



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

18 October 2018*

(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(1) — Annexes II and III — Designation of special areas of conservation (SACs) — Harbour porpoise)

In Case C-669/16,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 23 December 2016,

European Commission, represented by J. Norris-Usher and C. Hermes, acting as Agents,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by G. Brown, acting as Agent, and by R. Palmer and M. Armitage, Barristers,

defendant,

THE COURT (Sixth Chamber),

composed of E. Regan, President of the Fifth Chamber, acting as President of the Sixth Chamber, C.G. Fernlund and S. Rodin (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 By its action, the European Commission seeks a declaration that, by failing to designate sites for the protection of the harbour porpoise (*Phocoena phocoena*), the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 4(1) and Annexes II and III of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild

* Language of the case: English.

fauna and flora (OJ 1992, L 206, p. 7, ‘the Habitats Directive’) and that, accordingly, by failing to contribute to the creation of the Natura 2000 network in proportion to the representation within its territory of the habitats of that species, the United Kingdom has also failed to fulfil its obligations under Article 3(2) of that directive.

Legal framework

2 The aim of the Habitat Directive, according to Article 2(1), 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.

3 Article 1 of the directive, which defines the principal terms used therein, provides:

‘For the purposes of this Directive:

...

- (g) species of Community interest means species which, within the territory referred to in Article 2, are:
- (i) endangered, except those species whose natural range is marginal in that territory and which are not endangered or vulnerable in the western palearctic region; or
 - (ii) vulnerable, i.e. believed likely to move into the endangered category in the near future if the causal factors continue operating; or
 - (iii) rare, i.e. with small populations that are not at present endangered or vulnerable, but are at risk. The species are located within restricted geographical areas or are thinly scattered over a more extensive range; or
 - (iv) endemic and requiring particular attention by reason of the specific nature of their habitat and/or the potential impact of their exploitation on their habitat and/or the potential impact of their exploitation on their conservation status.

Such species are listed or may be listed in Annex II and/or Annex IV or V;

...

- (j) site means a geographically defined area whose extent is clearly delineated;
- (k) site of Community importance means a site which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000 referred to in Article 3, and/or contributes significantly to the maintenance of biological diversity within the biogeographic region or regions concerned.

For animal species ranging over wide areas, sites of Community importance 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;

- (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 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 (OJ 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 The procedure governing the designation of special areas of conservation (‘SACs’) is laid down in Article 4 of the Habitats Directive and consists of four stages.

6 First, as regards the identification of the sites and notification of these to the Commission, Article 4(1) of the directive provides:

‘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.’

7 Second, when the Member State concerned has transmitted the list of the sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory are hosted by the sites, it is clear from the first and second subparagraphs of Article 4(2) of that directive that the Commission is to establish, from that list and in agreement with the Member State concerned, a draft list of sites of Community importance (‘the SCIs’). Third, pursuant to the third subparagraph of Article 4(2) and Article 4(3) of the same directive, the list of sites selected as SCIs is to be adopted by the Commission in accordance with the procedure laid down in Article 21 of the directive. Fourth, it is clear from Article 4(4) of the Habitats Directive that, once an SIC has been adopted in accordance with that procedure, the Member State concerned is to designate that site as an SAC.

8 Annex II of the Habitats Directive, which lists the animal and plant species of Community interest whose conservation requires the designation of SACs, refers, in point (a), headed ‘Animals’, inter alia, to ‘Vertebrates’, including, in the list of species of cetaceans, the harbour porpoise.

- 9 Annex III of the directive is entitled ‘Criteria for selecting sites eligible for identification as [SCIs] and designation as [SACs]’. Under the heading ‘Stage 1: Assessment at national level of the relative importance of sites for each natural habitat type in Annex I and each species in Annex II (including priority natural habitat types and priority species)’ is a point B which lists in the following terms the ‘Site assessment criteria for a given species in Annex II’:
- ‘(a) Size and density of the population of the species present on the site in relation to the populations present within national territory.
 - (b) Degree of conservation of the features of the habitat which are important for the species concerned and restoration possibilities.
 - (c) Degree of isolation of the population present on the site in relation to the natural range of the species.
 - (d) Global assessment of the value of the site for conservation of the species concerned.’
- 10 That part of Annex II also includes a point C which states that, on the basis of the criteria listed in point B, ‘Member States will classify the sites which they propose on the national list as sites eligible for identification as sites of Community importance according to their relative value for the conservation of each natural habitat type in Annex I or each species in Annex II.’

