the Habitats Directive). Each Member State is to 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 Article 3(1). To that effect each Member State is to designate sites as SACs taking account of the objectives already referred to, namely to maintain or restore at a favourable conservation status the habitats concerned within its territory (Article 3(2) of the Habitats Directive).

6 — Supreme Administrative Court.

9. By letter of 17 December 1998, the Commission issued a reasoned opinion in which it stated that it had been sent neither a complete list of SPAs nor the necessary geographical information. It asked the Republic of Finland to comply with the reasoned opinion within two months of notification thereof. According to the Commission, in view of the available scientific data, the Republic of Finland ought to have classified as SPAs at least 91 areas put forward in the 1997 BirdLife Report⁷ concerning areas of importance for the conservation of birds at world or European level.⁸ Only 12 of the areas identified in the report had however been classified as SPAs by the Republic of Finland. The Commission again noted that the Kemihara bogs had not been so classified, even though this site figured in the 1997 IBA Proposal.

10. On 23 December 1998, the Finnish Government again sent the Commission a copy of the decision of the Council of Ministers. It reiterated the arguments it had developed in its reply of 15 December 1998 to the letter of formal notice and maintained the position taken in that reply.

11. Replying on 11 February 1999 to the Commission's reasoned opinion, the Finnish Government explained that the SPAs

put forward for the purpose of forming the Natura 2000 network had been delimited on the basis of scientific criteria. It confirmed too that the decision of the Council of Ministers was still not final and would enter into force only when all the applications lodged with the Korkein hallinto-oikeus had been considered.

12. Taking the view that it was unable to conclude from this reply that the Republic of Finland had complied with the obligations arising out of the Birds Directive provisions at issue, the Commission decided to bring the present action.

B — *Forms of order sought*

13. The Commission's application was lodged at the Court Registry on 15 June 2000.

14. The Commission claims that the Court should:

— declare that, by not fully and definitively classifying SPAs as required by

7 — Hereinafter the '1997 BirdLife Report' or the '1997 IBA Proposal'.

8 — Important Bird Areas (hereinafter 'IBAs').

Article 4(1) and (2) of the Birds Directive, the Republic of Finland has failed to fulfil its obligations as a member of the European Community;

— dismiss the Commission's action as regards the alleged inadequacy of the SPAs;

— order the Commission to pay the costs.

— order the Republic of Finland to pay the costs.

III — The pleas in law formulated by the Commission and the arguments of the Republic of Finland

15. The Finnish Government acknowledges that it did not send the Commission a definitive list of SPAs within the time-limit specified in the reasoned opinion. It denies however that its delay in doing so was detrimental to achievement of the objectives of the Birds and Habitats Directives or the Commission's efforts. It contends that the Court should:

A — *First plea: the non-definitive nature of the list of SPAs adopted by the Finnish Government (breach of Article 4(1) and (2) of the Birds Directive)*

1. Arguments of the Commission

— declare the action inadmissible inasmuch as the Commission relied on the publication *Important Birds in Europe*, issued in 2000, to establish the existence of an infringement;

16. The Commission observes that the list sent to it by the Finnish authorities on 23 December 1998 is not definitive since modifications can be made to it when the applications currently pending with the Korkein hallinto-oikeus have been dealt with. The Republic of Finland has thus infringed the provisions of Article 4(1) and (2) of the Birds Directive. The Commission

— declare the Commission's allegations concerning the delimiting of the Kemihaara bogs to be inadmissible;

observes further that, having failed to receive the list of Finnish SPAs in accordance with Article 4(1) and (2) of the Birds Directive, it had not been able to take the measures prescribed in Article 4(3) of that Directive with a view to forming a coherent whole.⁹

B — *Second plea: the incomplete nature of the list of SPAs adopted by the Finnish Government (infringement of Article 4(1) and (2) of the Birds Directive)*

