Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

14 January 2016*

(Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Kaliakra and Belite Skali special protection areas — Directive 92/43/EEC — Conservation of natural habitats and wild species — Kompleks Kaliakra site of Community importance — Directive 2011/92/EU — Assessment of the effects of certain projects on the environment — Temporal applicability of the system of protection — Deterioration of natural habitats of species and disturbance of species — Wind power — Tourism)

In Case C-141/14,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 24 March 2014,

European Commission, represented by E. White, C. Hermes and P. Mihaylova, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Republic of Bulgaria, represented by E. Petranova and D. Drambozova, acting as Agents,

defendant,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Second Chamber, acting as President of the Third Chamber, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 20 May 2015,

after hearing the Opinion of the Advocate General at the sitting on 3 September 2015,

gives the following

* Language of the case: Bulgarian.

Judgment

1 By its action, the European Commission asks the Court to declare that:

— by failing to include all the territories of the important bird areas (IBAs) in the special protection area (SPA) covering the Kaliakra region ('the Kaliakra SPA'), the Republic of Bulgaria has failed to classify as a special protection area the most suitable territories in number and size for the conservation, first, of the biological species listed in Annex I to 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) ('the Birds Directive') and, secondly, of the regularly occurring migratory species, not listed in that annex, in the geographical sea and land area where that directive applies, and accordingly has failed to fulfil its obligations under Article 4(1) and (2) of that directive;

— by approving the implementation of the projects 'AES Geo Energy', 'Windtech', 'Brestiom', 'Disib', 'Eco Energy' and 'Longman Investment' in the territory of the IBA covering the Kaliakra region ('the Kaliakra IBA') which was not classified as an SPA, although it should have been, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of the Birds Directive;

— by approving the implementation of the projects 'Kaliakra Wind Power', 'EVN Enertrag Kavarna', 'TSID — Atlas', 'Vertikal — Petkov & Cie' and 'Thracian Cliffs Golf & Spa Resort' in the territories of the Kaliakra SPA, the site of Community importance 'Kompleks Kaliakra' ('the Kompleks Kaliakra SCI') and the SPA covering the region of Belite Skali ('the Belite Skali SPA'), the Republic of Bulgaria has failed to fulfil its obligations under Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) ('the Habitats Directive');

— by failing to assess properly the cumulative effect of the projects 'AES Geo Energy', 'Windtech', 'Brestiom', 'Disib', 'Eco Energy' and 'Longman Investment', the implementation of which, in the territory of the Kaliakra IBA which was not classified as an SPA, although it should have been, was approved by the Republic of Bulgaria, that Member State has failed to fulfil its obligations under the combined provisions of Articles 2(1) and 4(2) and (3) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1) and point 1(b) of Annex III to that directive.

Legal framework

EU law

The Birds Directive

2 According to its Article 1(1), the Birds Directive 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. It covers the protection, management and control of these species and lays down rules for their exploitation.

3 Article 4 of that directive provides as follows:

'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.

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 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.

…

4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.'

The Habitats Directive

4 Article 6(2), (3) and (4) of the Habitats Directive provides as follows:

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

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

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

Directive 2011/92

5 Under Article 2(1) of Directive 2011/92:

'Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4.'

6 Article 4(2) and (3) of that directive provides as follows:

'2. Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

(a) a case-by-case examination;

or

(b) thresholds or criteria set by the Member State.

Member States may decide to apply both procedures referred to in points (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.'

7 Point 1(b) of Annex III to that directive provides that the characteristics of projects must be considered with particular regard to, inter alia, cumulation with other projects.

The Act of Accession of the Republic of Bulgaria to the European Union

8 The Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded (OJ 2005 L 157, p. 203) entered into force on 1 January 2007.

Background to the dispute and the pre-litigation procedure

9 The Kaliakra region, situated on Bulgaria's Black Sea coast, is an important site for the conservation of numerous species of birds and their habitats and accordingly was designated an IBA by the non-governmental organisation BirdLife International.

10 On 18 December 2007, in accordance with the Birds Directive, the Republic of Bulgaria established the Kaliakra SPA. Nevertheless, that protection area covered only two thirds of the territory of the Kaliakra IBA. The Republic of Bulgaria also set up the Belite Skali SPA to the west of the Kaliakra SPA and outside the Kaliakra IBA. Furthermore, that Member State proposed to the Commission that a site of Community interest be designated under the name 'Kompleks Kaliakra' including almost the entire area covered by the Kaliakra and Belite Skali SPAs.

11 Following complaints submitted by the Bulgarian Society for the Protection of Birds (Bulgarsko druzhestvo za zashtita na ptitsite) concerning the insufficient scope of the geographical area covered by the Kaliakra SPA and the adverse effects of several business projects on natural habitats and habitats of bird species, the Commission sent a letter of formal notice on 6 June 2008 to the Republic of Bulgaria requesting that it address the failure to fulfil its obligations under Article 4(1) and (2) of the Birds Directive in respect of six SPAs, including the Kaliakra SPA. Since the Commission was not satisfied with the various replies submitted by the Republic of Bulgaria, it sent a second letter of formal notice on 1 December 2008 requesting the Republic of Bulgaria to remedy its failure to fulfil its obligations under Article 4(4) of the Birds Directive and the combined provisions of Articles 2(1) and 4(2) and (3) of Directive 2011/92 and of Annex III thereto, in so far as that Member State had authorised the installation of several wind farms within the Kaliakra IBA. The Republic of Bulgaria replied to those letters of formal notice on 30 January 2009 and subsequently submitted additional information on several occasions.

