JUDGMENT OF THE COURT (Sixth Chamber)

11 September 2001 *

In Case C-67/99,

Commission of the European Communities, represented by R. Wainwright and P. Stancanelli, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Ireland, represented by M.A. Buckley, acting as Agent, H.A. Whelehan SC and A.M. Collins BL, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to transmit to the Commission the full 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 (OJ 1992 L 206, p. 7), 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,

* Language of the case: English.

THE COURT (Sixth Chamber),

composed of: C. Gulmann (Rapporteur), President of the Chamber, V. Skouris, R. Schintgen, F. Macken and J.N. Cunha Rodrigues, Judges,

Advocate General: P. Léger,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 18 January 2001,

after hearing the Opinion of the Advocate General at the sitting on 3 May 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 25 February 1999, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that, by failing to transmit to the Commission the full 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 (OJ 1992

L 206, p. 7) ('the directive'), 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.

Community law

2 According to its Article 2, the aim of the directive is to contribute towards biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the EC Treaty applies.

3 Article 3(1) and (2) of the directive provides:

'1. A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to Directive 79/409/EEC.

2. Each Member State shall contribute to the creation of Natura 2000 in proportion to the representation within its territory of the natural habitat types and the habitats of species referred to in paragraph 1. To that effect each Member State shall designate, in accordance with Article 4, sites as special areas of conservation taking account of the objectives set out in paragraph 1.'

4 A 'site' is defined by Article 1(j) of the directive as a geographically defined area whose extent is clearly delineated. Article 1(k) of the directive defines a 'site of Community importance' as being a site which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000, and/or contributes significantly to the maintenance of biological diversity within the biogeographical region or regions concerned. For animal species ranging over wide areas, sites of Community importance must correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction.

5 The procedure governing the designation of special areas of conservation ('SACs'), which is laid down in Article 4 of the directive, consists of four stages. First, each Member State must propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II native to its territory the sites host (Article 4(1)). Second, the Commission, on the basis of the Member States' lists and in agreement with each of them, must establish a draft list of sites of Community importance (Article 4(2), first and second subparagraphs). Third, the list of sites selected as sites of Community importance must be adopted by the Commission in accordance with the procedure laid down in Article 21 of the directive (Article 4(2), third subparagraph, and 4(3)). Fourth, Member States are required to designate sites of Community importance as SACs (Article 4(4)).

6 With more specific regard to the first stage, Article 4(1), first subparagraph, of the directive requires Member States to propose the list of sites there mentioned

on the basis of the criteria set out in Annex III (Stage 1) to the directive and relevant scientific information.

7 Annex III (Stage 1), Parts A and B, to the directive sets out 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.'

8 Under Annex III (Stage 1), Part C, to the directive, Member States are required, on the basis of the criteria set out in Annex III (Stage 1), Parts A and B, to classify the sites which they propose on the national list as sites eligible for identification as sites of Community importance according to their relative value for the conservation of each natural habitat type in Annex I or each species in Annex II.

9 Under the second subparagraph of Article 4(1) of the directive, the list of sites proposed must be transmitted to the Commission within three years of notification of the 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 established by the Commission in accordance with the procedure laid down in Article 21 of the directive ('the format').

10 Since the directive was notified on 10 June 1992, Member States ought to have transmitted the list of proposed sites and the information on those sites to the Commission before 11 June 1995.

11 The format was established only by Commission Decision 97/266/EC of 18 December 1996 concerning a site information format for proposed Natura 2000 sites (OJ 1997 L 107, p. 1). That decision was notified to the Member States on 19 December 1996 and published in the *Official Journal of the European Communities* on 24 April 1997.

Pre-litigation procedure

12 Having failed to receive from the Irish authorities either a full list of sites hosting the natural habitat types and native species referred to in Annexes I and II to the directive respectively or the information on those sites, and in the absence of anything else indicating to it that Ireland had adopted the measures necessary to meet its obligations under Article 4 of the directive, the Commission, on 24 April

1996, put the Irish Government on formal notice to submit its observations on that matter within two months, in accordance with the procedure laid down in Article 169 of the EC Treaty.

13 By letter of 28 April 1997, the Irish authorities communicated a list of 207 sites covering 5 530 km^2 which had been publicly proposed for designation as SACs and which hosted priority natural habitats.

