OPINION OF ADVOCATE GENERAL LÉGER

delivered on 3 May 2001 [1]

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1. In the present actions the Commission of the European Communities is seeking rulings that Ireland, the Federal Republic of Germany and the French Republic have failed to fulfil their obligations under Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. [2]

2. The habitats directive seeks to establish a coherent European ecological network of special areas of conservation ('SACs') under the title 'Natura 2000', pursuant to a three-stage procedure. During the first stage, which is the only one in issue in the present cases, Member States are required, in accordance with the provisions of Article 4(1) of the habitats directive, to forward to the Commission a list of sites within their territory hosting the types of natural habitats and wild species set out in Annexes I and II to that directive. That list must also include information on the national sites thus listed. [3]

2 — OJ 1992 L 206, p. 7, hereinafter 'the habitats directive'.

3 — The project's scale has for these reasons been described by the Commission's representative as being 'the most ambitious within the area of conservation since Noah's Ark'.

3. The Commission criticises Ireland, the Federal Republic of Germany and the French Republic for having forwarded to it incomplete lists and for having failed to attach the relevant information required.

4. The present actions thus concern definition of the margin of discretion which Member States have during this first stage in the designation of SACs.

I — The legal framework common to Cases C-67/99, C-71/99 and C-220/99

5. The habitats directive has as its objective to promote biodiversity 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. [4]

6. In order to achieve that objective, the habitats directive provides for the creation, according to a specified timetable, [5] of a coherent European ecological network of SACs. [6]

7. According to Article 3(1) of the habitats directive, this network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, together with the special protection areas [7] established pursuant to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, [8] is required to ensure the maintenance or, where appropriate, the restoration of the types of natural habitats and species' habitats concerned to a favourable conservation status in their natural range.

8. Each Member State is required under Article 3(2) of the habitats directive to contribute to the creation of Natura 2000 in proportion to the representation within its territory of the types of natural habitats and species' habitats referred to in Article 3(1). To that end, each Member State is required to designate sites as SACs, taking account of the objectives set out, namely that the relevant habitats located within its territory be maintained in or restored to a favourable conservation status. For the purposes of the directive, a 'site' is to be construed as meaning a geographically defined area whose extent is clearly delineated. [9]

9. The procedure for the designation of SACs is laid down in Article 4 of the habitats directive. It consists of three stages.

4 — First, third, fourth, fifth and sixth recitals in the preamble.
5 — Sixth recital in the preamble.
6 — Sixth and seventh recitals in the preamble.
7 — Hereinafter 'SPAs'.
8 — OJ 1979 L 103, p. 1, hereinafter 'the birds directive'.
9 — Article 1(j) of the habitats directive.

10. The *first stage* is described in Article 4(1).

11. The first subparagraph of Article 4(1) provides that implementation of this first stage is a matter coming within the competence of the Member States. Implementation consists in *establishing*, on the basis of criteria set out in Annex III (Stage 1) and relevant scientific information, a *list* of the sites containing the natural habitat types mentioned in Annex I and hosting the native species mentioned in Annex II.

12. Annex III (Stage 1) to the habitats directive lays down the following criteria:

'A. *Site assessment criteria for a given natural habitat type in Annex I*

(a) Degree of representativity of the natural habitat type on the site.

(b) Area of the site covered by the natural habitat type in relation to the total area covered by that natural habitat type within national territory.

(c) Degree of conservation of the structure and functions of the natural habitat type concerned and restoration possibilities.

(d) Global assessment of the value of the site for conservation of the natural habitat type concerned.

B. *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.'

13. On the basis of those criteria, Member States are required to classify the sites which they propose on the national list in terms of their eligibility 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. [10] This list must show the sites containing the priority natural habitat types and priority species selected by the Member States on the basis of the criteria listed under Headings A and B of Annex III (Stage 1). [11] 'Priority' is to be understood as referring to those species and natural habitats that are in danger of disappearance and for the conservation of which the Community has particular responsibility. [12]

14. The first subparagraph of Article 4(1) of the habitats directive stipulates that, in the case of 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'. Similarly, 'for aquatic species which range over wide areas, such sites will be proposed only where there is a clearly identifiable area presenting the physical and biological factors essential to their life and reproduction'.

10 — Annex III (Stage 1), Heading C.

11 — Ibid., Heading D.

12 — Article 1(d) and (h) of the habitats directive.

15. Under the second subparagraph of Article 4(1), the list must be transmitted to the Commission within three years of notification of the habitats directive, together with information on each site. This information must 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), and must be provided in a format [13] established in accordance with the procedure laid down in Article 21 of the habitats directive. [14] The format was established by the Commission in Decision 97/266/EC of 18 December 1996. [15] That decision was notified to Ireland, the Federal Republic of Germany and the French Republic on 19 December 1996.

16. The *second stage* is set out in Article 4(2) and (3) of the habitats directive.

17. This stage follows a procedure consisting of two phases. The first phase must allow the Commission, 'on the basis of the criteria set out in Annex III (Stage 2)... [to] establish, in agreement with each Member

13 — Hereinafter 'the format'.

14 — This procedure requires that the Commission adopt the measures provided for under the habitats directive after consultation with an *ad hoc* committee consisting of representatives of the Member States and chaired by a representative of the Commission (Article 20 of the habitats directive).

15 — Commission Decision concerning a site information format for proposed Natura 2000 sites (OJ 1997 L 107, p. 1, and, particularly, p. 20).

State, a *draft list of sites of Community importance* drawn from the Member States' lists identifying those which host one or more priority natural habitat types or priority species'. [16]

18. At the conclusion of this first phase, '*the list of sites* selected as sites *of Community importance*, [17] identifying those which host one or more priority natural habitat types or priority species, *shall be adopted by the Commission...*' [18] in accordance with the procedure laid down in Article 21 of the habitats directive.

19. Annex III to the habitats directive also lays down the criteria which Member States and the Commission must take into account when selecting SCIs during the second stage. [19]

20. The *third stage* is set out in Article 4(4). This marks the conclusion of the procedure for designating SACs and is a matter coming within the exclusive competence of the Member States. Article 4(4) provides that once a site has been selected as a SCI and is included on the list drawn up by the Commission at the conclusion of the second stage, 'the Member State concerned shall designate that site as a *special area of conservation...*'. [20]

21. Article 6 requires that Member States establish measures to ensure the management and conservation of SACs. The measures adopted for that purpose are intended in principle to come into force once the third stage has been completed. However, the habitats directive provides that measures to prevent deterioration of SCIs [21] must be taken at the conclusion of the second stage. [22]

22. Since the habitats directive was notified on 9 June 1992, the period within which Member States were required to forward to the Commission the list of proposed sites and the information on those sites expired on 10 June 1995. [23]

16 — The first subparagraph of Article 4(2); emphasis added.

17 — Hereinafter 'SCIs'.

18 — The third subparagraph of Article 4(2); emphasis added.

19 — The selection criteria chosen include the 'geographical situation of the site in relation to migration routes of species in Annex II and whether it belongs to a continuous ecosystem situated on both sides of one or more internal Community frontiers' (Annex III (Stage 2), Heading 2(b)) and the 'ecological value' of the site (Annex III (Stage 2), Heading 2(e)).