12 On 30 September 2011, the Commission sent a supplementary third letter of formal notice to the Republic of Bulgaria which, first, was designed to consolidate the two previous letters of formal notice and, secondly, contained new requests concerning the territories of the Kaliakra IBA, the Belite Skali SPA and the Kompleks Kaliakra SCI. That letter raised two sets of issues: the insufficient geographical scope of the territory of the Kaliakra SPA and the effects of several projects on the Kaliakra SPA, the Belite Skali SPA, the Kompleks Kaliakra SCI and the area which should have been classified as an SPA, according to the IBA inventory, but which had not been so classified.

13 On 30 January 2012, the Republic of Bulgaria informed the Commission that the projects listed by it had been, for the most part, approved before that Member State's accession to the European Union or before the inclusion of the areas concerned in the Natura 2000 network, with the result that EU law was not applicable to those sites.

14 By letter of 22 June 2012, the Commission delivered a reasoned opinion in which it complained that the Republic of Bulgaria had failed to fulfil its obligations under Article 4(1), (2) and (4) of the Birds Directive, Article 6(2), (3) and (4) of the Habitats Directive and the combined provisions of Articles 2(1) and 4(2) and (3) of Directive 2011/92 and of Annex III thereto.

15 The Republic of Bulgaria replied to that reasoned opinion and, on the basis of additional information, informed the Commission that it had taken a series of measures designed to correct the shortcomings identified.

16 As it took the view that the situation remained unsatisfactory, the Commission brought the present action on 24 March 2014.

The action

The first complaint, alleging infringement of Article 4(1) and (2) of the Birds Directive

Arguments of the parties

17 By its first complaint, the Commission submits that, by failing to include within the Kaliakra SPA all the areas covered by the Kaliakra IBA, the protection of which was important for the conservation of birds, the Republic of Bulgaria did not classify as SPAs the most suitable territories in number and size for the conservation both of the biological species listed in Annex I to the Birds Directive and of migratory species not listed in that annex but occurring regularly in the geographical sea and land area where that directive applies, with the result that that Member State has failed to fulfil its obligations under Article 4(1) and (2) of that directive.

18 The Commission takes the view that the Republic of Bulgaria acknowledged, in its additional correspondence, that it had failed in its obligation to classify the entire territory of the Kaliakra IBA as an SPA. Several measures were accordingly taken to correct the infringements identified, namely to extend the Kaliakra SPA up to the boundaries of the Kaliakra IBA. Furthermore, a legal measure of 6 February 2014, published in *Darzhaven vestnik* No 15 of 21 February 2014, formally extended the protection area. However, the Commission maintains that those measures do not have any formal effect on the infringement since they were adopted after the period indicated by that institution in its reasoned opinion had expired, that is to say after 22 August 2012.

19 In support of that complaint, the Commission puts forward, in essence, three arguments based on a range of scientific evidence.

20 That institution claims, first, that the territories not classified as an SPA within the Kaliakra IBA are of great importance, from an ornithological point of view, for several species and are a typical 'bottleneck' situated on the Via Pontica, the second largest migration route in Europe.

21 In that context, the Commission submits that all the territories covered by the Kaliakra IBA must be regarded as a single functional unit for migratory birds, that is to say, a region in its own right which must not be divided up. The Commission adds that the exclusion of farmland from the Kaliakra SPA leaves without protection several migratory corridors and resting places used by a significant proportion of migratory populations on the sea coast, including the white stork, the Levant sparrowhawk, the booted eagle, the Montagu's harrier, the pallid harrier, the red-footed falcon and other species.

22 Next, the Commission submits that the part of the Kaliakra IBA not classified as an SPA provides nesting habitats for certain bird populations, including the calandra lark (Melanocorypha calandra), the greater short-toed lark (Calandrella brachydactyla), the stone-curlew (Burhinus oedicnemus) and the tawny pipit (Anthus campestris). Furthermore, that unclassified area is, it contends, an important hunting ground for several bird species which appear as breeding birds on the standard data form and which are expressly listed in the SPA assessment. The Levant sparrowhawk (Accipiter brevipes), the long-legged buzzard (Buteo rufinus) and the Eurasian eagle owl (Bubo bubo) feature among the species of birds of prey.

23 Finally, the Commission contends that the entire world population of the red-breasted goose (Branta ruficollis), considered to be a globally threatened species, spends the winter in the region in question, while over 80% of habitats allowing the geese to feed are located in the unprotected area of the Kaliakra IBA.

24 The Republic of Bulgaria disputes the claim that it has failed to fulfil its obligations. It submits that, with the creation of the Kaliakra SPA in 2007, it classified the most suitable territories in number and size for the conservation of the species concerned, in accordance with Article 4(1) and (2) of the Birds Directive. The correspondence with the Commission and the measures that it undertook express, it submits, only its desire to engage in dialogue with that institution, in accordance with the duty of cooperation.

25 In response to the studies adduced by the Commission, the Republic of Bulgaria presents various scientific studies which, it claims, show that the Kaliakra area is not a 'bottleneck' for migratory birds. Furthermore, that Member State submits that, although, ultimately, it was decided to extend the Kaliakra SPA up to the boundaries of the IBA of the same name, no scientific evidence of an ornithological nature justified the inclusion within that SPA of the farmland situated in the Kaliakra IBA, since that land does not necessarily form a natural unit with the land situated close to the coast, which was already protected as an SPA. The typical breeding birds of the habitats located within that protection area, it contends, breed to a much lesser extent on that neighbouring farmland.

26 The Republic of Bulgaria also disputes the contention that the Kaliakra region is a resting place for a large proportion of populations of migratory birds. Several expert reports, it argues, show that those places vary according to the specific route used by those birds and weather conditions. The Republic of Bulgaria refers to a number of reports which state that the most important feeding areas of the red-breasted goose, a species under threat on a global scale, are outside the Kaliakra IBA, close to the Shabla and Durankulak lakes.