14 Bearing in mind the fact that the format had been available only from 19 December 1996, the Commission sent to the Irish Government on 11 July 1997 an additional letter of formal notice in which it once again complained that it had failed to transmit a full list of sites and relevant site information and called on it to submit its observations on that infringement of Article 4(1) of the directive within one month. The Commission stressed, in particular, the need to use the format for transmission of the relevant data.

15 By letter of 5 September 1997, the Irish authorities informed the Commission of their intention to give effect to the first subparagraph of Article 4(1) of the directive by preparing the required list in three tranches, the first consisting of sites hosting priority natural habitat types, the second consisting of sites hosting non-priority natural habitats and species, and the third consisting of marine sites. With regard to the list transmitted on 28 April 1997, concerning the first of the three tranches, the Irish authorities pointed out that this had never been intended to replace or remove the need for the formal transmission mechanism.

16 Since its correspondence with the Irish authorities did not allow it to conclude that Ireland had transmitted a full list of the sites hosting the natural habitat types and native species listed in Annexes I and II to the directive respectively or the information relating to those sites, the Commission, acting in accordance with

Article 169 of the EC Treaty, issued a reasoned opinion to Ireland on 19 December 1997, in which it called on that Member State to comply therewith within two months of its notification.

17 By letter of 23 February 1998, the Irish authorities informed the Commission that their failure to transmit the list of sites and the information relating to those sites was attributable to delays associated with the public consultation process in Ireland, and indicated that they expected to be in a position to transmit a list by about mid-1998. By a letter of 30 September 1998 Ireland transmitted a first partial definitive list of 39 sites for purposes of Article 4(1) of the directive. Information on the 39 sites contained on this first partial definitive list had been transmitted separately with a letter of 6 August 1998. By letter of 12 October 1998, the Irish authorities submitted a second partial definitive list of nine sites for purposes of Article 4(1) of the directive. The information on the sites contained on this second list had been sent separately with a letter of 6 October 1998.

18 Taking the view that these communications did not allow it to conclude that Ireland had put an end to the infringement in question, the Commission decided to bring the present action before the Court.

Admissibility

19 The Irish Government submits that the action must be declared inadmissible in its entirety. It argues that the reasoned opinion fails to satisfy the requirements laid down in the Court's case-law. It does not, it contends, contain a coherent and detailed statement of the reasons which led the Commission to conclude that Ireland had failed to fulfil its Treaty obligations.

20 Moreover, it continues, that opinion does not contain the same grounds and complaints as those which feature in the application. The Irish Government submits in that regard that the reasoned opinion merely mentions Ireland's dilatory compliance with the provisions of Article 4(1) of the directive but makes no reference to the specific heads of complaint in the application which allege that Ireland has failed to comply with the substantive requirements of Article 4(1).

21 It should be noted in this regard that a reasoned opinion must contain a coherent and detailed statement of the reasons which led the Commission to conclude that the State in question has failed to fulfil its obligations under Community law (see, *inter alia*, Case C-279/94 *Commission* v *Italy* [1997] ECR I-4743, paragraph 15).

22 In addition, the subject-matter of proceedings brought under Article 169 of the EC Treaty is circumscribed by the pre-litigation procedure provided for by that provision and the Commission's reasoned opinion and application must consequently be based on the same complaints (see, *inter alia*, *Commission* v *Italy*, cited above, paragraph 24).

23 That rule, however, does not prevent the Commission from setting out its initial complaints in greater detail in its application, on condition that it does not alter the subject-matter of the dispute (see, along these lines, Case C-256/98 *Commission* v *France* [2000] ECR I-2487, paragraphs 30 and 31).

24 In its reasoned opinion, the Commission complained that Ireland had failed to forward either the definitive and complete list of sites eligible for designation as

SACs or the information relating to those sites, as required under Article 4(1), first and second subparagraphs, of the directive. The Commission has pointed out in that regard that the indicative and partial list forwarded by the Irish authorities on 28 April 1997 could not be treated as being a full list either from the geographical point of view or with regard to the types of natural habitats and species' habitats to be covered, and that the site information communicated did not relate to all of the sites in question.