20 — Article 4(4); emphasis added.

21 — It is, for instance, stated that certain plans or projects likely to have a significant effect on SCIs must be subject to an assessment of their implications for the site (Article 6(3) of the habitats directive).

22 — Article 4(5).

23 — The second subparagraph of Article 4(1) of the habitats directive.

II — The procedural framework of Cases C-67/99, C-71/99 and C-220/99

A — *The pre-litigation phase*

1. In Case C-67/99

23. Since it did not receive from Ireland the list of sites hosting the natural habitat types under Annex I and native species under Annex II or the information on those sites as required pursuant to the second subparagraph of Article 4(1) of the habitats directive, or any other information allowing it to conclude that Ireland had adopted the measures necessary to comply with its obligations, the Commission, by letter of 24 April 1996, put the Irish Government on formal notice to submit within two months its observations on those heads of complaint, in accordance with Article 169 of the EC Treaty (now Article 226 EC).

24. On 28 April 1997, the Irish authorities forwarded a list of 207 sites covering 5 530 km^2 which had been publicly proposed for designation and contained priority habitats.

25. Bearing in mind the fact that the format had been notified to Ireland on 19 December 1996, the Commission sent to the Irish Government on 11 July 1997 an additional letter of formal notice pursuant to Article 169 of the Treaty. In that letter it stressed the need to use the format for transmission of the relevant data and criticised the Irish Government for having failed to send to it a full list of the sites concerned by Article 4(1) of the habitats directive or to provide relevant site information under that article, calling on it once again to submit its observations within one month.

26. On 5 September 1997, the Irish authorities informed the Commission of their intention to comply with their obligations under Article 4(1) of the habitats directive by preparing the required definitive list in accordance with a timetable consisting of three tranches. Under the first tranche, namely that prior to the end of 1997, the Irish authorities stated that the Commission would receive the list of sites hosting priority habitat types. [24] At the conclusion of the second tranche, the list of sites hosting non-priority habitats and non-priority species would be forwarded to it. Under the third tranche, finally, the list of marine sites would be forwarded to the Commission.

27. The Irish authorities also informed the Commission that the boundaries of the sites hosting priority habitat types were subject to revision in the light of the outcome of the

24 — Ireland has stated that it did not host any priority species.

national consultation process. They acknowledged that they were required to comply with the formal mechanism for transmission of the site information. They thereby accepted that the list sent on 28 April 1997 was not to be considered as the definitive list corresponding to the first tranche.

28. Since it took the view that the measures thus adopted were inadequate, the Commission addressed to the Irish Government, on 19 December 1997, a reasoned opinion setting out why it was maintaining its heads of complaint alleging non-compliance with Article 4(1) of the habitats directive. It accordingly called on Ireland to adopt the measures necessary to comply with that opinion within two months of notification.

29. On 23 February 1998 the Irish authorities informed the Commission that the delay in meeting its obligations under the habitats directive was attributable to the public consultation process in Ireland, but indicated that they expected to be in a position to transmit a list in the course of 1998. On 6 August 1998 the Commission received information relating to a first partial definitive list of 39 sites pursuant to Article 4(1) of the habitats directive. The list corresponding to the information thus addressed to the Commission was received by it on 30 September 1998. By letter of 12 October 1998, the Irish authorities submitted a second partial definitive list of nine sites for the purposes of Article 4(1) of the habitats directive. The information on these sites was sent to the Commission on 6 October 1998.

30. As it was unable to conclude, on the basis of those notifications, that Ireland had completely put an end to the infringement in question, the Commission decided to bring the present action.

2. In Case C-71/99

31. Since it did not receive from the Federal Republic of Germany the list of sites hosting the natural habitat types under Annex I and native species under Annex II or the information on those sites required under the second subparagraph of Article 4(1) of the habitats directive, or any other information allowing it to conclude that the Federal Republic of Germany had adopted the measures necessary to comply with its obligations, the Commission, by letter of 4 March 1996, put the German Government on formal notice to submit within two months its observations on those heads of complaint, in accordance with Article 169 of the Treaty.

32. On 8 August 1996 the German federal authorities informed the Commission that under German law the *Länder* have the power to select SACs. In view of the fact

that the *Länder* had informed them that they would designate those areas only once the habitats directive had been implemented in national law, the German federal authorities stated that they were not in a position to submit the full list of national sites eligible for designation as SACs.

33. By letters of 30 September 1996, 24 January 1997, 28 January 1997 and 11 June 1997, the German federal authorities sent to the Commission three lists of SACs in the *Land* of Bayern and notified the existence of one site in the *Land* of Sachsen-Anhalt.

34. Having regard to the fact that the format had been notified to the Federal Republic of Germany on 19 December 1996, the Commission sent to the German Government on 3 July 1997 an additional letter of formal notice pursuant to Article 169 of the Treaty. In that letter it stressed the need to use the format for transmission of the relevant data and criticised the German Government for having failed to send to it a full list of the sites concerned by Article 4(1) of the habitats directive or to provide relevant site information under that article, calling on it once again to submit its observations within one month.

35. On 21 October 1997 the German federal authorities sent a further list of sites in the *Land* of Schleswig-Holstein designated as SACs pursuant to Article 4(1) of the habitats directive. In a separate letter, they also stressed the particular features of German law, which confers on the *Länder* the power to select SACs, and referred to the policy of the *Länder* in this regard. They pointed out in this connection that, since the implementing legislation had not yet been adopted, the *Länder* did not intend to send to the German federal authorities the full list of the sites concerned by Article 4(1) of the habitats directive.

36. Since it took the view that the measures adopted by the German authorities were inadequate, the Commission sent to the German Government, on 19 December 1997, a reasoned opinion setting out why it was maintaining its heads of complaint alleging non-compliance with Article 4(1) of the habitats directive. It called on the Federal Republic of Germany to adopt the measures necessary to comply with that opinion within two months of notification.

37. In the course of 1998, the German federal authorities sent to the Commission a series of letters containing 11 lists of sites relating to Article 4(1) of the habitats directive situated in the *Länder* of Hessen, Thüringen, Bayern, Sachsen-Anhalt, Saarland, Hamburg, Rheinland-Pfalz, Bremen, Niedersachsen and Berlin. They also sent notes concerning the sites thus listed and a timetable for the measures contemplated by

each *Land* for compliance with the obligations arising under Article 4(1) of the habitats directive.

38. As it was unable to conclude, on the basis of that correspondence, that the Federal Republic of Germany had completely put an end to the infringement in question, the Commission decided to bring the present action.

3. In Case C-220/99

39. Since it had not received from the French authorities the list of sites hosting the natural habitat types under Annex I and native species under Annex II or the information on those sites required under the second subparagraph of Article 4(1) of the habitats directive, or any other information allowing it to conclude that the French Republic had adopted the measures necessary to comply with its obligations, the Commission, by letter of 27 March 1996, put the French Government on formal notice to submit within two months its observations on those heads of complaint, in accordance with Article 169 of the Treaty.