1. Arguments of the Commission

2. Arguments of the Republic of Finland

17. The Republic of Finland acknowledges that it did not provide a definitive list of SPAs within the time-limit specified in the reasoned opinion. It denies however that its delay in doing so was detrimental to the achievement of the objectives of the Birds and Habitats Directives and the Commission's efforts. The Finnish authorities indicate that by letter of 18 December 1998, and hence within the time-limit specified in the reasoned opinion, they sent the Commission the information concerning the areas submitted by them in pursuance of the Habitats Directive and concerning all the SPAs classified in accordance with the Birds Directive. This information, transmitted in the format prescribed in Decision 97/266/EC,¹⁰ thus met the requirements of Article 4(3) of the Birds Directive.

18. The Commission complains that the Republic of Finland has not compiled a complete list of SPAs. It bases this allegation on the 1997 BirdLife Report. According to the Commission, the report, drawn up in conjunction with the Finnish Environment Centre and submitted for the purpose of establishing the IBA list for 2000, identified 96 areas in Finland warranting inclusion in the list of Finnish SPAs. The Republic of Finland has however classified 69 areas only. 27 areas whose qualitative status has been demonstrated scientifically are thus missing from the list.

19. The Commission cites the Kemihäärä bogs, which are recognised as a site of international importance. It contends that these bogs derive their ornithological value from the fact that they are one of the areas of Finland offering the most favourable conditions for the conservation of 22 species of birds, listed in Annex I of the Birds Directive, that nest there.¹¹ The failure to include this site in the list of

⁹ — Paragraph 24 of the Commission's application.

¹⁰ — Commission Decision of 18 December 1996 concerning a site information format for proposed Natura 2000 sites (OJ 1997 L 107, p. 1).

¹¹ — The Commission also identifies other areas whose ornithological importance is, in its view, underlined in the 1997 BirdLife Report (see paragraph 33 of the application).

SPAs put forward by the Republic of Finland proves, according to the Commission, that scientific criteria were not applied when classifying the SPAs.

20. The Commission maintains that the 1997 BirdLife Report is endorsed, as regards the list of Finnish SPAs, by the recent publication concerning IBAs in Europe.¹² Given the European dimension of the IBA survey and its scientific value, the Republic of Finland ought, if it had wished to challenge it, to have provided scientific evidence to support its position. Despite the Commission's requests to this effect, however, the Finnish authorities have never supplied the slightest evidence that they relied on scientific data in selecting the sites for inclusion in the list.

2. Arguments of the Republic of Finland

21. The Republic of Finland contests the second plea, basing its case on the following three arguments.

22. It contends, firstly, that in drawing up the list of Finnish SPAs it applied the

scientific criteria set out in the Birds Directive. It states in this connection that it sent the Commission, using the format prescribed in Decision 97/266, full information concerning the criteria it had applied in selecting the SPAs. It observes further that in summer 2000 the Korkein hallinto-oikeus ruled on all the applications lodged against the decision of the Council of Ministers. The Korkein hallinto-oikeus took the view that the criteria applied in selecting and delimiting the SPAs were of an ecological nature as required by the Birds and Habitats Directives. It arrived at this conclusion following close examination of each application and having confirmed that the decision of the Council of Ministers had been based, for each of the areas and the delimitation thereof, on true facts and on studies concerning the ecological value of the sites concerned, those studies being based on reliable scientific knowledge. On completion of its examination, the Korkein hallinto-oikeus:

- granted the applications concerning 50 areas, 18 of which were SPAs covered by the decision of the Council of Ministers;
- ordered that the matter be referred back to the Council of Ministers in respect of 14 other SPAs for them to be expanded in some cases and reduced in size in others;

¹² — *Important Bird Areas in Europe — BirdLife International 2000, BirdLife Conservation Series No 8, Volume 1: Northern Europe.*

— ordered the matter to be referred back to the Council of Ministers in respect of 4 sites that did not figure in the Natura 2000 project. These were the Kemihaara bog and Lake Karunki sites, cited in the Commission's application, and the Peuralamminneva and Korpoo Langvikeen sites.