25 In its application, the Commission set out the same heads of claim as in the reasoned opinion. It pointed out that, in view of the scientific reference sources, the definitive and partial list of sites proposed by Ireland was insufficient. It stated that Ireland had not proposed any sites for 26 natural habitat types of Community interest — including seven priority natural habitats extensively represented within its territory, such as coastal lagoons, Atlantic decalcified fixed dunes (*Cannulo-Ulicetea*), decalcified fixed dunes with *Empetrum nigrum*, active raised bogs, bog woodland, and *Taxus baccata* woods of the British Isles — or for 20 species of Community interest, such as *Rhinolophus hipposideros*, *Phoca vitulina*, *Alosa fallax*, *Geomalacus maculosus* and *Margaritifera margaritifera*, of which it has sizeable populations. The Commission also noted that, for certain natural habitat types and certain species, the number of sites definitively proposed by Ireland was inadequate.

26 It first of all follows from the foregoing that, in this case, the reasoned opinion does satisfy the requirements of the Court's case-law referred to in paragraph 21 of the present judgment.

27 Second, this analysis makes possible the finding that the Commission did not, in its application, alter the subject-matter of the dispute, but confined itself to illustrating the head of complaint set out in its reasoned opinion, concerning the failure to transmit a list of all the sites eligible for designation as SACs, by providing precise examples of the shortcomings in the lists which had already been forwarded by Ireland.

28 The plea of inadmissibility raised by Ireland must for those reasons be rejected.

Substance

The first plea in law

29 With regard to the obligation to transmit the site list referred to in Article 4(1), first subparagraph, of the directive, the Commission points out that each Member State's contribution to the setting up of a coherent European ecological network depends on the representation on its territory of the natural habitat types and species' habitats listed in Annexes I and II to the directive respectively. It is clear from the combined provisions of Article 4(1) of and Annex III to the directive that Member States enjoy a certain margin of discretion when selecting sites for inclusion in the list. The exercise of that discretion is, however, in the Commission's view, subject to compliance with the following three conditions:

— only criteria of a scientific nature may guide the choice of the sites to be proposed;

— the sites proposed must provide a geographical cover which is homogeneous and representative of the entire territory of each Member State, with a view to ensuring the coherence and balance of the resulting network. The list to be

submitted by each Member State must therefore reflect the ecological variety (and, in the case of species, the genetic variety) of the natural habitats and species present within its territory;

— the list must be complete, that is to say, each Member State must propose a number of sites which will ensure sufficient representation of all the natural habitat types listed in Annex I and all the species' habitats listed in Annex II to the directive which exist on its territory.

30 So far as the Irish national list is concerned, the Commission notes that, when the period laid down in the reasoned opinion expired on 19 February 1998, Ireland had forwarded to it a list of 207 sites, but that this was no more than an indicative list. When the Commission brought its action before the Court on 25 February 1999, Ireland had not confirmed this indicative list but had merely sent a partial definitive list of 48 sites and related information, and at the date of the hearing, 18 January 2001, Ireland had transmitted in total a list of 362 sites.

31 The Commission states that it instituted the present proceedings with a view to securing a declaration that the Irish national list was manifestly inadequate, and that such inadequacy far exceeded the margin of discretion given to Member States. Not only is such inadequacy evident with regard to the situation existing when the period set in the reasoned opinion expired, but also a whole series of provisos concerning the list of 362 sites still remained to be formulated. The Irish national list, the Commission concludes, did not therefore meet the criteria set out in Article 4(1) of the directive, read in conjunction with Annex III thereto.

32 The Irish Government accepts that, when the period laid down in the reasoned opinion expired, it had not forwarded to the Commission any list of sites capable

of being designated as SACs. It argues that this delay was attributable to domestic difficulties. In order to obtain approval of the population for the ambitious objectives pursued by the directive, it was considered necessary to launch a vast programme of public consultation. It points out that the 362 Irish sites officially notified up to January 2001 are protected under Irish law, which goes much further than what is required under the directive.

33 Although it follows from the rules governing the procedure for identifying sites eligible for designation as SACs, set out in Article 4(1) of the directive, that Member States have a margin of discretion when making their site proposals, the fact none the less remains, as the Commission has noted, that they must do so in compliance with the criteria laid down by the directive.

34 It should be noted in this regard that, in order 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 directive's objective of conserving 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 (Case C-371/98 *First Corporate Shipping* [2000] ECR I-9235, paragraph 22).