40. On 6 June 1996 the French authorities sent to the Commission a copy of a letter dated 26 April 1996 in which the French Minister for the Environment requested regional prefects to carry out 'the consultations provided for under the transposing decree... in respect of [the] 1 300 principal sites [described by the Muséum national d'histoire naturelle (National Museum for Natural History) as "outstanding" or "very interesting" for the establishment of the Natura 2000 network]'.

41. Having regard to the fact that the format had been notified to the French Republic on 19 December 1996, the Commission sent to the French Government on 3 July 1997 an additional letter of formal notice pursuant to Article 169 of the Treaty in which it criticised the French Government for having failed to send to it a full list of sites concerned by the first subparagraph of Article 4(1) of the habitats directive or to provide information relating to each site using the format provided for under the second subparagraph of Article 4(1) thereof. The Commission called on the French Government to submit its observations on those complaints within one month of receiving the letter of formal notice. That period expired on 15 September 1997, as the result of the Commission's agreement to a request by the French Republic for that period to be extended.

42. On 21 October 1997 the French authorities forwarded a first list of 74 sites. Partial information on those sites was provided only in respect of 25 of them. [25] So far as the remaining 49 were concerned, the French Republic indicated their names

25 — This information related to the presence of the habitats and species in respect of which the sites were proposed and to provisional surface areas.

but did not mention the existing habitat types or native species, or the surface areas concerned.

43. Since it took the view that the measures adopted were inadequate, the Commission sent to the French Government, on 6 November 1997, a reasoned opinion explaining why it was maintaining its heads of complaint alleging non-compliance with the first and second subparagraphs of Article 4(1) of the habitats directive. It criticised the French Republic for having failed to forward the full list of sites containing the natural habitat types under Annex I and native species under Annex II or the information on those sites. The Commission called on the French Republic to adopt the measures necessary to comply with that opinion within two months of its notification.

44. By letters of 9 December 1997, 22 and 26 January 1998, 12 February 1998, 17 November 1998, 21 and 28 January 1999 and 18 February 1999, the French authorities sent to the Commission the list of 672 sites hosting the types of habitats and species referred to in Annexes I and II, representing a surface area of 1 453 000 hectares, together with 381 formats corresponding to a number of those sites.

45. In their letter of 12 February 1998, the French authorities stated that they had had at their disposal since 1995 an inventory of sites capable of meeting the objectives of the habitats directive but that, in view of the uncertainties and misgivings which implementation of that directive had generated among the French public, they had preferred to 'freeze' its application. The French authorities stressed that they had decided to consult the French public in order the better to meet its expectations. They also pointed out that the French legislative elections had resulted in a change in the French Government and that this had caused additional delays.

46. The French authorities also informed the Commission, in their letter of 17 November 1998, that a list of military sites eligible for inclusion in the Natura 2000 network would be sent under separate cover.

47. Being unable to conclude, on the basis of the above correspondence, that the French Republic had completely brought to an end the infringement in question, the Commission decided to bring the present action.

B — *The forms of order sought by the parties*

1. In Case C-67/99

48. The Commission's application was lodged at the Court Registry on 25 February 1999.

49. The Commission claims that the Court should:

— declare that, by failing to transmit to the Commission the full list of sites mentioned in the first subparagraph of Article 4(1) of Directive 92/43, together with the information on each site required by the second subparagraph of Article 4(1) thereof, Ireland has failed to fulfil its obligations under that directive;

— order Ireland to bear the costs.

50. Ireland contends that the Court should:

in the first instance,

— declare the application inadmissible;

— order the applicant to pay the costs;

alternatively,

— declare that, by failing to transmit to the Commission on or by 19 February 1998 any list of sites mentioned in the first subparagraph of Article 4(1) of Directive 92/43, together with the information on each site required by the second subparagraph of Article 4(1) thereof, Ireland has failed to fulfil its obligations under that directive;

— dismiss the remainder of the application as inadmissible;

— order that each party bear the costs of the proceedings.

2. In Case C-71/99

51. The Commission's application was lodged at the Court Registry on 1 March 1999.

52. The Commission claims that the Court should:

— declare that the Federal Republic of Germany failed to fulfil its obligations under Directive 92/43 by failing to transmit to the Commission a full list of the sites referred to in the first subparagraph of Article 4(1) of Directive 92/43 together with the information on each site set out in the second subparagraph of Article 4(1) thereof;

— order the Federal Republic of Germany to pay the costs.

53. The Federal Republic of Germany submits that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

3. In Case C-220/99

54. The Commission's application was lodged at the Court Registry on 9 June 1999.

55. The Commission claims that the Court should:

— declare that, by failing to transmit to the Commission the full list of sites which is referred to in the first subparagraph of Article 4(1) of Directive 92/43 and information on the sites in accordance with the second subparagraph of Article 4(1) of that directive, the French Republic has failed to fulfil its obligations under Directive 92/43;

— order the French Republic to pay the costs.

56. The French Republic contends that the Court should:

— dismiss as inadmissible or, failing that, as unfounded the Commission's com-

plaint alleging inadequacy of the French list, and maintain only the complaint concerning the lateness in the final transmissions of sites by the French Republic under the first subparagraph of Article 4(1) of the habitats directive;

— confirm that it was absolutely impossible for the French Republic, before the expiry of the period stipulated in the reasoned opinion and under the conditions imposed by the Commission, to meet the obligation to transmit information on the proposed sites arising under the second subparagraph of Article 4(1) of the habitats directive;

— order the Commission to pay the costs.

III — The pleas in law put forward by the Commission and the arguments of the parties

57. The Commission puts forward two pleas in law against the Irish, German and French Governments. In the first of these, it criticises them for their failure to submit a complete list of sites featuring the natural habitat types referred to in Annex I and a complete list of sites hosting the native species mentioned in Annex II, as required by the first subparagraph of Article 4(1) of the habitats directive. In its second plea in law, the Commission argues that the Governments concerned failed to transmit the information relating to those lists, as required by the second subparagraph of Article 4(1) of that directive.

58. Before detailing how the Governments criticised respectively failed to transpose correctly the provisions of Article 4(1) of the habitats directive (B), the Commission first sets out the identical arguments presented in support of those two pleas (A).

A — *The identical arguments presented by the Commission in Cases C-67/99, C-71/99 and C-220/99*

1. The first plea in law

59. According to the Commission, the margin of discretion which Member States have in drawing up the list of sites to be proposed to the Commission at the conclu-

sion of the first stage is limited and is subject to compliance with the following three conditions:

— only criteria of a scientific nature may determine selection of the sites to be proposed;

— the sites proposed must ensure a geographical spread which is uniform and representative of the whole territory of each Member State so as to guarantee coherence and balance of the resulting network;

— the list must be complete, that is to say, each Member State must propose a number of sites making it possible to include, in a sufficiently representative manner, all of the natural habitat types in Annex I and all of the species' habitats in Annex II which occur within its territory.

60. The Commission points out that its proposed reading of Article 4(1) of the habitats directive and of Annex III thereto is consistent with both the spirit and the letter of that directive.