Pre-litigation procedure

- 11 In 2012, the Commission received a complaint from the non-governmental organisation World Wildlife Fund UK concerning, in particular, the United Kingdom’s failure to designate SACs for the harbour porpoise.
- 12 In support of its complaint, World Wildlife Fund UK attached a report entitled ‘Protecting the harbour porpoise in UK Seas’, drawn up by two experts on the harbour porpoise species, Dr Peter Evans and Dr Sian Prior (‘the Evans and Prior report’). The report identified six sites which it claimed should, on the basis of the scientific data available, be designated as SACs for that species. Those sites were respectively referred to as ‘Western Scotland and Inner Hebrides’, ‘North & West Anglesey’, ‘South-west Llyn’, ‘South Cardigan Bay’, ‘Pembrokeshire Marine/ Sir Benfro Forol’ and ‘Outer Bristol Channel’. According to the report, five other sites could also potentially form part of the SAC network, namely the sites referred to as ‘Northern Isles’, ‘Moray Firth, extending to East Grampian’, ‘Eastern England’, ‘Dogger Bank’ and ‘Skerries and Causeway (Northern Ireland)’. The Evans and Prior report included draft standard data forms for each of the sites identified.
- 13 In September 2012, the United Kingdom stated that the harbour porpoise was present in 34 Natura 2000 sites it had proposed under Article 4(1) of the Habitats Directive, but it assessed the species as only ‘D’ under the population criterion, meaning that out of the 34 proposed sites, 33 could not be considered for that species under Article 4(2) of the directive, for the purposes of constituting SCIs and, subsequently, SACs. Only one site in the United Kingdom was identified as meeting the population criterion ‘C’, namely site UK0030383 ‘Skerries and Causeway’.
- 14 On 25 October 2012, the Commission formally sent questions to the United Kingdom Government via the EU pilot mechanism.
- 15 The United Kingdom formally replied to these questions via the same mechanism on 17 December 2012.

- 16 Taking the view that the proposal of only one site for the species in question was insufficient, particularly in the light of the Evans and Prior report, the Commission sent the United Kingdom a letter of formal notice in which it complained that it had failed to fulfil its obligations to propose sites for the harbour porpoise, under Articles 3(2) and 4(1) of the Habitats Directive.
- 17 By letter dated 19 August 2013, the United Kingdom replied to the letter of formal notice contesting, in essence, the assertion that the Evans and Prior report provided sufficient evidence that there were other sites which warranted designation on the basis of existing relevant scientific information. The United Kingdom indicated, however, that it was continuing its investigations in that regard with a view to proposing further sites for harbour porpoises under Article 4(1) of the Habitats Directive.
- 18 On 17 October 2014, given that no further sites had been proposed, the Commission addressed a reasoned opinion to the United Kingdom, pursuant to the first paragraph of Article 258 TFEU, charging it with failure to fulfil its obligation to propose, in accordance with Article 3(2) and 4(1) of that directive, a sufficient number of sites for the harbour porpoise.
- 19 In that reasoned opinion the Commission noted, first, that as at the date the reasoned opinion was sent the Skerries and Causeway site remained the only site that had been proposed under Article 4(1) of the Habitats Directive and, second, that the evidence submitted in the draft Standard Data Forms, as included in the Evans and Prior report, was the ‘best available evidence’ for the purpose of proposing sites under that provision. The Commission also stated that it was concerned that one of the practical implications of the failure to fulfil this obligation and, accordingly, the failure to afford those sites protection under Article 6 of the directive, was that applications for offshore wind farms were being processed without due regard for the impact of those applications on the harbour porpoise populations.
- 20 The deadline for compliance with the reasoned opinion was 16 December 2014.
- 21 In its response dated 16 December 2014, the United Kingdom outlined the steps that had been taken to identify and designate sites for the harbour porpoise and gave an indicative timetable for the completion of the necessary steps to that end, including the holding of a public consultation.
- 22 On 29 January 2015, a meeting took place in Brussels (Belgium) between officials from the Commission and from the United Kingdom to further discuss the United Kingdom’s follow up to the reasoned opinion. At that time, the United Kingdom presented a map of the areas selected for potential public consultation.
- 23 By email of 28 May 2015, the United Kingdom provided the Commission with a copy of the initial advice from its statutory nature advisory body as well as an explanatory paper outlining how the Habitats Directive criteria were applied in the initial analysis. This documentation identified eight areas selected for potential public consultation which were spread over three ‘management units’ in order to achieve ‘a representative network of sites’.
- 24 After having provided the Commission, on 3 December 2015, with an updated version of the timetable which foresaw a minimum of eight further months of delay, the United Kingdom, on 19 January 2016, informed the Commission that a public consultation on possible sites for the harbour porpoise had been launched in relation to five proposed sites in England, Wales and Northern Ireland.
- 25 On 23 March 2016, a separate public consultation was launched for one site in Scotland.
- 26 On 22 September 2016, the United Kingdom formally proposed the Inner Hebrides and Minches Special Area of Conservation in Scottish waters as an SAC for the harbour porpoise in western Scotland.