35 Only in that way, moreover, is it possible to realise the objective, in the first subparagraph of Article 3(1) of the 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. It follows from Article 1(e) and (i) of the

directive, read in conjunction with Article 2(1) thereof, that the favourable conservation status of a natural habitat or a species must be assessed in relation to the entire European territory of the Member States to which the Treaty applies (*First Corporate Shipping*, cited above, paragraph 23).

36 It is also necessary to recall that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in that Member State as it stood at the end of the period laid down in the reasoned opinion. The Court cannot therefore take account of any subsequent changes (see, *inter alia*, Case C-266/99 *Commission* v *France* [2001] ECR I-1981, paragraph 38).

37 When the period laid down in the reasoned opinion expired on 19 February 1998, the content of the Irish national list sent to the Commission was manifestly inadequate, going well beyond the margin of discretion available to Member States for the purpose of drawing up the list of sites mentioned in Article 4(1), first subparagraph, of the directive. In accordance with the case-law cited in the preceding paragraph of the present judgment, the lists of sites communicated to the Commission after the expiry of that period are irrelevant for purposes of the present action.

38 It must therefore be concluded that, by failing to transmit to the Commission, within the prescribed period, the list of sites mentioned in the first subparagraph of Article 4(1) of the directive, Ireland has failed to fulfil its obligations under that directive.

The second plea in law

39 With regard to the obligation to transmit information on the sites eligible for designation as SACs, the Irish Government acknowledges that it had not sent that

information by the expiry of the period laid down in the reasoned opinion, but at the same time argues that, since the format was not adopted until December 1996 and the Commission insisted that the information in question be transmitted by means of that format, it was not possible to complete this important work within the set period.

40 The Commission submits that the obligation to transmit the site information had to be met before 11 June 1995. Even if certain Member States which already had the list of proposed sites and relevant information before 11 June 1995 wished to await adoption of the format, they could, after the format was notified on 19 December 1996, rapidly have incorporated that information in the format and forwarded it to the Commission.

41 The Commission adds that, in order to take account of the late adoption of the format, it extended the pre-litigation procedure by addressing an additional letter of formal notice to Ireland on 11 July 1997, thus well after the date on which the format was notified. The Irish authorities were therefore fully in a position to meet their obligation to transmit the information on each site. When the period laid down in the reasoned opinion expired on 19 February 1998, Ireland had not sent to the Commission the information on the sites to be proposed.

42 It is necessary first to point out that, even though the Commission had initially sent to the Irish Government a letter of formal notice on 24 April 1996, that is to say, before the format was notified, it sent to the Irish Government a new letter of formal notice, following notification of the format, giving it a new period within which to comply with Article 4(1), second subparagraph, of the directive.

43 Next, it must be noted that, following notification of the directive on 10 June 1992, the Member States were aware which types of information they would be

required to collate for purposes of transmission within three years of that notification, that is to say, by 11 June 1995. They also knew that this information had to be provided on the basis of the format once it had been drawn up by the Commission. Article 4(1), second subparagraph, of the directive expressly states that the information to be transmitted, in a format established by the Commission, 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).

44 The period which the Commission gave to the Irish Government for meeting its obligation to include on the format the site information, which it was required to have at its disposal prior to 11 June 1995, must consequently be regarded as reasonable. From 19 December 1996, the date on which the format was notified, to 19 February 1998, when the period laid down in the reasoned opinion expired, the Irish Government benefited from a period of more than one year to comply with that specific obligation.

45 Since the Irish Government acknowledges that, when the period laid down in the reasoned opinion expired, it had not transmitted to the Commission, on the basis of the format, the information on the sites to be proposed, it must be held that, by failing to transmit to the Commission, within the period prescribed, the information relating to the sites on the list mentioned in the first subparagraph of Article 4(1) of the directive, pursuant to the second subparagraph of that article, Ireland has failed to fulfil its obligations under that directive.

Costs

46 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Commission has applied for an order for costs against Ireland and the latter has been unsuccessful, Ireland must be ordered to bear the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to transmit to the Commission, within the period prescribed, the 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 those sites required by the second subparagraph of Article 4(1) thereof, Ireland has failed to fulfil its obligations under that directive;**

2. **Orders Ireland to bear the costs.**

Gulmann Skouris Schintgen

Macken Cunha Rodrigues

Delivered in open court in Luxembourg on 11 September 2001.

R. Grass C. Gulmann

Registrar President of the Sixth Chamber