required to specify the reasons why the list of SPAs differed from the list of sites given in the 1997 BirdLife report. In its view, the adequacy of the Finnish proposal could, in the absence of any other valid scientific material, be assessed on the basis of the IBA 89 cartographical survey.¹³

23. Secondly, the Republic of Finland considers the 1997 BirdLife Report to have no evidential value. In its view, neither the provisions of Article 4 of the Birds Directive nor the case-law of the Court confer evidential value on reports of that type. The report could not moreover be regarded as definitive prior to obtaining international endorsement. It was not however until after the expiry of the time-limit specified in the reasoned opinion that the report became definitive. It follows that the Commission was not entitled, in the framework of the present infringement proceedings, to rely on a document that did not have formal status.

24. The Finnish Government asserts, thirdly, that it follows from the judgment in Case C-3/96 *Commission v Netherlands*¹⁴ that a Member State can be found to have contravened the provisions of Article 4 of the Birds Directive only if it can be demonstrated that it has classified as SPAs 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 for conservation of the species in question. The Finnish Government states however that it has classified as SPAs sites the number and total of which are greater than was provided for in either the IBA 89 cartographical survey or the 1997 IBA Proposal. In its view, it follows from the foregoing that, as the Commission has failed to furnish the proof it is required to submit to the Court under the terms of the judgment in *Commission v Netherlands* cited above, the second complaint must be dismissed.

In any event, the 1997 IBA Proposal does not, in the Republic of Finland's view, lend itself to the evaluation of Finnish birdlife. It maintains therefore that a comparison of the Finnish SPAs and the areas identified in the 1997 BirdLife Report does not suffice to demonstrate that the list of Finnish SPAs does not meet the requirements of Article 4(1) and (2) of the Birds Directive. It concludes from this that it was not

13 — This survey identifies fewer sites than the survey appearing in the 1997 IBA proposal.

14 — [1998] ECR I-3031.

IV — Assessment

A — *First plea: the non-definitive nature of the list of SPAs adopted by the Finnish Government (infringement of Article 4(1) and (2) of the Birds Directive)*

25. The Court has consistently held that ‘the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in that Member State as it stood at the end of the period laid down in the reasoned opinion’.¹⁵

26. Article 4(1) of the Birds Directive requires Member States to classify as SPAs the most suitable territories in number and size for the conservation of the species referred to in Annex I to that Directive. Article 4(2) of the Birds Directive lays down identical obligations in respect of regularly occurring migratory species not listed in that Annex. To this end, Article 4(2) of the Birds Directive requires

Member States to pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

27. It is apparent from the documents in the case that the list of SPAs to be drawn up in accordance with Article 4(1) and (2) of the Birds Directive had not, by the end of the period laid down in the reasoned opinion, been definitively adopted by the Finnish authorities. The Finnish authorities do not dispute this.

28. The Republic of Finland does however rebut the complaint that Article 4(3) of the Birds Directive has been infringed. In its view, the Commission has not furnished proof that it was unable, on account of the Republic of Finland’s non-compliance with its obligations under Article 4(1) and (2) of the Birds Directive, to take the measures prescribed in Article 4(3) of that Directive with a view to forming a coherent whole.

29. I consider that there is no need to examine the substance of this complaint as it has not, in my view, been properly brought before the Court.

30. Under Articles 19 of the EC Protocol on the Statute of the Court of Justice and

¹⁵ — See, in particular, Case C-67/99 *Commission v Ireland* [2001] ECR I-5757, paragraph 36, Case C-71/99 *Commission v Germany* [2001] ECR I-5811, paragraph 29, Case C-220/99 *Commission v France* [2001] ECR I-5831, paragraph 33, Case C-394/00 *Commission v Ireland* [2002] ECR I-586, paragraph 12 and Case C-29/01 *Commission v Spain* [2002] ECR I-2503, paragraph 11.

38(1)(c) and (d) of the Court's Rules of Procedure, an application to the Court must state the subject-matter of the proceedings, contain a summary of the pleas in law and state the form of order sought by the applicant.