27 Taking the view that the United Kingdom had not, therefore, taken the necessary measures to fulfil its obligations under Articles 3(2) and 4(1) of the Habitats Directive, the Commission brought the present action on 23 December 2016.

The action

Admissibility of the action

28 By a separate document dated 14 March 2017, the United Kingdom raised a plea of inadmissibility against the present action under Article 151 of the Rules of Procedure of the Court.

29 By decision of 26 September 2017, consideration of the plea of inadmissibility was reserved for final judgment and the United Kingdom was invited to submit a defence.

Arguments of the parties

30 The United Kingdom submits, in essence, that the action is inadmissible in so far as the complaints, as set out in the application, are directed, inter alia, against the measures it adopted only after the date for compliance with the reasoned opinion, namely, in particular, the Member State's proposal of 22 September 2016 to create a further SAC of the Inner Hebrides and Minches in Scottish waters.

31 In addition, the application refers expressly, in paragraph 33, to the insufficiency of the 'sites' proposed for the harbour porpoise, whereas the reasoned opinion is based on the fact that the United Kingdom proposed only one site as a potential SAC. In paragraphs 57 and 58 of its application, the Commission complains that the United Kingdom's designation of the Inner Hebrides and Minches site does not constitute compliance with its obligations under Article 4(1) of the Habitats Directive.

32 According to the United Kingdom, in order for the Commission to claim that it has failed to fulfil its obligations under that directive by proposing the Inner Hebrides and Minches site as a potential SAC, it should have introduced a pre-litigation procedure in that regard.

33 As a result, the action includes, in breach of the principles which emerge from the Court's settled case-law in that regard, complaints which were not included in the reasoned opinion and which are made against national measures adopted after that reasoned opinion was issued.

34 In those circumstances, unless it is to undermine the essential guarantees from which the Member States benefit under Article 258(1) TFEU, the present action should be held to be inadmissible without it being necessary to consider the merits of the case.

35 According to the Commission, the matters set out in its application accord with the objections identified in the reasoned opinion, in accordance with the requirements of Article 258 TFEU and the principles established in the case-law. The plea of inadmissibility should therefore be rejected.

36 First, the Commission maintains that the infringement identified in the reasoned opinion and that identified in the application are, in essence, the same failure attributable to the United Kingdom, namely the failure to propose sufficient sites for the harbour porpoise under Article 4(1) of the Habitats Directive and the corresponding failure to contribute to the creation of the Natura 2000 network. The various sites mentioned in the application are mentioned rather as evidence that the United Kingdom continues to fail to fulfil its obligation to propose a sufficient number of sites. It is in that context that the whole application, including paragraph 33, should be read.