Findings of the Court

27 It should be noted, in the first place, that, according to the settled case-law of the Court, Article 4(1) and (2) of the Birds Directive requires the Member States to classify as SPAs the territories meeting the ornithological criteria specified by those provisions (judgment in *Commission* v *Ireland*, C-418/04, EU:C:2007:780, paragraph 36 and the case-law cited).

28 In the second place, Member States are obliged to classify as SPAs all the sites which, in accordance with the ornithological criteria, appear to be the most suitable for conservation of the species in question (judgment in *Commission* v *Ireland*, C-418/04, EU:C:2007:780, paragraph 37 and the case-law cited).

29 In the third place, the Court has held that the Member States' margin of discretion in choosing the most suitable territories for classification as SPAs concerns not the appropriateness of classifying as SPAs the territories which appear most suitable according to ornithological criteria, but only the application of those criteria for identifying the most suitable territories for conservation of the species listed in Annex I to the Birds Directive (judgment in *Commission* v *Austria*, C-209/04, EU:C:2006:195, paragraph 33 and the case-law cited).

30 Finally, in the fourth place, as regards the partial classification of certain regions, the Court has already held, first, that classification as an SPA cannot be the result of an isolated study of the ornithological value of each of the areas in question but must be carried out in the light of the natural boundaries of the territory in question, and, secondly, that the ornithological criteria which alone form the foundation of the classification must have a scientific basis (judgment in *Commission* v *Ireland*, C-418/04, EU:C:2007:780, paragraph 142).

31 In the present case, it is common ground that the Kaliakra IBA is of utmost importance for a number of species of birds and their habitats. According to the information provided to the Commission by the Republic of Bulgaria, the Kaliakra site hosts a total of 310 species of birds, including approximately 100 which must be subject to special conservation measures concerning their habitats, 95 which are listed in Annex I to the Birds Directive, and a large number of species of migratory birds. Of the 310 species of birds referred to, 106 are of European significance in terms of conservation, 17 are under threat on a global scale, 21 are classified in the category 'SPEC 2' and 68 in the category 'SPEC 3' as species whose conservation status is a cause for concern in Europe.

32 As regards, first, the presence of nesting birds in the area of the Kaliakra IBA which was initially unclassified, it should be noted, as the Advocate General stated in points 41 to 43 of her Opinion, that the Republic of Bulgaria explained, in a plausible manner and without being contradicted on that point by the Commission, that breeding birds typical of the habitats initially protected, which are to be found near the coast, breed to a much lesser extent in the areas consisting of farmland. Furthermore, the very limited presence of the Levant sparrowhawk (Accipiter brevipes), the long-legged buzzard (Buteo rufinus) and the Eurasian eagle owl (Bubo bubo), to the extent that the non-governmental organisation BirdLife International makes no reference to them as a ground for identifying the Kaliakra site as an IBA, is not sufficient for that farmland to be considered the most suitable for the conservation of those species.

33 Next, as regards migratory birds, the Commission submits, in a manner consistent with the assessment of that area as an IBA and in reliance on a study conducted in 2005 for the specific purpose of identifying 'bottlenecks' in Bulgaria, that the Kaliakra IBA is such a bottleneck. According to that study, it was possible to observe more than 30 000 gliding birds that year close to Kaliakra. That finding cannot be contradicted by the Republic of Bulgaria's argument that significant groups of migratory birds are observed only on an irregular basis in the area in question, inasmuch as the migration route is affected by wind conditions.

34 As the Advocate General observed in point 50 of her Opinion, it is clear precisely from the evidence adduced by that Member State that those concentrations of birds are neither random nor entirely exceptional and that, on the contrary, they occur regularly, depending on the prevailing wind conditions. Moreover, when those concentrations occur, the farmland in the Kaliakra IBA, which was initially unclassified, contains precisely the habitats required by migratory birds to rest and feed.

35 It follows that the Kaliakra IBA belongs to the areas that are most suitable for the conservation of birds during migration.

36 Finally, it is also necessary to reject the Republic of Bulgaria's argument that the part of the Kaliakra IBA which was subsequently classified as an SPA was not, however, particularly important for the conservation of the red-breasted goose, which is considered to be a globally threatened species, and of which practically the entire world population spends the winter on the west coast of the Black Sea. According to a study to which that Member State refers, that species does not seek its food in the parts of the territory covered by the extension to the Kaliakra SPA every year. However, as the Commission stresses, the same study shows that, in any event, in two of the five years of the observation period from 1995 to 2000, several thousand red-breasted geese sought food in that part of the Kaliakra IBA which was subsequently classified as an SPA.

37 Furthermore, as the Advocate General states in points 60 to 63 of her Opinion, the fact that recent observations suggest that the red-breasted goose has less often used those areas of the territory not classified as an SPA from the outset does not prevent those areas from being a site of utmost importance for the feeding of that species of bird, in so far as those observations began only after the construction of a large number of wind-power installations in those areas of the territory.

38 It must therefore be held that the Commission's first complaint is well founded.

The third complaint, alleging failure to comply with Article 6(2) of the Habitats Directive, so far as concerns the approval of projects in the Kaliakra and Belite Skali SPAs and in the territory of the Kaliakra Kompleks SCI

Arguments of the parties

39 By its third complaint, which it is appropriate to consider in the second place, the Commission seeks a declaration that, by approving the wind-power-installation projects 'Kaliakra Wind Power', 'EVN Enertrag Kavarna', 'Vertikal — Petkov & Cie' and the building project 'Thracian Cliffs Golf & Spa Resort' in the territory of the Kaliakra and Belite Skali SPAs and of the Kompleks Kaliakra SCI, the Republic of Bulgaria has failed to fulfil its obligations under Article 6(2) of the Habitats Directive, as interpreted by the Court in *Dragaggi and Others* (C-117/03, EU:C:2005:16) and in *Bund Naturschutz in Bayern and Others* (C-244/05, EU:C:2006:579), in so far as that Member State did not take appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species in respect of the conservation of which those territories were classified as SPAs or SCIs.