31. In accordance with the Court's case-law, in any application made under Article 169 of the Treaty, the Commission must indicate the specific complaints on which the Court is called upon to rule and the legal and factual particulars on which those complaints are based.¹⁶ The Court has also held that, under Article 38(1)(c) of its Rules of Procedure, the merits of an application must be determined solely in the light of the submissions made in the application initiating the proceedings.¹⁷ Again according to the Court, as any action brought under Article 169 is preceded by a pre-litigation procedure, the Commission may be led to abandon certain complaints set out in the letter of formal notice or in the reasoned opinion.¹⁸

32. In the present case, the Commission expressly complained, in the formal letter of notice¹⁹ and the reasoned opinion,²⁰ that the Republic of Finland had infringed the provisions of Article 4(3) of the Birds

Directive but did not plead accordingly in the application lodged at the Court Registry on 15 June 2000. Moreover, while the Commission mentioned the infringement of this provision indirectly in the grounds of the application, it did not substantiate the allegation with any legal or factual particulars. I conclude from this that the Commission has decided not to bring this complaint before the Court.

33. It can be concluded from the foregoing that, by failing to classify SPAs definitively as laid down by the Birds Directive by the end of the period specified in the reasoned opinion, the Republic of Finland has failed to fulfil its obligations under Article 4(1) and (2) of the Birds Directive.

B — Second plea: the list of SPAs adopted by the Finnish Government is incomplete (infringement of Article 4(1) and (2) of the Birds Directive)

34. It is settled case-law that, in proceedings under Article 169 of the Treaty for failure to fulfil an obligation, it is incumbent on the Commission to prove that the obligation has not been fulfilled and to place before the Court the information

16 — See in particular Case C-347/88 *Commission v Greece* [1990] ECR I-4747, paragraph 28.

17 — See, in particular, Case 232/78 *Commission v France* [1979] ECR 2729, paragraph 3, and Case C-256/98 *Commission v France* [2000] ECR I-2487, paragraph 31.

18 — See Case C-347/88 *Commission v Greece* cited above, paragraph 29.

19 — Operative part of the letter of formal notice of 10 July 1998, SG (98) D/5656 (p. 3).

20 — Operative part of the reasoned opinion of 17 December 1998, SG (98) D/11906 (p. 5).

necessary to determine whether that is so.²¹

35. The Court has also held that, while ‘the Member States have a certain margin of discretion in the choice of [SPAs], the classification of those areas is nevertheless subject to certain ornithological criteria determined by the Directive’.²² The criteria to be considered include the presence of birds listed in Annex I to the Birds Directive and the designation of a habitat as a wetland area.²³ Consequently, Member States are obliged to classify as SPAs all the sites which, applying ornithological criteria, appear to be the most suitable for conservation of the species in question.²⁴

36. Concerning the relevant scientific criteria which Member States must consider in making this selection, it should moreover be noted that the Birds Directive does not recognise any particular scientific source as having legal value. It follows that the

Member States are free to produce whatever scientific evidence has allowed them to select the sites on their territory that meet the requirements of Article 4(1) and (2) of the Birds Directive.²⁵

37. Lastly, the Court has held that it is for the Member States, in a spirit of genuine cooperation in accordance with each Member State’s duty under Article 5 of the EC Treaty (now Article 10 EC), to facilitate achievement of the general task of the Commission, which is to ensure that the provisions of the Treaty, as well as provisions adopted thereunder by the institutions, are applied.²⁶

38. It is in the light of these principles that it has to be considered whether the Republic of Finland has failed to fulfil its obligations under Article 4(1) and (2) of the Birds Directive in not providing the Commission, within the time-limit specified in the reasoned opinion, with a complete list of SPAs.