- 37 The Commission maintains, next, that it is evident from the application that the references to facts and matters arising after 16 December 2014 have the sole purpose of providing a comprehensive factual background and to clarify ‘for the sake of completeness’ that the Commission considered that the infringement was subsisting at the date of the application.
- 38 Lastly, even if the Court should consider that the scope of the application exceeds the scope of the complaint as formulated in the reasoned opinion by virtue of the fact that reference is made to facts and matters arising after 16 December 2014, this should not, in any event, result in a finding that the entire application is inadmissible.

Findings of the Court

- 39 It should be noted that, according to the Court’s settled case-law, the subject matter of an action under Article 258 TFEU for failure to fulfil obligations is determined by the Commission’s reasoned opinion, so that the action must be based on the same grounds and pleas as that opinion (judgments of 8 July 2010, *Commission v Portugal*, C-171/08, EU:C:2010:412, paragraph 25, and of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 37).
- 40 It is also apparent from the Court’s case-law that the question of whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion (see judgments of 4 September 2014, *Commission v Greece*, C-351/13, not published, EU:C:2014:2150, paragraph 20 and of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 40).
- 41 In the present case, it must be noted that in both the reasoned opinion and the application the Commission complains that the United Kingdom has failed to fulfil its obligations under Articles 3(2) and 4(1) of the Habitats Directive by failing to designate sites for the protection of the harbour porpoise and, as a result, failing to contribute to the creation of the Natura 2000 network.
- 42 In that regard, first, to the extent that reference is made in the application to the proposed ‘sites’ for the harbour porpoise, it should be noted that such a reference in the plural, in essence, merely reflects the wording of those provisions of the Habitats Directive.
- 43 Second, while it is true, as the United Kingdom also highlights, that the reasoned opinion was concerned solely with the Skerries and Causeway site, the only site proposed before the expiry of the period laid down in the reasoned opinion, while in paragraphs 57 and 58 of the application the Commission discusses the additional proposal of the Inner Hebrides and Minches site, which was made after the expiry of that period, it is clear from reading those passages of the application in context that the Commission referred to that site only for completeness and did not thus widen the subject matter of the case as it is defined, consistently, in the conclusions of the reasoned opinion and the application.
- 44 In any event, in accordance with the case-law referred to in paragraph 40 above, that second site proposal will not be taken into account in the Court’s assessment of the alleged failure to fulfil obligations (see, by analogy, judgment of 10 November 2016, *Commission v Greece*, C-504/14, EU:C:2016:847, paragraph 69).
- 45 It follows that the application is admissible.

