Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

20 June 2024*

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(Failure of a Member State to fulfil obligations – Environment – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Article 4(4) and Article 6(1) – Failure to designate special areas of conservation, conservation objectives and conservation measures)

In Case C-85/22,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 8 February 2022,

European Commission, represented by C. Hermes and G. Koleva, acting as Agents,

applicant,

v

Republic of Bulgaria, represented initially by T. Mitova, E. Petranova and L. Zaharieva, and subsequently by T. Mitova and L. Zaharieva, acting as Agents,

defendant,

THE COURT (Seventh Chamber),

composed of F. Biltgen, President of the Chamber, J. Passer and M.L. Arastey Sahún (Rapporteur), Judges,

Advocate General: T. Ćapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

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

gives the following

Judgment

1 By its application, the European Commission requests the Court to declare that the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) and Article 6(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), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Habitats Directive'):

– by failing to designate as special areas of conservation, as soon as possible and within six years at most, 194 out of the 229 sites of Community importance included on the list established by

Commission Decision 2009/91/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Alpine biogeographical region (OJ 2009 L 43, p. 21), by Commission Decision 2009/92/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, an initial list of sites of Community importance for the Black Sea biogeographical region (OJ 2009 L 43, p. 59), by Commission Decision 2009/93/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Continental biogeographical region (OJ 2009 L 43, p. 63), and by Commission Implementing Decision 2013/23/EU of 16 November 2012 adopting a sixth updated list of sites of Community importance for the Continental biogeographical region (OJ 2013 L 24, p. 58) ('the sites of Community importance at issue');

– by failing systematically and persistently to set conservation objectives which are detailed and specific to the special areas of conservation at issue;

– by failing systematically and persistently to establish the necessary conservation measures which correspond to the ecological requirements of the natural habitat types referred to in Annex I to the Habitats Directive and the species referred to in Annex II to that directive; and

– by failing correctly to transpose Article 6(1) of the Habitats Directive into national law.

I. Legal context

A. European Union law

2 The third and eighth recitals of the Habitats Directive state:

'Whereas, the main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, this Directive makes a contribution to the general objective of sustainable development; whereas the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities;

…

Whereas it is appropriate, in each area designated, to implement the necessary measures having regard to the conservation objectives pursued'.

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

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

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to [Council] Directive 79/409/EEC [of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)].

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

4 Article 4 of that directive provides:

'1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction. For aquatic species which range over wide areas, such sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction. Where appropriate, Member States shall propose adaptation of the list in the light of the results of the surveillance referred to in Article 11.

The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site. That information shall include a map of the site, its name, location, extent and the data resulting from application of the criteria specified in Annex III (Stage 1) provided in a format established by the Commission in accordance with the procedure laid down in Article 21.

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the nine biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory referred to in Article 2(1), the Commission shall establish, in agreement with each Member 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.

Member States whose sites hosting one or more priority natural habitat types and priority species represent more than 5% of their national territory may, in agreement with the Commission, request that the criteria listed in Annex III (Stage 2) be applied more flexibly in selecting all the sites of Community importance in their territory.

The list of sites selected as sites of Community importance, identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.

3. The list referred to in paragraph 2 shall be established within six years of the notification of this Directive.

4. Once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.

5. As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).'

5 Pursuant to Article 6(1) and (3) of the Habitats Directive:

‘1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

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

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

B. Bulgarian law

6 Article 8 of the Zakon za biologichnoto raznoobrazie (Law on Biological Diversity) (DV No 77 of 9 August 2002), in the version applicable to the facts of the case (‘the ZBR’), provides:

‘(1) The Ministry of the Environment and Water shall study, evaluate and draw up documents concerning the sites referred to in Article 7, which shall contain:

1. the name;

2. the subject matter and conservation objectives of the protected site;

4. completed standard forms containing data and evaluations;

5. cartographic material and a record of the coordinates of the boundaries of the protected site.

(2) Proposals for study sites under paragraph 1 may be made by national bodies and public and scientific organisations.