40 The Commission submits that, before their classification as SPAs, namely from 1 January 2007 to 18 December 2007, the legal regime applicable to the corresponding parts of the territory of Kaliakra and Belite Skali was that provided for in Article 4(4) of the Birds Directive, as interpreted by the Court in *Commission* v *France* (C-96/98, EU:C:1999:580) and in *Commission* v *France* (C-374/98, EU:C:2000:670). Following the site's classification as an SPA, that is to say, as from 18 December 2007, the legal regime applicable to those two SPAs is that set out in Article 6(2) of the Habitats Directive.

41 The Commission maintains that, before the inclusion of the Kompleks Kaliakra SCI on the European list of SCIs, but after its classification on the national list as a proposed SCI, that is to say, from 18 December 2007 to 15 December 2008, the legal regime applicable was that stated by the Court in its judgments in *Dragaggi and Others* (C-117/03, EU:C:2005:16) and in *Bund Naturschutz in Bayern and Others* (C-244/05, EU:C:2006:579), namely:

— in the case of sites eligible for identification as SCIs, which are included on the national lists transmitted to the Commission, which may include, in particular, sites hosting priority natural habitat types or priority species, the Member States are, by virtue of the Habitats Directive, required to take protective measures that are appropriate, from the point of view of that directive's conservation objective, for the purpose of safeguarding the ecological interest which those sites have at national level;

— the appropriate protection scheme applicable to the sites which appear on a national list transmitted to the Commission under Article 4(1) of the Habitats Directive requires Member States to oppose any intervention which risks seriously compromising the ecological characteristics of those sites.

42 As regards, in the first place, the Kaliakra and Belite Skali SPAs, the Commission submits, on the basis of scientific reports, that the various projects approved by the Republic of Bulgaria (infrastructure connected with wind-power generation, a golf course, hotels, housing, etc.) referred to in paragraph 39 of the present judgment, have significant adverse effects on birds, habitats and priority species. Accordingly, in the Kaliakra SPA, the direct destruction of habitats of bird species listed in Annex I to the Birds Directive is estimated as at least 15.8% of the total surface area. In the Belite Skali SPA, 456.23 hectares of land, representing 10.9% of that area and containing priority steppe-land habitats, mainly nesting habitats for bird species listed in Annex I to the Birds Directive, have, it is claimed, been irrevocably destroyed.

43 The implementation of those various projects, authorised by the Republic of Bulgaria, thus led, the Commission argues, to the destruction of habitats hosting, inter alia, the following species of birds listed in Annex I to the Birds Directive, which also appear on the standard data forms for those two SPAs: the pied wheatear (Oenanthe pleschanka), the calandra lark (Melanocorypha calandra), the greater short-toed lark (Calandrella brachydactyla), the stone-curlew (Burhinus oedicnemus), the long-legged buzzard (Buteo rufinus), the Levant sparrowhawk (Accipiter brevipes) and the European roller (Coracias garrulus).

44 In the second place, the Commission criticises the Republic of Bulgaria for not having protected the Kompleks Kaliakra SCI sufficiently from damage caused by the implementation of projects connected with wind-power generation, namely the projects 'Kaliakra Wind Power', 'EVN Enertrag Kavarna' and 'Vertikal — Petkov & Cie', and the tourist-infrastructure project 'Thracian Cliffs Golf & Spa Resort'. In that regard, that institution considers that those projects led to the irrevocable destruction, within that SCI, of 587.51 hectares of land hosting the 'Ponto-Sarmatic steppes' priority habitat, referred to in Annex I to the Habitats Directive under code 62C0*, that is to say, 24.5% of that habitat.

45 In reply to those claims, the Republic of Bulgaria contends that Article 6(2) of the Habitats Directive is not applicable to projects which were authorised before it acceded to the European Union, and is, therefore, also not applicable in relation to their implementation either. The three wind-power-generation projects and the hotel-complex project in question were approved in 2005 and their effect on the conservation of the natural habitats cannot therefore, it submits, be examined on the basis of that directive.

46 Furthermore, it submits, the Commission does not specify how the figures and data referred to in paragraphs 42 to 45 of the present judgment were obtained.

47 Finally, as regards the significant adverse effects on the Kaliakra SCI, the Republic of Bulgaria also contests the argument that the four projects referred to by the Commission in its application were approved by that Member State in 2005, with the result that it cannot be accused of having failed to fulfil its obligations under a directive that was not applicable to it before it acceded to the European Union.

Findings of the Court

48 It must be noted at the outset that, taking into account the information provided by the Republic of Bulgaria in its defence, to the effect that it did not authorise the implementation of the project 'TSID — Atlas', the Commission decided to exclude that project from the present action for failure to fulfil obligations.

49 Furthermore, as the Advocate General correctly observes in points 71 to 73 of her Opinion, that third complaint must be understood as meaning that the Commission claims that the Republic of Bulgaria has failed to fulfil, first, its obligations under Article 6(2) of the Habitats Directive by failing to oppose the implementation of projects in the Kaliakra and Belite Skali SPAs and, secondly, the provisional protection obligations arising from the judgments in *Dragaggi and Others* (C-117/03, EU:C:2005:16) and in *Bund Naturschutz in Bayern and Others* (C-244/05, EU:C:2006:579) by reason of its failure to oppose those projects implemented within the boundaries of the proposed Kompleks Kaliakra SCI. By that complaint, the Commission therefore refers, not to decisions authorising projects adopted by the Republic of Bulgaria before its accession to the European Union, but to their implementation after that accession and the deterioration of those sites resulting from that implementation.