61. According to the Commission, the creation of a coherent European ecological network, which remains the principal objective of the habitats directive, presupposes that Member States will make an exhaustive inventory of the sites within their territory which host natural habitat types and species' habitats mentioned in Annexes I and II.

62. The Commission also notes that there is a significant difference between the procedure for the designation of SACs, provided for under the habitats directive, and the procedure for the designation of SPAs, provided for under the birds directive. The designation procedure in the birds directive is straightforward and involves only the Member States, to the exclusion of the Commission. Article 4(1) of the birds directive provides that 'the most suitable territories in number and size' are to be classified as SPAs for conservation of the species concerned. Under the habitats directive, in contrast, the procedure for the designation of SACs consists of three stages. During the first stage, which is of present concern here, in accordance with the provisions of the first subparagraph of Article 4(1), read in conjunction with Annex III (Stage 1), not only are 'the most suitable' sites covered but also, in general, all sites hosting the natural habitat types in Annex I and the native species in Annex II. According to those provisions, the number of sites proposed on the list must also be significant and the sites must be representative. From this the Commission concludes that the obligation to propose a full list of sites means that, in drawing up that list, Member States must base themselves on the

scientific criteria set out in Annex III (Stage 1), without, however, confining themselves to proposing only those sites which, in their view, ought to be designated as SACs. In other words, the list of the proposed sites must be exhaustive in such a way as to make it possible, during the subsequent phases of the procedure for the designation of SACs, to realise the objectives of the habitats directive. Member States are therefore obliged to take account, during this first stage, of quantitative and qualitative criteria.

2. The second plea in law

63. With regard to transmission of site information, the Commission takes the view that this obligation is clear and precise. Under the actual wording of the habitats directive, this obligation was to be met before 9 June 1995. On the assumption that some Member States wished to wait for the format to be adopted, the Commission points out that the format was notified to the Member States on 19 December 1996. The Member States, which were required to have at their disposal the list of proposed sites and relevant information by 10 June 1995 at the latest, would thus have been able rapidly to incorporate that information into the format and send it to the Commission.

B — *The specific arguments presented by the Commission in Cases C-67/99, C-71/99 and C-220/99, and the parties' arguments*

1. In Case C-67/99

The first plea in law

64. The Commission contends that the list proposed by Ireland on 28 April 1997 clearly does not satisfy the provisions of the first subparagraph of Article 4(1) of the habitats directive and must for that reason be treated as being incomplete. The Irish Government, moreover, acknowledges this since, as it has itself stated, that list is neither exhaustive nor definitive. Citing a variety of scientific sources, the Commission also lists types of natural habitats and species covered by the habitats directive and present in Ireland which were not identified by the Irish authorities. The Commission provides several examples in this regard.

65. Ireland primarily claims that the action should be declared inadmissible in its entirety. It argues that the reasoned opinion fails to meet the requirements laid down by the Court's case-law. The reasoned opinion, it submits, does not set out coherently and

in detail the reasons which persuaded the Commission that Ireland had failed to fulfil its Treaty obligations.

66. Furthermore, that reasoned opinion does not refer to the same grounds and heads of complaint as set out in the action. Ireland submits in this regard that the reasoned opinion refers only to its delay in complying with Article 4(1) of the habitats directive but does not set out the specific heads of complaint contained in the application which allege that Ireland failed to comply with the substantive requirements of that provision.

67. In the alternative, Ireland acknowledges that, when the period laid down in the reasoned opinion expired, it had not forwarded to the Commission either the complete list of sites mentioned in the first subparagraph of Article 4(1) of the habitats directive or the information relating to those sites. It submits that this delay was attributable to internal difficulties. In order to secure the agreement of the population to the ambitious objectives pursued by that directive, Ireland considered it necessary to launch an extensive public consultation process.

The second plea in law

68. The Commission states that the Irish authorities failed, within the period prescribed in the reasoned opinion, to forward complete information on the sites which had been included on the list sent to it. The Commission also notes that Ireland has to date failed to comply with that obligation.

69. For the reasons set out above, Ireland maintains its submission that the Commission's action should be declared inadmissible. In the alternative, it accepts that not all of the site information has been forwarded. It points out, however, that the system introduced by its national law ensures, within the national territory, protection for the species and natural habitats concerned by the habitats directive. It further points out that it is making every effort to meet its obligations.

2. In Case C-71/99

The first plea in law

70. The Commission notes that, at the expiry of the period set in the reasoned opinion, the Federal Republic of Germany had not forwarded to it a complete site list satisfying the requirements of the habitats directive. The Commission puts forward three arguments in support of this plea.

71. It first notes that the German federal authorities have implicitly acknowledged as much since they indicated, in a letter of 15 April 1998, 'that they intended later to designate other sites in addition to those designated to date, in order to complete the system of Natura 2000 conservation areas'.

72. The Commission goes on to point out that a comparison of the designations made by the German federal authorities with the scientific data which they provided amply demonstrates this. The Commission thus refers to figures in the handbook edited by the Bundesamt für Naturschutz [26] (Federal Office for Nature Protection), *The European System of Natura 2000 conservation areas — BfN handbook on the transposition of the fauna-flora-habitats directive and of the directive on the protection of birds*, Bonn-Bad Godesberg, 1998. [27] This central administration and research organ of the *Bund*, under the control of the Federal Ministry of the Environment and having competence in the areas of nature protection and landscape planning, listed all of the natural habitat types in Annex I and all types of wild species in Annex II to the habitats directive which occur in Germany. It turns out that the German federal authorities did not include, on the list of sites forwarded to the Commission, a number of habitat types occurring in Germany.

73. The Commission further points out that the sites proposed for certain habitat types do not correspond to the requirements of the habitats directive. This, it claims, is attributable to the fact that, for an important type of habitat, a very small number of sites was proposed or that, for significant areas of the national territory, in particular for the biogeographical regions referred to in Article 1(c)(iii) of the habitats directive, no site was proposed. The Commission lists the natural habitat types in Annex I and types of species in Annex II in respect of which no site was proposed in the Continental or Atlantic biogeographical regions. Thus, according to the Commission, for the Continental region 81 natural habitat types under Annex I occur in Germany. A mere 28 natural habitat types were proposed by the German federal authorities in the site lists sent to the Commission. Likewise, for that biogeographical region, of 85 habitats of wild species in Annex II, only 56 were proposed on the lists which the Commission received. The same finding holds true for the Atlantic region.

74. Finally, the Commission states that the Federal Republic of Germany proposed an insufficient number of sites, in the light of the criteria in Annex III and of the objective pursued by the habitats directive, namely the conservation of habitats.

75. The Federal Republic of Germany points out that compliance with the obligation to forward the list of relevant national sites imposed by the first subparagraph of Article 4(1) of the habitats directive is

26 — Hereinafter 'the BfN'.

27 — Hereinafter 'the handbook'.

subject to the receipt of the standard format drawn up by the Commission. Since that format was not notified until 19 December 1996, it was impossible for the Federal Republic of Germany to meet its obligations under the directive within the periods prescribed by the Commission.