39. The Commission complains that the Republic of Finland has not selected all the sites which, applying ornithological criteria and on the basis of reliable scientific

21 — See, in particular, Case 96/81 *Commission v Netherlands* [1982] ECR 1791, paragraph 6, Case C-166/97 *Commission v France* [1999] ECR I-1719, paragraph 40, and Case C-96/98 *Commission v France* [1999] ECR I-8531, paragraph 36.

22 — See, in particular, Case C-355/90 *Commission v Spain* [1993] ECR I-4221, paragraph 26, and Case C-3/96 *Commission v Netherlands*, cited above, paragraph 60.

23 — Case C-355/90 *Commission v Spain*, cited above, paragraph 26.

24 — Case C-3/96 *Commission v Netherlands*, cited above, paragraph 62.

25 — *Ibid.*, paragraph 69.

26 — See, in particular, Case C-365/97 *Commission v Italy* [1999] ECR I-7773, paragraph 85.

studies, appear to be the most suitable for conservation of the species in question. Its complaint therefore concerns the qualitative merits of the sites selected by that State. The Commission cites, by way of example, the Kemihaara bogs, which appear in both the 1997 BirdLife Report and the IBA publication for 2000 as a site that should be classified as an SPA.

40. The mere fact of this site featuring in the 1997 BirdLife Report does not constitute proof that it must necessarily be classified as an SPA by the Republic of Finland. The evidential value of that report is not therefore irrefutable.²⁷ It does however appear from the proceedings, and this is not disputed, that the report was drawn up by an international body, on which a number of ornithological associations are represented, in conjunction with the Finnish Environment Centre and experts in the field of bird protection. It cannot therefore be denied all scientific value.

41. The Finnish Government does moreover itself indicate that the Kemihaara bog site, which did not appear on the list of Finnish SPAs approved by the Council of Ministers on 20 August 1998, was the subject of a specific decision by the Korkein hallinto-oikeus.²⁸ That court ordered that the matter be referred back to the Council

of Ministers in respect of four sites, including the Kemihaara peat site, that did not figure in the Natura 2000 project.²⁹

42. It should further be noted that the Republic of Finland, while disputing the report's evidential value, does not call in question its scientific value nor supply any opposing scientific data. Moreover, all the scientific evidence was, according to the Finnish authorities, submitted to the Korkein hallinto-oikeus in the framework of the applications lodged under national law. That evidence, however, has been submitted neither to the Commission nor to the Court.³⁰ The Commission was consequently unable to determine whether the obligations laid down in Article 4(1) and (2) of the Birds Directive had been observed.

43. Finally, the Republic of Finland, while contesting the second complaint made against it, acknowledges that the proposed list of SPAs is liable to be amended following the applications lodged with the Korkein hallinto-oikeus against the decision of the Council of Ministers. In other words, sites appearing on that list could be with-

27 — See point 36 of the present Opinion.

28 — See point 22 of the present Opinion.

29 — See paragraph 31 of the Finnish Government's defence.

30 — Although the Court expressly asked the Finnish Government to produce the documents setting out the scientific criteria that had been applied in selecting and delimiting the sites concerned for the purpose of classification as SPAs, the documents submitted by the Finnish Government make no reference to the scientific sources on which it had supposedly based its conclusions.

drawn from, or added to, the list of Finnish SPAs to be definitively adopted. It follows that the list of SPAs proposed by the Finnish authorities cannot be considered to have been exhaustive on expiry of the time-limit specified in the reasoned opinion.

V — Costs

44. It can be concluded from the foregoing that, by failing to classify fully, by the end of the period laid down in the reasoned opinion, the SPAs provided for by the Birds Directive, the Republic of Finland has failed to fulfil its obligations under Article 4(1) and (2) of the Birds Directive.

45. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission applied for the costs and the Republic of Finland failed in its defence, the latter should be ordered to pay the costs.

VI — Conclusion

46. For the foregoing reasons, I therefore propose that the Court should:

(1) declare that, by not fully and definitively classifying special protection areas, the Republic of Finland has failed to fulfil its obligations as a member of the European Community under Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;

(2) order the Republic of Finland to pay the costs.