50 It is therefore necessary, first, to consider whether Article 6(2) of the Habitats Directive could apply, from a temporal perspective, to the situation in question, to the extent that that provision could require the Republic of Bulgaria to oppose the implementation, within the Kaliakra and Belite Skali SPAs, of the projects 'Kaliakra Wind Power', 'EVN Enertrag Kavarna', 'Vertikal — Petkov & Cie', and 'Thracian Cliffs Golf & Spa Resort'.

51 In that respect, it is clear from the Court's case-law that Article 6(2) of the Habitats Directive also applies to installations the project for which was approved by the competent authority before the protection provided for in that directive became applicable to the protection area concerned (see, to that effect, judgment in *Commission* v *Spain*, C-404/09, EU:C:2011:768, paragraph 124).

52 The Court has already held that, although such projects are not subject to the requirements relating to the procedure for prior assessment of the implications of the project for the site concerned, laid down by the Habitats Directive, their implementation nevertheless falls within the scope of Article 6(2) of that directive (judgments in *Stadt Papenburg*, C-226/08, EU:C:2010:10, paragraphs 48 and 49, and in *Commission* v *Spain*, C-404/09, EU:C:2011:768, paragraph 125).

53 In the present case, first, it is clear from the file submitted to the Court that the 'Kaliakra Wind Power' project for the construction of 35 wind-power installations was authorised in 2006 and became operational on 5 June 2008. The 'EVN Enertrag Kavarna' project involving the construction of 32 wind-power installations was authorised on 26 July 2006. That authorisation was subsequently reduced to 20 installations, eight of which were built and became operational on 8 June 2012. Three further installations were authorised in 2005 as part of the 'Vertikal — Petkov & Cie' project. Proceedings brought against those three authorisations concluded in a settlement reached on 26 July 2007, after which the operation of two installations began on 24 April 2008 and 14 February 2011, while the third installation was not built.

54 Secondly, an initial building permit for the 'Thracian Cliffs Golf & Spa Resort' tourism project in the Belite Skali SPA, which includes the construction of a golf course and spa, was issued on 22 December 2005 and the operating authorisation was granted on 6 April 2010.

55 It follows from the findings set out in paragraphs 51 and 52 of the present judgment that the implementation of those projects and the activity generated by the installations resulting from those projects, even though they were authorised before the accession of the Republic of Bulgaria and before the Birds and Habitats Directives applied to those authorisations, fall within the scope of Article 6(2) of the Habitats Directive.

56 In the second place, as regards the complaint that the Republic of Bulgaria did not take appropriate measures to prevent the deterioration of a number of habitats of species and the adverse effect on birds caused by the activity associated with the installations resulting from the implementation of the four projects in question in the Kaliakra and Belite Skali SPAs, it should be recalled that an activity complies with Article 6(2) of the Habitats Directive only if it is guaranteed that it will not cause any disturbance likely significantly to affect the objectives of that directive, particularly its conservation objectives (judgment in *Commission* v *Spain*, C-404/09, EU:C:2011:768, paragraph 126 and the case-law cited).

57 It follows that the present complaint is well founded only if the Commission demonstrates to a sufficient legal standard that the Republic of Bulgaria has not taken the appropriate protective measures, consisting in ensuring that the activities associated with the operation of the installations resulting from those projects, in so far as they took place after the classification of the Kaliakra and Belite Skali sites as SPAs, would not lead to deteriorations of the habitats of a number of species or cause disturbances, to the detriment of those species, likely to have significant effects having regard to the objective of the Habitats Directive of ensuring the conservation of those species (see, by analogy, judgment in *Commission* v *Spain*, C-404/09, EU:C:2011:768, paragraph 128).

58 None the less, in order to establish failure to fulfil obligations under Article 6(2) of the Habitats Directive, the Commission does not have to establish the existence of a cause-and-effect relationship between the operation of installations resulting from a project and significant disturbance caused to the species concerned. It is sufficient for the Commission to establish that there is a probability or risk that that operation might cause such disturbances (see, to that effect, judgment in *Commission* v *Spain*, C-404/09, EU:C:2011:768, paragraph 142 and the case-law cited).

59 In that regard, the file submitted to the Court shows that, given the high density of wind-power installations within the Kaliakra SPA, in particular in the context of the 'Kaliakra Wind Power' project, their activity could cause significant disturbances and deterioration to the habitats of protected species of birds. The same is true in respect of the area of the Belite Skali SPA affected by the installations of the 'Thracian Cliffs Golf & Spa', the operation of which alters the characteristics of the habitats in question.

60 In the light of the foregoing, the Court finds that this complaint put forward by the Commission is, to that extent, well founded.

61 By contrast, as regards, in the third place, the substantial destruction of the 'Ponto-Sarmatic steppes' priority habitat referred to in paragraph 44 of the present judgment, the Republic of Bulgaria claims, without being contradicted, that the ground preparation work which destroyed those habitats located within the territory of the Kompleks Kaliakra SCI took place before the accession of that Member State to the European Union. Consequently, the destruction of those habitats cannot constitute, from a temporal perspective, a failure to comply with EU law.

62 Furthermore, it should be noted that, as the Advocate General observed in point 107 of her Opinion, if a habitat type has already been destroyed in the areas concerned the subsequent operation of the installations resulting from the implementation of the projects cannot impair it any further. Consequently, the Commission's action is not well founded on that point.

The second complaint, alleging failure to comply with Article 4(4) of the Birds Directive, so far as concerns the approval of the projects in the Kaliakra IBA

Arguments of the parties

63 By its second complaint, the Commission seeks a declaration that, by approving the projects 'AES Geo Energy', 'Windtech', 'Brestiom', 'Disib', 'Eco Energy' and 'Longman Investment' in the territory of the Kaliakra IBA which was not classified as an SPA, although it should have been, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of the Birds Directive, as interpreted by the Court in *Commission* v *France* (C-96/98, EU:C:1999:580) and in *Commission* v *France* (C-374/98, EU:C:2000:670).