According to the German Government, compliance with the above obligation involves the performance of extensive and delicate preparatory work. It notes in this regard that the scientific criteria to be taken into consideration for the selection of relevant sites are numerous and complex. It points out further that the format is the first document to define the information allowing for selection of the relevant sites. Because of this, it was imperative that it should have that format before beginning the preparatory operations. Consequently, the German Government submits that the period laid down for compliance with that obligation could, at the earliest, have begun to run only from notification of that format. The German Government finds as a fact that the Commission decided to bring the action even though the period had not yet expired at that time.

76. The Federal Republic of Germany further argues that Member States are given a wide margin of discretion in regard to selecting the sites for inclusion on the list to be submitted to the Commission. They are thus entitled to notify only those sites which they consider to be appropriate and necessary for the establishment of a coherent European network, on the basis of technical criteria and having regard to the objectives of the habitats directive. The national level is, in the view of the Federal Republic of Germany, the most appropriate level at which to carry out a proper selection of the sites hosting the natural habitats in Annex I and the habitats of species in Annex II. Member States are more familiar with the sites within their territory. The Federal Republic of Germany therefore takes the view that it is not necessary to notify all the sites which meet the requirements of the directive.

77. Finally, the Federal Republic of Germany challenges the scientific sources on which the Commission relied in order to demonstrate that the list submitted was incomplete. In its opinion, the handbook in no wise constitutes the German reference list.

The second plea in law

78. According to the Commission, the Federal Republic of Germany failed to forward, by the expiry of the period set in the reasoned opinion, the information relating to the listed sites.

79. The Commission sets out in this connection the lists of sites which it received from the various *Länder* and which did not contain the information required or which were not compiled in the appropriate format.

80. The Federal Republic of Germany does not submit any observations on this point.

3. In Case C-220/99

The first plea in law

81. The Commission finds that, at the expiry of the period set in the reasoned opinion, the French Republic had submitted to it only a list comprising 535 sites. Furthermore, on 15 March 1999, the date on which the Commission concluded its analysis, that list comprised 672 sites. This figure results from the addition of the sites which the French Republic notified by means of the abovementioned letters. Those sites represent a total area of some 14 530 km^2 for the land portion, equivalent to approximately 2.5% of the national territory.

82. The Commission also puts forward, in essence, three series of arguments in support of this first plea in law.

83. It first points out that, as the French Government has itself acknowledged, this list is incomplete. Indeed, the French authorities indicated that the list of sites notified did not include any military sites and that the list of military sites liable to be included in the Natura 2000 network would be sent separately.

84. Next, the Commission remarks that a comparison of the available scientific data concerning the natural habitat types in Annex I and the types of wild species in Annex II to the habitats directive occurring in France with the lists sent by the French authorities to the Commission makes it clear that several types of natural habitats in Annex I and types of species in Annex II were not proposed. The first subparagraph of Article 4(1) of the habitats directive expressly requires Member States to propose sites for all types of natural habitats and wild species listed in Annexes I and II. Failure to comply with that obligation must lead automatically to the finding that the French Republic has failed to fulfil its obligations, as alleged.

85. The Commission points out that, in any event, the number of sites notified is inadequate when one considers the sites on French territory which deserve to be included on the national list. It notes in this regard that the national scientific inventory completed in 1996 [28] by the Muséum national d'histoire naturelle [29] under the aegis of the French Government made it possible, in particular, to classify in order of priority the 1 695 'natural areas of ecological interest with regard to fauna and flora' identified in the course of earlier work carried out under the supervision of the French authorities. This classification in

28 — Hereinafter 'the inventory'.
29 — Hereinafter 'the Museum'.

order of priority appears to have been carried out on the basis of the criteria defined in Annex III to the habitats directive, as attested by the technical document originating from the Museum which served as a guide for that work. The Commission adds that it has formally requested notification of this inventory but that the French Republic has never acceded to this request.

86. The Commission points out that the French Government decided to exclude 319 sites and to retain only 1 316 'outstanding' or very 'interesting' sites covering approximately 13% of the national territory. It recognises that the French Republic does have a certain scope for making a selection at the stage under consideration, and acknowledges in particular that it is entitled to remove from the list those sites which are not relevant in the light of the scientific criteria available to it. However, the Commission considers that the national list of sites notified by the French Government ought to have been as extensive as possible and to have included all sites hosting the natural habitat types and species types in Annexes I and II which occur within the territory of the French Republic and which are representative and relevant. The Commission is not certain that the 319 sites excluded from the national list sent to it are neither representative nor relevant. It stresses in this regard that the French Government has not forwarded the scientific criteria which formed the basis of those exclusions.

87. The Commission finds that, even assuming those exclusions to be justified, the Museum listed 1 316 sites described as 'outstanding' or 'very interesting'. In so far as the list notified by the French Republic features only 672 sites, it is for that reason manifestly inadequate, unless the French Republic can establish that the sites excluded do not allow for conservation of the species and habitats concerned by the directive. Moreover, it turns out to be the case that the list forwarded by the French Republic represents only 2.5% of its territory, whereas the 1 316 sites described by the Museum as 'outstanding' or 'very interesting' correspond to 13.6% of the national territory.

88. Finally, the Commission contends that the French authorities took account of criteria not mentioned in the habitats directive for the purpose of selecting the sites for inclusion in the list to be forwarded to the Commission pursuant to the first subparagraph of Article 4(1) thereof. Thus, in two circulars, the French authorities indicate that the notification of the sites to the Commission is subject to agreement by interested parties involved at local level and to the opinions received.

89. The French Republic disputes the failure of which it stands accused. Its defence pleas may be summarised as follows.

90. The French Government argues that the complaint alleging that the number of sites notified at the conclusion of the first stage of designation of SACs is inadequate must be declared inadmissible in so far as the Commission did not invoke that complaint in its reasoned opinion of 6 November 1997.

91. The French Republic points out that, according to settled case-law, a failure to fulfil obligations must be assessed at the expiry of the period set in the reasoned opinion. It acknowledges that, at that date, it had not submitted a list featuring all of the sites which it intended to include on the list to be forwarded to the Commission at the conclusion of the first stage. It takes the view, however, that the Court ought to take account of the fact that, on 22 July 1999, it forwarded a list of 1 029 sites covering approximately 5% of the national territory. It further stresses the fact that, notwithstanding the non-submission of the complete French list, four biogeographical seminars were held. [30] Any failure attributable to the French Republic could not, therefore, have been the source of the delay in the Community's Natura 2000 network project.

92. The French Republic challenges the Commission's interpretation of Article 4(1) of the habitats directive. In its opinion, the objective to be pursued during this first stage in the process of designating SACs is not to draw up an exhaustive inventory of the sites within the territory of each Member State which feature the natural habitat types and wild species types in Annexes I and II. The determinant criterion for establishing the list of relevant sites is qualitative, not quantitative. In other words, the appropriateness of the national list must be assessed, not on the basis of the number of sites notified, but rather on the basis of the representative character of the natural habitats and species' habitats featuring in the national proposal, examined in particular with regard to their degree of rarity and their distribution over the national territory. In the French Government's view, the final list of sites forwarded to the Commission is, regard being had to the objectives of the habitats directive, a sufficiently representative proposal for natural habitats and species' habitats. The French Government further submits that the Court will be required to resolve this point in Case C-371/98 *First Corporate Shipping*. [31]

93. The French Republic considers, further, that the Commission cannot be the arbiter of the appropriateness or adequacy of the number of sites included on the list which Member States send to the Commission at the conclusion of this first stage in the designation of SACs. Such evaluations may be carried out only within the context of the biogeographical seminars.

