OPINION OF ADVOCATE GENERAL LÉGER

delivered on 12 September 2002 [1]

1. By the present action the Commission of the European Communities seeks a declaration that the Kingdom of Belgium has failed to fulfil its obligations under Council Directive 92/43/EEC of 21 May 1992 relating to the conservation of natural habitats and of wild fauna and flora [2].

2. The Commission alleges that the Belgian authorities have not adopted within the prescribed time-limit the necessary measures to ensure the full and proper transposition of a series of provisions of the directive. The provisions concerned (the 'disputed provisions') are the following:

— Article 1 which defines the main concepts used in the directive;

— Article 4(5) which indicates the system applicable to priority sites placed on the lists of sites of Community importance;

— Article 5(4) which indicates the system applicable to the sites concerned during the consultation period;

— Articles 6 and 7 on the measures necessary to ensure the protection of special areas of conservation;

— Articles 12 and 13 on the measures of protection for animal and plant species;

1 — Original language: French.

2 — OJ 1992 L 206, p. 7 ('the directive')

— Article 14 on the taking of specimens from fauna and flora habitats;

— Article 15 on the prohibition of indiscriminate means of capturing and killing certain species;

— Article 16(1) on the circumstances in which Member States can derogate from certain provisions of the directive;

— Article 22(b) on the introduction of species not native to the territory;

— Article 22(c) which requires the promotion of education and information on the need to protect species and habitats, and

— Article 23(2) which requires that the transposing measures adopted by Member States contain a reference to the directive or be accompanied by such a reference.

3. In view of the federal structure of the Kingdom of Belgium the parties in their submissions identified matters particular to each region concerned. It is apparent from the case-file [3] that under the special law of institutional reform of 8 August 1980 [4] the regions are the entities competent to legislate in the areas covered by the directive. The parties make the following submissions.

4. In relation to the Walloon Region, the Commission submits that the competent authorities have not adopted the necessary measures to ensure the transposition of all the provisions of the directive at issue, with the exception of Article 23(2). The Belgian Government does not dispute this allegation. It points out that, after the reasoned opinion, the Walloon Region adopted a decree ensuring the transposition of those provisions. [5] In the light of this, in its reply [6] the Commission withdrew the complaints against the Walloon Region.

5. As regards the Flemish Region, the Commission observes that the regional authorities have failed to adopt the necess-

3 — Defence (p. 2).

4 — *Moniteur belge* of 15 August 1980 (see Article 6(1) of that Law).

5 — Decree of 6 December 2001 on the conservation of Nature 2000 sites of wild fauna and flora (Annex 1 to the defence).

6 — Paragraphs 11 to 13.

ary measures to ensure the transposition of all the provisions of the directive at issue, with the exception of Article 22(c).[7] The Kingdom of Belgium does not dispute this allegation. It acknowledges that the measures currently in force ensure only a 'partial transposition'[8] of the directive.

6. Finally, in relation to the Bruxelles-Capitale region, the Commission submits that the competent authorities have not adopted the necessary measures to ensure the transposition of the second sentence of the first subparagraph of Article 6(4) and of Articles 7 and 22(c) of the directive. The Kingdom of Belgium disputes these allegations.[9]

7. It follows that the only dispute between the parties is the allegations made by the Commission against the Bruxelles-Capitale region. I shall therefore limit the scope of this Opinion to those points and propose that, in respect of the others, the Court uphold the action as limited by the Commission.

7 — In its reply (paragraph 15), the Commission expressly withdrew the complaint of the failure on the part of the Flemish authorities to transpose Article 22(c) of the directive.

8 — Defence (p. 5).

9 — Ibidem (pp. 2 and 3).

The alleged failure to transpose the second sentence of the first subparagraph of Article 6(4) of the directive

8. Article 6 of the directive defines the system applicable to special areas of conservation and sites of Community importance. It is worded as follows:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures... .

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... .

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... shall be subject to appropriate assessment of its implications... .

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.'

9. The Commission submits that the Bruxelles-Capitale region has not ensured the transposition of the second sentence of the first subparagraph of Article 6(4) of the directive. In its view, no provision of the Order of the Bruxelles-Capitale Region of 26 October 2000 on the conservation of natural habitats and wild flora and fauna [10] lays down an obligation on the part of the competent authorities to inform the Commission of compensatory measures adopted under Article 6(4).