64 The Commission claims that, by failing to take the appropriate measures, having regard to the conservation objective of the Birds Directive, and by authorising or tolerating interventions which, first, risk seriously compromising the ecological characteristics of the area of the Kaliakra IBA not classified as an SPA, secondly, significantly reduce the area of that site, thirdly, lead to the disappearance of priority species present on that site, and, fourthly and finally, lead to the destruction of that site or its representative characteristics, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of the Birds Directive. On that basis, the Commission maintains that, in that area of the Kaliakra IBA, 1 450 hectares of land hosting habitats and feeding and resting areas for species of birds referred to in Annex I to the Birds Directive have been irrevocably lost.

65 The Republic of Bulgaria, for its part, has provided information concerning the factual situation of various investment projects and claims, inter alia, that a limitation period of five years was introduced in national law in 2012 limiting the period of validity of authorisations granted for the implementation of those projects, with the result that any projects the implementation of which had not commenced within the period prescribed are to be suspended.

Findings of the Court

66 Article 4(4) of the Birds Directive requires Member States to take appropriate steps to avoid, within SPAs, pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of that article.

67 In that respect, it should be noted, in the first place, that, according to the case-law of the Court, Member States must comply with the obligations arising under the first sentence of Article 4(4) of the Birds Directive, even where the areas in question have not been classified as SPAs, provided that they should have been so classified (see judgment in *Commission* v *Spain*, C-186/06, EU:C:2007:813, paragraph 27 and the case-law cited).

68 As the file submitted to the Court shows, the projects in question are located in territories which, as has been established in paragraph 38 of the present judgment, should have been classified by the Republic of Bulgaria, something which did not, however, take place until after the expiry, on 22 August 2012, of the period laid down in the reasoned opinion.

69 In the second place, in order to establish that there has been a failure to fulfil the obligations resulting from the first sentence of Article 4(4) of the Birds Directive, as the Advocate General observed in point 115 of her Opinion, it is necessary to refer, by analogy, to the case-law of the Court relating to the failure to fulfil obligations under Article 6(2) of the Habitats Directive, since the content of the latter provision is largely the same as that of the first sentence of Article 4(4) of the Birds Directive (see, to that effect, judgment in *Commission* v *Ireland*, C-117/00, EU:C:2002:366, paragraph 26 and the case-law cited).

70 According to that case-law, and as is apparent from paragraph 58 of the present judgment, breach of the provision in question is to be deemed to exist where the Commission establishes that there is a probability or risk that a project will cause deterioration to the habitats of protected species of birds or cause significant disturbance to those species.

71 Consequently, it is necessary to examine whether the Commission has established that there is a probability or risk that the projects at issue in the area of the Kaliakra IBA which was belatedly classified as an SPA will cause the deterioration and disturbances referred to in the preceding paragraph of the present judgment.

72 First, the statement of defence of the Republic of Bulgaria, the relevant elements of which are not disputed by the Commission, shows that in the case of three of the projects referred to in paragraph 63 of the present judgment, namely the 'Windtech', 'Brestiom', and 'Eco Energy' projects, it was simply decided that it was not necessary to carry out an environmental impact assessment. That Member State issued no additional authorisation in so far as they are concerned and the installations were not built. In the meantime, the decisions stating that it was not necessary to carry out an environmental impact assessment became obsolete.

73 It follows that, in so far as it relates to those three projects, the Commission's second complaint is not well founded.

74 Secondly, as regards the other three projects referred to in paragraph 63 of the present judgment, namely 'AES Geo Energy', 'Disib' and 'Longman Investment', the file submitted to the Court shows that the Republic of Bulgaria granted additional authorisations and that the wind-power installations which had been authorised were built. Accordingly, following an environmental impact assessment carried out in 2008, the first of those projects was granted a permit for the construction of 52 wind turbines, which became operational on 15 November 2011. The second and third projects also each received a permit issued after the accession of the Republic of Bulgaria to the European Union, leading to the construction of two wind turbines, which were brought into operation in 2008.

75 As has already been established in paragraph 59 of the present judgment, the operation of wind-power installations may lead to significant disturbances and deterioration of the habitats of protected bird species.

76 The fact that, according to the results of observations made by the wind farm 'AES Geo Energy', to which the Republic of Bulgaria refers, red-breasted geese still use the areas in question and that, when the wind conditions are favourable, migratory birds are concentrated in the Kaliakra site does not stand in the way of that finding. The obligations to protect exist before any reduction in the number of birds has been observed or before the risk of a protected species becoming extinct has materialised (see, to that effect, judgment in *Commission* v *Spain*, C-186/06, EU:C:2007:813, paragraph 36 and the case-law cited).

77 Furthermore, as the Advocate General observed in point 128 of her Opinion, the data in question appear to indicate a loss of attractiveness, since they show that red-breasted geese use the site less often than when peak values were recorded before the wind turbines were built.

78 It follows from the foregoing considerations that, by approving the wind-power-installation projects 'AES Geo Energy', 'Disib' and 'Longman Investment' in the territory of the Kaliakra IBA which was not classified as an SPA, although it should have been, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of the Birds Directive.

The fourth complaint, alleging non-compliance with Articles 2(1) and 4(2) and (3) of Directive 2011/92 and with point 1(b) of Annex III to that directive

Arguments of the parties

79 By its fourth complaint the Commission claims that, by failing to assess correctly the cumulative effect of the wind-power-installation projects, construction of which was authorised in the territory of the Kaliakra IBA which was not classified as an SPA, although it should have been, namely the projects 'AES Geo Energy', 'Windtech', 'Brestiom', 'Disib', 'Eco Energy' and 'Longman Investment', the Republic of Bulgaria has failed to fulfil its obligations under Articles 2(1) and 4(2) and (3) of Directive 2011/92 and under point 1(b) of Annex III to that directive.