Substance

Arguments of the parties

- 46 The Commission claims that the United Kingdom has failed to fulfil its obligations under Articles 3(2) and 4(1) and Annexes II and III of the Habitats Directive, in so far as those obligations concern the protection of the harbour porpoise.
- 47 In accordance with those provisions, each Member State whose territory includes sites hosting the harbour porpoise was required to send the Commission a list of sites proposed for the protection of that species by 10 June 1995 at the latest. Given the complexity of creating a Natura 2000 network in the marine environment, formed of various SACs, the Commission did not, initially, bring actions against the Member States that did not respect that deadline. However, Commission Notice (COM(2006) 216) of 22 May 2006, entitled ‘Halting the loss of biodiversity by 2010 — and beyond — Sustaining ecosystem services for human well-being’ provided that the Natura 2000 network should be created by 2012 at the latest and every Member State hosting the harbour porpoise in the Atlantic region, with the exception of the United Kingdom, was able identify sites in their marine waters by that time.
- 48 By 16 December 2014, the United Kingdom had proposed only one site for the harbour porpoise, namely the Skerries and Causeway site, which was insufficient to discharge the obligation to create an exhaustive list of sites pursuant to Article 4(1) of the Habitats Directive. Since the failure to comply with that obligation did in fact prevent the creation of the Natura 2000 network, referred to in Article 3(1) of that directive, the United Kingdom also failed to comply with that obligation.
- 49 According to the Commission, it is clear that a list proposing only one site is insufficient, first, owing to the fact that, according to the information available to it on the basis of the reports referred to in Article 17 of the Habitats Directive, 56% of the range of the harbour porpoise species in the Atlantic region is in the marine waters of the United Kingdom, while the site proposed by that Member State covers barely 0.1% of that area.
- 50 Second, the Evans and Prior Report identified six sites in respect of which the relevant information available, on the date that report was published in 2012, should have led the United Kingdom to propose those sites as prospective SACs, and a further five sites that could potentially be proposed to form part of the SAC network.
- 51 Third, the inadequacy of listing just one site for the harbour porpoise in the United Kingdom is confirmed by other sources, such as the conclusions of the Marine Natura 2000 biogeographical seminar for the Atlantic Sea region, which took place in Galway (Ireland) on 24 and 25 March 2009, and the initial advice of the Joint Nature Conservation Committee, which identified eight potential sites for the harbour porpoise in United Kingdom marine waters.
- 52 Fourth, other Member States have been able to designate sites for the harbour porpoise immediately adjacent to a site identified in the Evans and Prior report as warranting being proposed for designation as an SAC, but which the United Kingdom has failed to propose.
- 53 The Commission rejects the argument by which the United Kingdom challenges the relevance and validity of the information and evidence on which it relies, in particular the Evans and Prior report. It considers that the United Kingdom also cannot use the complexity and difficulties in identifying marine sites as justification for its failure. Furthermore, the Commission notes that the United Kingdom repeatedly failed to respect its own projected timetables.

- 54 The Commission notes, moreover, that the additional site designated by the United Kingdom since the 16 December 2014, namely the Inner Hebrides and Minches site, is also insufficient to discharge its obligations under the Habitats Directive, since the combined surface area of that site and the Skerries and Causeway site covers less than 3% of the estimated distribution area of the harbour porpoise in the UK Marine Atlantic region.
- 55 In its statement of defence, the United Kingdom submits, first, that the identification of suitable potential SACs for the harbour porpoise is an extremely difficult process, particularly in the light of the express requirement in the Habitats Directive that sites should be proposed for SACs only if they are ‘clearly identifiable’, the need for a rigorous scientific assessment of the suitability of particular sites as potential SACs, and the imperative to avoid the vain expenditure of resources on sites that will not, as a matter of fact, contribute to the attainment of the aims of the Habitats Directive and of the Natura 2000 network. Defining the boundaries of potential SACs is particularly hard in the case of the harbour porpoise since it is a naturally widely-distributed cetacean, and relatively little is known about its breeding behaviour. Nonetheless, as far as that task is concerned, substantial progress has been made by the United Kingdom since the date of the reasoned opinion and, subsequently, since the date on which the present action was brought.
- 56 Nonetheless, the United Kingdom acknowledges that, as at the date for compliance with the reasoned opinion, the identification and proposal by the UK of only one site as a potential SAC, namely the Skerries and Causeway site, was insufficient to discharge its obligations under Article 4(1) of the Habitats Directive in respect of the harbour porpoise. To that extent, the UK admits that it had also failed, at that date, to fulfil its obligations under Article 3(2) of the directive to contribute to the creation of the Natura 2000 network in proportion to the representation within its territory of the harbour porpoise.
- 57 By contrast, the UK contests the Commission’s criticisms as to its methodological approach to the identification and proposal of sites. However, it acknowledges that is not necessary for the Court to rule on those matters given that, as is clear from the previous paragraph, it has acknowledged its failure as alleged in the reasoned opinion.