94. The French Republic acknowledges that, on the basis of the criteria in the habitats directive, the Museum carried out a national harmonisation of the regional proposals made by each regional scientific council for natural heritage. At the conclusion of a national procedure, [32] the Museum selected 1 695 sites, 1 316 of which were adjudged 'outstanding' or 'very interesting'. At the hearing, however, the French Republic indicated that the Museum's inventory is partially obsolete, regard being had to other scientific data available to it.

30 — Introduced by the Commission for the purpose of evaluating and harmonising the Member States' proposals in order to enable a coherent network to be established.

31 — The judgment in this case has in the meantime been delivered on 7 November 2000, ECR I-9235.

32 — With the involvement of the French National Council for Nature Protection.

95. So far as concerns the absence of military areas from the list of sites submitted, the French Government points out that its last notifications included several military sites and that these proposals will be the subject of an additional notification to include, in addition to the sites concerned, the information relating to those sites.

The second plea in law

96. The Commission points out that, of the 672 sites notified by the French Republic, 379 are the subject of appropriate information, within the meaning of Article 4(1) of the habitats directive, and 293 sites were not accompanied by such information.

97. While it acknowledges that it did not send any format within the period prescribed by the reasoned opinion, the French Government none the less argues that it was impossible for it to meet that obligation within the period provided. It takes the view that the Commission's delay in drawing up the format had an effect on the entire national procedure. It contends that, because of the Commission's delay in drafting the format, it drew up its own format on a computerised base and called on the regional prefects to use that format for collecting information on the selected sites. When the Commission notified the format, the French authorities were obliged to transfer and modify all of the data contained on the national list for each site in order to incorporate it into the format. The time required for this restructuring — and thus the additional period resulting as a consequence — cannot be attributed to the French authorities since it results essentially from the Commission's delay in drawing up the format. The Commission therefore cannot criticise the Member States for a delay of its own making. The French Government notes that the pre-litigation procedure was none the less started before the format had been notified and that this procedure had reached the stage of the reasoned opinion less than one year after that notification.

IV — Analysis

A — *The objections of inadmissibility raised by Ireland and the French Republic*

1. In Case C-67/99

98. The purpose of the pre-litigation procedure under Article 169 of the Treaty is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under Community law and, on the other, to avail itself of its right to defend itself against the complaints made by the Commission.

99. The purpose of the letter of formal notice is to delimit the subject-matter of the dispute and to indicate to the Member State, which is invited to submit its observations, the factors enabling it to prepare its defence. [33] The reasoned opinion must specify precisely the complaints contained in the letter of formal notice through a coherent and detailed statement of the reasons which have led the Commission to conclude that the State in question has failed to fulfil Community-law obligations. [34]

100. The rule that the regularity of the procedure under Article 169 of the Treaty requires the Commission to develop in its application instituting proceedings the same complaints as those which it invoked in the reasoned opinion does not preclude it from restating in greater detail the subject-matter of its action by invoking more precise matters than those featuring in the reasoned opinion. In so doing, however, the Commission may not alter the subject-matter of the proceedings. [35]

101. Like the Commission, I take the view that the objection of inadmissibility raised by Ireland lacks any basis and must be rejected.

102. The subject-matter of the proceedings, as set out by the Commission in its letter of formal notice of 24 April 1996, its additional letter of formal notice of 11 July 1997, its reasoned opinion of 19 December 1997 and its application of 25 February 1999 instituting proceedings, is clearly defined. It is evident from those documents, in particular from the reasoned opinion, that the Commission is criticising Ireland for its failure to forward a definitive and complete list of sites capable of being treated as SACs and the information relating to such sites, as provided for under the first and second subparagraphs of Article 4(1) of the habitats directive. The Commission highlights in particular the construction to be placed on those provisions. Thus, in its view, compliance with those provisions presupposes that Member States will draw up an exhaustive inventory of the list of sites within their territory which host the natural habitats and the species' habitats that are very precisely and exhaustively defined in Annexes I and II. Each Member State must also verify that the sites catalogued meet the scientific criteria set out in Annex III (Stage 1) to the habitats directive. Likewise, the Commission criticises Ireland for not having used the format provided for under the second subparagraph of Article 4(1) of the habitats directive, which must contain the information relating to the sites thus listed. This format defines very precisely the information on those sites which the Member State is required to collect. The Commission has pointed out, without being challenged, that the essential features of the format's content had been determined by May 1994 and that Member States were aware of its content from that time on. Furthermore, Ireland understood perfectly well the complaints which the Commission had levelled against it. During the pre-litigation procedure, Ireland indeed acknowledged that the lists forwarded were not to be regarded as complete and defini-

33 — On these points, see, *inter alia*, the judgment in Case C-96/95 *Commission* v *Germany* [1997] ECR I-1653, paragraphs 22 and 23, and the judgment of 15 February 2001 in Case C-230/99 *Commission* v *France* [2001] ECR I-1169, paragraph 31.

34 — See, *inter alia*, Case C-279/94 *Commission* v *Italy* [1997] ECR I-4743, paragraphs 14 and 15.

35 — See Case C-256/98 *Commission* v *France* [2000] ECR I-2487, paragraphs 30 and 31.

tive. It also accepted that the site information provided required to be supplemented. Ireland cannot therefore validly argue that the Commission's complaints, as set out in the reasoned opinion, were unclear or that they related only to delays found to have occurred in giving effect to Article 4(1) of the habitats directive.

103. Furthermore, it does not appear that the Commission, in its action instituting proceedings, altered the subject-matter of the dispute, but rather it seems that it clarified the reasoned opinion by providing precise examples of the shortcomings in the lists submitted by Ireland. Thus, while the Commission indicated to Ireland, in its reasoned opinion, that the list forwarded was incomplete, it stated in the action instituting proceedings that Ireland had not proposed any sites for the types of priority habitats extensively represented within its territory, such as coastal lagoons, decalcified fixed dunes with *Empetrum nigrum*, Atlantic decalcified fixed dunes, active raised bogs, bog woodland, and *Taxus baccata* woods of the British Isles.

104. It follows that the Commission set out clearly in its reasoned opinion the points on which it was critical of Ireland. Likewise, the complaints detailed in the reasoned opinion and in the action instituting proceedings are identical. The objection of inadmissibility raised by Ireland must for those reasons be rejected.

2. In Case C-220/99

105. The French Republic considers that, in the application instituting proceedings, the plea alleging an insufficient number of sites meriting selection on the national list is a new plea in law which was raised out of time and must for that reason be declared inadmissible. It states that this plea was not invoked against it in the reasoned opinion of 6 November 1997.

106. I do not share the view taken by the French Republic. In my opinion, it is confusing a 'plea in law' and an 'argument', which are two distinct legal concepts.