80 According to the Commission, the Republic of Bulgaria decided not to carry out an environmental impact assessment in respect of four of those projects, namely 'Windtech', 'Brestiom', 'Eco Energy' and 'Longman Investment'. In the case of one of those projects, 'AES Geo Energy', it claims that that Member State decided to carry out such an impact assessment without, however, taking into account the cumulative effect of the harm caused by the various projects authorised in the Kaliakra IBA, or the avoidance effect and disturbance caused by the wind-power installations in respect of the behaviour of the birds, or the barrier effect of the turbines or the loss and deteriorations caused by those installations to the detriment of various bird habitats.

81 In support of that complaint, the Commission also submits that, with regard to the four projects for which an environmental impact assessment was not carried out, the wording of the decisions to that effect are, in essence, exactly the same. Moreover, those decisions were not supported by relevant arguments demonstrating that the project concerned would have no significant adverse effects on the territory designated as an IBA and identified for inclusion in the Natura 2000 network.

82 The Republic of Bulgaria argues that, in the decisions referred to in the preceding paragraph, it was expressly stated that no cumulative effects with other projects were anticipated. In addition, that Member State claims that the projects 'Disib' and 'AES Geo Energy' must be excluded from the scope of the present action in so far as the requests for assessment of the need to carry out an environmental impact assessment were made before 1 January 2007.

Findings of the Court

83 It should be noted at the outset that, first, the Commission claims that there has been an infringement of Directive 2011/92, whereas the decisions on which it relies in support of its action were adopted by the Republic of Bulgaria in 2007, at a time when Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17), was in force. However, as the Advocate General has rightly stated in point 139 of her Opinion, the provisions of Directives 85/337 and 2011/92 relevant in the present case are substantially identical.

84 Secondly, it is apparent from the Commission's reply that, taking into account the information provided by the Republic of Bulgaria in its statement of defence, that institution wishes to exclude from the present complaint the wind-power-installation projects 'Disib' and 'AES Geo Energy'.

85 In those circumstances, it is necessary to examine, in the first place, whether there is sufficient evidence before the Court for a finding that the Republic of Bulgaria has failed to fulfil its obligations under Articles 2(1) and 4(2) and (3) of Directive 2011/92 and under point 1(b) of Annex III to that directive by failing to assess correctly the cumulative effect of the wind-power-installation projects 'Windtech', 'Brestiom', 'Eco Energy' and 'Longman Investment' approved in the areas of the Kaliakra IBA which were classified as an SPA only after the date laid down by the Commission in its reasoned opinion.

86 As has already been established in paragraph 72 of the present judgment, no building permit was issued in respect of the projects 'Windtech', 'Brestiom' and 'Eco Energy' and, according to the information provided by the Republic of Bulgaria, the decisions on the need for an environmental impact assessment became obsolete as they were not implemented within the five-year period laid down by national legislation. Only the 'Longman Investment' project was actually implemented and it has been operational since 16 June 2008.

87 In that respect, as regards the 'Windtech', 'Brestiom' and 'Eco Energy' projects, nothing in the file before the Court permits a finding that there was an infringement of Article 2(1) of Directive 2011/92.

88 It is true that the decisions on the need for an environmental impact assessment were still valid on the date laid down by the Commission in its additional reasoned opinion, namely 22 August 2012, and only became obsolete five years after their adoption, that is to say, on 24 and 28 September 2012 respectively. According to the Court's settled case-law, however, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion, and the Court cannot take account of any subsequent changes (see, to that effect, judgment in *Commission* v *Belgium*, C-421/12, EU:C:2014:2064, paragraph 45).

89 However, as is apparent from the file submitted to the Court, and as the Advocate General observed in points 148 and 149 of her Opinion, the decisions finding that there was no need to conduct an impact assessment for a project are not equivalent, under national law, to a decision authorising the implementation of that project, since the project still requires a building permit. Accordingly, it must be noted that the Republic of Bulgaria cannot be criticised for exempting the 'Windtech', 'Brestiom' and 'Eco Energy' projects from the implementation of an environmental impact assessment 'before consent is given', within the meaning of Article 2(1) of Directive 2011/92. However, in so far as the decision concerning the need to carry out an environmental impact assessment must never the less be adopted in accordance with that directive, in particular with Article 4(2) and (3) thereof and Annex III thereto, infringement of those provisions is possible even if the project never obtained all the necessary consent.

90 As regards the project which was implemented, namely 'Longman Investment', in respect of which it was decided that there was no need to carry out an environmental impact study before giving the necessary consent, it should be noted that the Republic of Bulgaria may have failed to fulfil its obligations under Article 2(1) of Directive 2011/92, as well as under Article 4(2) and (3) of that directive and Annex III thereto.

91 In the second place, as regards the preliminary assessment of the need for an environmental impact assessment, it must be recalled that, in accordance with the first subparagraph of Article 4(2) of the Directive 2011/92, the Member States are required to determine, through a case-by-case examination

or through thresholds or criteria set by them, whether projects listed in Annex II to that directive are to be made subject to an environmental impact assessment. Those projects include the installations for the harnessing of wind power for energy production (wind farms) listed in point 3 of that annex.

92 So far as concerns the establishment of thresholds or criteria, it must be borne in mind that Article 4(2)(b) of Directive 85/337 indeed confers a measure of discretion on the Member States. However, that discretion is limited by the obligation, set out in Article 2(1) of that directive, to make projects likely, by virtue, inter alia, of their nature, size or location, to have significant effects on the environment subject to an impact assessment (judgments in *Salzburger Flughafen*, C-244/12, EU:C:2013:203, paragraph 29, and in *Marktgemeinde Straßwalchen and Others*, C-531/13, EU:C:2015:79, paragraph 40).