10. The Kingdom of Belgium acknowledges that the order does not contain measures relating to the obligation to provide information. It argues nevertheless that Member States are not required to transpose this obligation into their domestic law. In its view, the second sentence of the first subparagraph of Article 6(4) does not have 'legislative force' since it 'does not create either rights or obligations on the part of citizens in general'. [11]

11. In our view that argument cannot be accepted.

12. The Kingdom of Belgium confuses two concepts which are distinct in law: the binding character of a provision and its direct effect. Whilst it is true that the second sentence of the first subparagraph of Article 6(4) cannot have direct effect within the meaning of the case-law, it does nevertheless have binding character under the EC Treaty. The provision is couched in mandatory terms and it imposes a clear obligation on Member States. It therefore has binding force within the meaning of the third subparagraph of Article 249 EC.

13. Moreover, it should be noted that the aim of the directive is to establish a coherent European ecological network called 'Natura 2000' composed of sites hosting the natural habitat types listed in

10 — *Moniteur belge* of 28 November 2000.

11 — Defence (p. 2).

Annex I and habitats of the species listed in Annex II. [12] The network shall ensure the maintenance or, where appropriate, the restoration at a favourable conservation status of the natural habitat types and the species' habitats concerned in their natural range. [13]

14. It should also be noted that the Commission fulfils a vital role in respect of these objectives. The Commission is the only institution which can co-ordinate the Natura 2000 network and ensure its coherence. [14] It is the only institution, for example, which can assess the conservation status of a natural habitat or species in the context of the whole of the European territory of the Member States. [15]

15. In view of the above factors, the obligation to inform the Commission is an essential part of the system established by the directive. In the absence of this obligation the Commission would not be in a position to fulfil effectively the task assigned to it under the directive. The Kingdom of Belgium's argument that Member States are not required to transpose the obligation to provide information laid down by Article 6(4) of the directive therefore cannot be accepted.

The alleged failure to transpose Article 7 of the directive

16. The Commission submits that the Bruxelles-Capitale Region has not adopted the necessary measures to ensure the transposition of Article 7 of the directive.

17. The Kingdom of Belgium does not dispute that but asserts simply that 'the non-transposition of Article 7... is merely the consequence of the fact that the Bruxelles-Capitale Region considers that Article 6 [of the directive] does not need to be transposed'. [16]

18. This argument cannot be accepted since we have already concluded that the 'Bruxelles-Capitale' region is obliged to ensure the transposition of all provisions of Article 6 of the directive.

12 — Article 3(1) of the directive.

13 — Idem.

14 — See Case C-371/98 *First Corporate Shipping* [2000] ECR I-9235, paragraphs 19 to 25.

15 — Ibidem (paragraph 23).

16 — Defence (p. 3).

The alleged failure to transpose Article 22(c) of the directive

19. Article 22 of the directive provides:

'In implementing the provisions of this Directive, Member States shall:

(a) ...

(b) ...

(c) promote education and general information on the need to protect species of wild fauna and flora and to conserve their habitats and natural habitats.'

20. The Commission states that it has not received any information to enable it to conclude that the Bruxelles-Capitale Region has adopted measures to implement the obligations under Article 22(c) of the directive.

21. The Kingdom of Belgium disputes that. It argues that the Bruxelles-Capitale Region has been fulfilling its obligations under Article 22(c) for a number of years by ensuring, through various agreements, the funding for educational programmes on nature.

22. In our view, that argument cannot be accepted. It is common ground that the Belgian Government has not supplied any information to enable the Commission to conclude that the Bruxelles-Capitale Region had properly implemented Article 22(c) of the directive. Moreover, the Belgian authorities have not supplied to the Court details of either the educational programmes for which they ensure funding or the agreements reached with entities concerned.

23. In these circumstances, neither the Commission nor the Court is in a position to determine whether the programmes in question enable proper implementation of Article 22(c) of the directive. As the case-file stands it is therefore appropriate to conclude that the third complaint advanced by the Commission is also well founded.

Conclusion

24. In the light of all the foregoing, I propose that the Court should declare that:

(1) The Kingdom of Belgium has failed to fulfil its obligations under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, inasmuch as:

— the Flemish Region has failed to adopt within the prescribed time-limit the laws, regulations and administrative provisions necessary to ensure the full and proper transposition of Articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(c) and 23(2) of the above directive, and

— the Bruxelles-Capitale Region has failed to adopt within the prescribed time-limit the laws, regulations and administrative provisions necessary to ensure the full and proper transposition of the second sentence of the first subparagraph of Article 6(4) and of Articles 7 and 22(c) of the above directive.

(2) The Kingdom of Belgium must pay the costs.