107. According to established case-law, any head of complaint which alters the subject-matter of the application must be treated as a 'new plea in law'. An 'argument', in contrast, merely develops or amplifies the subject-matter of the application. [36] It follows from that case-law that, in proceedings based on Article 169 of the Treaty, the pleas raised in the reasoned opinion and in the application instituting proceedings must be identical, on pain of being declared inadmissible. A new argument, in contrast, is admissible at any time. [37]

36 — See, *inter alia*, Case C-153/96 P *De Ruyk* v *Commission* [1997] ECR I-2901.

37 — See the judgment in Case C-256/98 *Commission* v *France*, cited above, paragraphs 30 and 31.

108. A reading of point 8 of the French Republic's rejoinder is particularly informative with regard to this confusion on its part. Thus, it is there stated that the Commission's first complaint concerning non-transmission of a complete list is divided into 'five pleas in law' which have as their purpose to 'establish this complaint'. Similarly, point 8 also states that these five pleas in law 'tend... towards the same conclusion'. The French Republic thus acknowledges that these 'five pleas in law' in support of the 'first complaint' do not alter its subject-matter. In so doing, it classifies as a 'plea in law' that which constitutes in law an 'argument'.

109. The pleas in law which the Commission raised in its reasoned opinion of 6 November 1997 and in the application of 3 June 1999 instituting proceedings are identical. The Commission criticises the French Republic for having failed to forward the complete list of all sites within its territory hosting the natural habitats and species' habitats set out in Annexes I and II to the habitats directive, as required under the first subparagraph of Article 4(1). It further criticises the French Republic for having failed to send with its list the information required pursuant to the second subparagraph of Article 4(1). In its application instituting proceedings, the Commission invoked a variety of arguments in support of its first plea in law which develop or amplify the subject-matter thereof but in no way alter its substance. The French Republic is thus criticised for not having forwarded the list of the military sites announced, for having failed to catalogue several sites within French territory hosting types of natural habitats and species mentioned in Annexes I and II to the habitats directive, and for having omitted to include on the list sent to the Commission all of the sites featured in the inventory of the Museum which were classified as 'outstanding' or 'very interesting'.

110. It follows that the Commission, in its application instituting proceedings, did not invoke any new plea in law which was not contained in the reasoned opinion. The objection of inadmissibility raised by the French Republic must for that reason be rejected.

B — *The first plea in law*

1. The margin of discretion enjoyed by Member States during the first stage in the designation of SACs

111. Contrary to the submissions made by Ireland, the Federal Republic of Germany and the French Republic, Member States are required, during the first stage in the designation of SACs, to draw up an exhaustive list of sites within their territory which host the types of natural habitats and native species listed in Annexes I and II to the habitats directive. This selection must be made in accordance with the scientific criteria laid down in Annex III (Stage 1) to that directive.

112. In its judgment in *First Corporate Shipping*, cited above, the Court held that 'to produce a draft list of sites of Community importance, 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 Habitats Directive's objective of conservation of natural habitats and wild fauna and flora. To that end, that list is drawn up on the basis of the criteria laid down in Annex III (Stage 1) to the directive.' [38]

113. The Court explained that only in that way is it possible to realise 'the objective, 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 Community'. [39] According to the Court, '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. Having regard to the fact that, when a Member State draws up the national list of sites, it is not in a position to have precise detailed knowledge of the situation of habitats in the other Member States, it cannot of its own accord, whether because of economic, social or cultural requirements or because of regional or local characteristics, delete sites which at national level have an ecological interest relevant from the point of view of the objective of conservation without jeopardising the realisation of that objective at Community level'. [40]

114. It follows that a Member State is obliged to include on the list of sites provided for under the first subparagraph of Article 4(1) of the habitats directive all sites which, in accordance with the relevant scientific criteria laid down in Annex III (Stage 1), host the types of natural habitats and species set out in Annexes I and II. That 'complete' list must also be forwarded to the Commission within the period laid down by the habitats directive. The 'complete list' must be understood as meaning the list that includes all sites hosting the types of natural habitats and native species set out in Annexes I and II which correspond to the criteria established in Annex III (Stage 1) and to the relevant scientific information.

115. Consequently, if it appears that a Member State has not included on that list a site having the above characteristics or has not forwarded that list to the Commission within the period set by the habitats directive for completion of the first stage of SAC designation, it will be possible to hold that that Member State has failed to fulfil its obligations under the first subparagraph of Article 4(1) of the habitats directive.

38 — Paragraph 22, emphasis added.

39 — Ibid., paragraph 23.

40 — Ibid.

116. With regard to the relevant scientific information which Member States must take into account in making that selection, it should be stressed that the habitats directive does not recognise any particular scientific source as having legal value. It follows that Member States are free to produce all probative scientific data enabling them to select the sites within their territory which meet the requirements of the first subparagraph of Article 4(1) of the habitats directive. It is up to the Commission, where appropriate, to adduce evidence that those data have no serious scientific value. [41]

117. It is pursuant to the principles mentioned above that I propose that the Court should examine whether the Member States concerned have or have not failed to fulfil the obligations laid down in the first subparagraph of Article 4(1) of the habitats directive.

2. In Case C-67/99

118. The question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that State at the end of the period laid down in the reasoned opinion. The Court cannot take account of any subsequent changes. [42]

119. Ireland acknowledges that it did not forward the complete list of sites within its territory which host the types of natural habitats and species in Annexes I and II to the habitats directive. It informed the Commission of its intention to meet its obligations according to a timetable which did not respect the periods set by that directive.

120. It is clear that, at the expiry of the period laid down in the reasoned opinion, Ireland had not forwarded to the Commission the list of all sites within its territory which host the types of natural habitats and species in Annexes I and II to the habitats directive.

121. It follows that, by failing to transmit to the Commission a complete list of the sites in its territory within the period laid down by the habitats directive, Ireland has failed to fulfil its obligations under the first subparagraph of Article 4(1) of that directive.

3. In Case C-71/99

122. The Commission has based itself on the handbook [43] in order to establish that the Federal Republic of Germany has failed

41 — See, by analogy, Case C-3/96 *Commission* v *Netherlands* [1998] ECR I-3031, paragraph 69.

42 — Ibid., paragraph 36.

43 — See point 72 of this Opinion.

to meet its obligations under the first subparagraph of Article 4(1) of the habitats directive. A comparison between the inventory drawn up by the BfN, which features in the handbook, and the lists of sites which the German authorities addressed to the Commission indicates that the lists, as forwarded, are incomplete.

123. It should be noted that the scientific sources on which the Commission bases itself for the purpose of establishing that the German national list is incomplete derive from a body which is recognised in Germany as being authoritative. Moreover, the Federal Republic of Germany merely asserts that the handbook is not the German reference list, but does not adduce any scientific evidence to corroborate that assertion. Finally, during the pre-litigation procedure, the German federal authorities acknowledged that their lists were incomplete.

124. As for the German Government's arguments based on the competence of the *Länder* in the selection of SACs, it should be pointed out that, 'in accordance with settled case-law, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive'. [44]

44 — See, *inter alia*, the judgment of 7 December 2000 in Case C-423/99 *Commission* v *Italy* [2000] ECR I-11167, paragraph 10.