Findings of the Court

- 58 It should be noted that the first sub-paragraph of Article 3(1) of the Habitats Directive provides for the establishment of a coherent European ecological network of SACs, under the title Natura 2000, composed of sites hosting the natural habitat types listed in Annex I to that directive and habitats of the species listed in Annex II to that directive, such as the harbour porpoise, the subject matter of the present action.
- 59 Article 3(2) of the Habitats Directive requires Member States to contribute to the creation of the Natura 2000 network in proportion to the representation, within their respective territories, of those natural habitat types and those habitats of species and, to that effect, to designate, in accordance with Article 4 of that directive and based on the procedure established by it, sites as SACs.
- 60 The procedure governing the designation of sites as SACs, as provided for by Article 4 of the Habitats Directive, consists of four stages, the first of which, pursuant to paragraph 1 of that article, involves the establishment by each Member State, on the basis of the criteria set out in Annex III to that directive, of a list of sites indicating which natural habitat types and which species that are native to its territory are hosted by the sites, listed in Annex I and Annex II to that directive respectively, and the transmission of that list to the Commission.

- 61 It should be noted, as is clear from Article 4(2) of the Habitats Directive, that the lists of sites proposed in this way by the Member States are to serve, subsequently, as a basis for the establishment by the Commission of a draft list of SCIs.
- 62 In this regard, the Court has already noted on several occasions that, in order to produce a draft list of SCIs, capable of leading to the creation of a coherent European ecological network of SACs, the Commission must have available an exhaustive list of the sites which, at national level, have an ecological interest which is relevant from the point of view of the Habitat Directive's objective of conserving natural habitats and wild fauna and flora (see, inter alia, judgments of 7 November 2000, *First Corporate Shipping*, C-371/98, EU:C:2000:600, paragraph 22, and of 11 September 2001, *Commission v France*, C-220/99, EU:C:2001:434, paragraph 31).
- 63 Moreover, only in that way is it possible to realise the objective, set out in the first subparagraph of Article 3(1) of the Habitats Directive, of maintaining or restoring the natural habitat types and the species' habitats concerned at a favourable conservation status in their natural range, which may lie across one or more frontiers inside the European Union. It follows from Article 1(e) and (i) of the directive, read in conjunction with Article 2(1) of the directive, that the favourable conservation status of a natural habitat or a species must be assessed in relation to the entire European territory of the Member States to which the Treaty applies (judgment of 11 September 2001, *Commission v Germany*, C-71/99, EU:C:2001:433, paragraph 28).
- 64 In the present case, it is not disputed that, on expiry of the deadline set in the reasoned opinion, namely 16 December 2014, the United Kingdom had, for the purpose of establishing the list of sites referred to in Article 4(1) of the Habitats Directive, proposed, on its list, only one site hosting the harbour porpoise, namely the Skerries and Causeway site.
- 65 In its statement of defence, the United Kingdom acknowledges that, at that date, the identification and proposal of that site was insufficient to discharge its obligations, under that Article 4(1), to establish a list of sites hosting the harbour porpoise and therefore to contribute to the creation of the Natura 2000 network, in accordance with Article 3(2) of that directive.
- 66 In addition, the Commission having provided sufficient evidence to establish that the sites included on the list transmitted by the United Kingdom were insufficient, it must be held that, by failing to propose and transmit, pursuant to Article 4(1) and Annexes II and III of the Habitats Directive, within the prescribed period, a list indicating a sufficient number of sites hosting the harbour porpoise and by failing, to that extent, to contribute, pursuant to Article 3(2) of that directive, to the creation of the Natura 2000 network in proportion to the representation within its territory of the habitats of that species, that Member State has failed to fulfil its obligations under those provisions.

Costs

- 67 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the United Kingdom has been unsuccessful, the United Kingdom must be ordered to pay the costs.

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

- 1. Declares that, by failing to propose and transmit, within the period prescribed, pursuant to Article 4(1) and Annexes II and III of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, a list indicating a sufficient number of sites hosting the harbour porpoise (*Phocoena phocoena*) and by failing, to that extent, to contribute, pursuant to Article 3(2) of that directive, to the creation of the Natura**

2000 network in proportion to the representation within its territory of the habitats of that species, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under those provisions;

2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Regan

Fernlund

Rodin

Delivered in open court in Luxembourg on 18 October 2018.

A. Calot Escobar
Registrar

K. Lenaerts
President