93 Thus, the criteria and thresholds referred to in Article 4(2)(b) of Directive 85/337 are designed to facilitate examination of the actual characteristics of any given project in order to determine whether it is subject to the requirement to carry out an environmental impact assessment (judgments in *Salzburger Flughafen*, C-244/12, EU:C:2013:203, paragraph 30, and in *Marktgemeinde Straßwalchen and Others*, C-531/13, EU:C:2015:79, paragraph 41).

94 It follows that the competent national authorities, when they receive a request for development consent for a project relating to Annex II to that directive, must carry out a specific evaluation as to whether, taking account of the criteria set out in Annex III to that directive, an environmental impact assessment should be carried out (judgment in *Marktgemeinde Straßwalchen and Other*s, C-531/13, EU:C:2015:79, paragraph 42).

95 As regards the question whether it was necessary, having regard to the combined application of Article 4(2) and (3) of Directive 2011/92 and of point 1(b) of Annex III thereto, to examine the cumulative effect of the various wind-power projects approved in the Kaliakra IBA, the Court has already held that the characteristics of a project must be assessed, inter alia, in relation to its cumulative effects with other projects. Failure to take account of the cumulative effect of a project with other projects may mean in practice that it escapes the assessment obligation when, taken together with the other projects, it may have significant effects on the environment (judgment in *Marktgemeinde Straßwalchen and Others*, C-531/13, EU:C:2015:79, paragraph 43 and the case-law cited).

96 It follows that a national authority, in ascertaining whether a project has to be made subject to an environmental impact assessment, must examine its potential impact jointly with other projects (judgment in *Marktgemeinde Straßwalchen and Others*, C-531/13, EU:C:2015:79, paragraph 45). In the present case, it is clear from the file submitted to the Court that the decisions in question merely state that no cumulative effects were to be expected. As the Advocate General observes in point 161 of her Opinion, the mere claim, by the Republic of Bulgaria, that there will be no cumulative effects does not, however, prove that that finding was established on the basis of a detailed assessment, since that Member State has, moreover, adduced no evidence in that regard.

97 Accordingly, it must be held that, first, by failing to assess in a suitable manner the cumulative effect in the territory of the Kaliakra IBA which was not classified as an SPA, although it should have been, of the wind-power-installation projects 'Windtech', 'Brestiom', 'Eco Energy' and 'Longman Investment', when determining whether there was a need to carry out an environmental impact assessment, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(2) and (3) of Directive 2011/92 and under point 1(b) of Annex III thereto, and, secondly, by none the less authorising the implementation of the 'Longman Investment' wind-power-installation project, that Member State has failed to fulfil its obligations under Article 2(1) of that directive.

98 It follows from all of the foregoing that:

— by failing to include all the territories of the important bird areas in the Kaliakra SPA, the Republic of Bulgaria has failed to classify as SPAs the most suitable territories in number and size for the conservation, first, of the biological species listed in Annex I to the Birds Directive and, secondly, of the migratory species not listed in that annex but regularly occurring in the geographical sea and land area where that directive applies, and accordingly has failed to fulfil its obligations under Article 4(1) and (2) of that directive;

— by approving the implementation of the projects 'AES Geo Energy', 'Disib' and 'Longman Investment' in the territory of the Kaliakra IBA which was not classified as an SPA, although it should have been, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of the Birds Directive;

— by approving the implementation of the projects 'Kaliakra Wind Power', 'EVN Enertrag Kavarna' and 'Vertikal — Petkov & Cie', and of the 'Thracian Cliffs Golf & Spa Resort' in the territory of the Kaliakra and Belite Skali SPAs respectively, the Republic of Bulgaria has failed to fulfil its obligations under Article 6(2) of the Habitats Directive;

— by failing, first, to assess properly the cumulative effect of the projects 'Windtech', 'Brestiom', 'Eco Energy' and 'Longman Investment' in the territory of the Kaliakra IBA which was not classified as an SPA, although it should have been, and, secondly, by none the less authorising the implementation of the 'Longman Investment' project, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(2) and (3) of Directive 2011/92 and point 1(b) of Annex III thereto, and under Article 2(1) of that directive, respectively.

Costs

99 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 complaints against it have been upheld in essence, the Republic of Bulgaria must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

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

1. Declares that:

— by failing to include all the territories of the important bird areas in the special protection area covering the Kaliakra region, the Republic of Bulgaria has failed to classify as special protection areas the most suitable territories in number and size for the conservation, first, of the biological species listed in Annex I to Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and, secondly, of the migratory species not listed in that annex but regularly occurring in the geographical sea and land area where that directive applies, with the result that that Member State has failed to fulfil its obligations under Article 4(1) and (2) of that directive;

— by approving the implementation of the projects 'AES Geo Energy', 'Disib' and 'Longman Investment' in the territory of the important bird area covering the Kaliakra region which was not classified as a special protection area, although it should have been, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of Directive 2009/147;

— **by approving the implementation of the projects 'Kaliakra Wind Power', 'EVN Enertrag Kavarna' and 'Vertikal — Petkov & Cie', and of the 'Thracian Cliffs Golf & Spa Resort', in the territory of the special protection areas covering the regions of Kaliakra and Belite Skali respectively, the Republic of Bulgaria has failed to fulfil its obligations under Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;**

— **by failing, first, to assess properly the cumulative effect of the projects 'Windtech', 'Brestiom', 'Eco Energy' and 'Longman Investment' in the territory of the important bird area covering the Kaliakra region which was not classified as a special protection area, although it should have been, and, secondly, by none the less authorising the implementation of the 'Longman Investment' project, the Republic of Bulgaria has failed to fulfil its obligations under Article 4(2) and (3) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment and point 1(b) of Annex III to that directive, and under Article 2(1) of that directive, respectively;**

2. **Dismisses the action as to the remainder;**

3. **Orders the Republic of Bulgaria to pay the costs.**

[Signatures]