125. It follows that, by failing to transmit to the Commission a complete list of the sites in its territory within the period laid down by the habitats directive, the Federal Republic of Germany has failed to fulfil its obligations under the first subparagraph of Article 4(1) of that directive.

4. In Case C-220/99

126. The Commission has based itself on the inventory drawn up by the Museum in order to establish that the French Republic has failed to meet its obligations under the first subparagraph of Article 4(1) of the habitats directive. A comparison between the inventory and the lists of sites which the French authorities sent to the Commission indicates that the lists transmitted by the French Government are incomplete.

127. It should be noted that, while not challenging the probative value of the inventory, the French Republic simply asserts that certain items of information contained in it are obsolete. It does not, however, adduce any scientific evidence capable of corroborating its assertions.

128. It follows that, by its failure to transmit to the Commission the complete list of the sites in its territory within the period laid down by the habitats directive, the French Republic has failed to fulfil its

obligations under the first subparagraph of Article 4(1) of that directive.

131. A solution of this kind makes it possible to avoid a situation in which implementation of a directive is postponed until such time as the final measure necessary for its full application has been carried out.

C — *The second plea in law*

1. The substance of the obligations under the second subparagraph of Article 4(1) of the habitats directive and the period set for meeting those obligations

129. The question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that State at the end of the period laid down in the reasoned opinion. [45]

130. Further, the fact that the Commission has not adopted all the provisions necessary for the application of a directive cannot, 'in the absence of [an] express provision to that effect, relieve Member States of their obligation to adopt within the period prescribed the measures necessary to comply with the Directive. That obligation remains, whether or not all the conditions for the implementation of the provisions of Community law have already been fulfilled'. [46]

132. Contrary to what the Federal Republic of Germany argues, the format is not the first text to have defined the information on the sites selected by Member States at the conclusion of the first stage in the designation of SACs. The second subparagraph of Article 4(1) of the habitats directive expressly provides that the information on each site '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)'.

133. Thus, once the text of the habitats directive had been published in the *Official Journal of the European Communities* on 22 July 1992, the Member States knew what kinds of information they would be required to collect for forwarding to the Commission within three years of notification of the directive. [47]

134. The second subparagraph of Article 4(1) of the habitats directive also provides that the above information must be included on the format. Since the format was notified to the Member States on 19 December 1996, the period within

45 — See, *inter alia*, Case C-3/96 *Commission* v *Netherlands*, cited above, paragraph 36.

46 — See, by way of analogy, Case C-137/96 *Commission* v *Germany* [1997] ECR I-6749, paragraph 10.

47 — That is to say, by 10 June 1995.

which that obligation had to be met began to run from that date. A reasonable period[48] must be given to Member States to enable them to meet that obligation as best they can. For the Member States, that obligation consisted specifically in the inclusion on the format notified to them in 1996 of the information which they had already held for one year. Indeed, Member States were aware of the essential content of the format as early as May 1994.[49] Moreover, information on the sites had to be collected by 10 June 1995 at the latest. A six-month period for Member States to comply with that obligation therefore appears to me to be capable of being adjudged reasonable.

135. It thus follows from the first and second subparagraphs of Article 4(1) of the habitats directive that Member States are under two kinds of obligation:

— the obligation to collect the information provided for under the first subparagraph of Article 4(1) and Annex III (Stage 1) by 10 June 1995;

— the obligation to incorporate that information into the format and to send the format to the Commission.

48 — See, by way of analogy, the judgment of 15 February 2001 in Case C-99/98 *Austria* v *Commission* [2001] ECR I-1101, paragraph 32.

49 — See point 102 of this Opinion.

136. It follows that Member States which had not forwarded to the Commission, by 19 June 1997, the format relating to the information on sites selected at the conclusion of the first stage failed in their obligations under the first and second subparagraphs of Article 4(1) of the habitats directive.

137. It remains to examine whether those obligations have in fact been met by the Member States concerned.

2. In Case C-67/99

138. It is clear that, when the period laid down in the reasoned opinion expired on 19 February 1998, Ireland had not forwarded to the Commission the formats relating to the sites within its territory hosting the types of natural habitats and native species in Annexes I and II.

139. It must also be pointed out that Ireland did not request the Commission for an extension of that period.

140. It thus follows that, by failing to transmit to the Commission the complete

format of the sites within its territory hosting the types of natural habitats and species in Annexes I and II within the period laid down by the habitats directive, Ireland has failed to fulfil its obligations under the second subparagraph of Article 4(1) of that directive.

3. In Case C-71/99

141. It is common ground, and has not been challenged, that, when the period laid down in the reasoned opinion expired on 19 February 1998, the Federal Republic of Germany had not forwarded to the Commission the formats relating to the sites within its territory which host the types of natural habitats and native species in Annexes I and II.

142. That State has therefore failed to fulfil its obligations under the second subparagraph of Article 4(1) of the habitats directive.

4. In Case C-220/99

143. It is clear that, when the period laid down in the reasoned opinion expired on 6 January 1998, the French Republic had only partially met its obligations under the second subparagraph of Article 4(1) of the habitats directive.

144. It has, furthermore, been consistently held that technical difficulties which a Member State may have encountered in carrying out its obligations cannot remove a failure to fulfil those obligations. [50] Those difficulties, moreover, did not prevent the French Republic from forwarding information which the Commission considered appropriate for 379 out of the 672 sites notified. [51]

145. It must therefore be held that, by failing to transmit to the Commission the complete formats for the sites within its territory hosting the types of natural habitats and species in Annexes I and II within the period laid down by the habitats directive, the French Republic has failed to fulfil its obligations under the second subparagraph of Article 4(1) of that directive.

D — *Costs*

146. Under Article 69(2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been

50 — See, *inter alia*, Case C-71/97 *Commission* v *Spain* [1998] ECR I-5991.

51 — See point 96 of this Opinion.

applied for in the successful party's pleadings. Since the Irish, German and French Governments have been unsuccessful, I propose that the Court order them to pay the costs, in accordance with the forms of order sought by the Commission.

Conclusion

147. For the reasons set out above, I propose that the Court should:

In Case C-67/99:

(1) rule that, by failing to transmit to the Commission the complete list of sites mentioned in the first subparagraph of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, together with the information on each site required by the second subparagraph of Article 4(1) thereof, Ireland has failed to fulfil its obligations under that directive;

(2) order Ireland to bear the costs of the proceedings.

In Case C-71/99:

(1) rule that, by failing to transmit to the Commission the complete list of sites mentioned in the first subparagraph of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, together with the information on each site required by the second subparagraph of Article 4(1) thereof, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

(2) order the Federal Republic of Germany to bear the costs of the proceedings.

In Case C-220/99:

(1) rule that, by failing to transmit to the Commission the complete list of sites mentioned in the first subparagraph of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, together with the information on each site required by the second subparagraph of Article 4(1) thereof, the French Republic has failed to fulfil its obligations under that directive;

(2) order the French Republic to bear the costs of the proceedings.