(3) The Ministry of Agriculture, Food and Forestry, the Executive Forest Agency, the Geodesy, Cartography and Cadastre Agency, and the municipalities shall make the data referred to in point (5) of paragraph 1 available to the Ministry of the Environment and Water in return solely for the reimbursement of the costs incurred for copies of the relevant documents.

(4) The Ministry of the Environment and Water shall inform the public and the organisations responsible for carrying out the studies referred to in paragraph 2 that the studies have started by publishing a notice on its website and in at least one daily newspaper.’

7 Article 12 of the ZBR provides:

‘(1) The Ministry of the Environment and Water shall draw up a draft order for the designation of each protected site which appears on the list referred to in Article 10(4).

(2) The draft order referred to in paragraph 1 shall state:

1. the basis for its adoption;

2. the name and location of the protected site;

3. the subject matter and conservation objectives of the protected site;

4. the total area, together with a description of the property on the protected site and/or a record of the coordinates of the boundaries of the protected site;

5. prohibitions or restrictions on activities which are contrary to the conservation objectives of the protected site.

(3) The Ministry of the Environment and Water shall inform the public of the draft order by publishing at least one notice on its website and in a daily newspaper. The notice shall indicate where and subject to which conditions the full text of the draft order can be consulted.

(4) The full text of the draft order shall be published on the website of the Ministry of the Environment and Water and shall be available at the administrative offices of the Regional Environmental and Water Inspectorates with territorial jurisdiction over the protected site.

(5) Within one month of the notice referred to in paragraph 3, interested parties may submit to the Minister for the Environment and Water, in writing, opinions, reservations and proposals in respect of the draft order, which shall relate solely to the prohibitions or restrictions referred to in point (5) of paragraph 2.

(6) Within one month of the expiry of the period referred to in paragraph 5, the Minister for the Environment and Water shall take a final decision on the opinions, reservations and proposals expressed and shall issue an order for the designation of the protected site concerned.

(7) The order referred to in paragraph 6 shall be final and shall not be subject to any appeal.’

8 Under Article 19 of the ZBR:

‘(1) Where there is a risk of deterioration of sites on the list referred to in Article 10(2) prior to their designation as areas of conservation, the Minister for the Environment and Water shall, by order published in the Official Journal, prohibit or restrict specific activities on those sites for a period not exceeding two years, with the exception of sites made available for national defence and the armed forces.

(2) The lodging of an appeal against the order referred to in paragraph 1 shall not suspend its enforcement.’

9 Article 27 of the ZBR reads as follows:

‘Management plans may be drawn up for the areas of conservation referred to in Article 3(1)(1).’

10 Article 29 of the ZBR provides:

‘(1) The management plans referred to in Article 27 shall include measures to prevent the deterioration of natural habitat types and the habitats of species, and to prevent endangering and disturbing the species for whose conservation the corresponding areas have been designated.

(2) The measures referred to in paragraph 1 shall include:

1. prohibition or restrictions of activities which are contrary to the requirements for the conservation of the protected sites concerned;

2. preventive activities aimed at avoiding foreseeable adverse events;

3. support, guidance and regulatory activities;

4. measures restoring natural habitats and the habitats of species or populations of flora and fauna;

5. scientific research, educational and monitoring activities.

(3) In adopting the measures referred to in paragraph 2, the following shall be taken into account as far as possible:

1. regional and local specificities, with the exception of those relating to the conservation of biological diversity, and the requirements of society;

2. the sustainable use of natural resources.

(4) In protected areas for which co-financing is envisaged under Article 10(6) and for which measures have been established in accordance with paragraph 1 but implementation has been delayed due to a delay in co-financing, no new measures shall be applied which could lead to the deterioration of the protected area concerned.’

11 Article 30 of the ZBR provides:

‘(1) Development plans, regional development plans for forest areas, forest plans and programmes, national and regional programmes drawn up pursuant to other laws shall comply with the orders referred to in Article 12(6), Article 16(4) and with the measures referred to in Article 29.

(2) In order to ensure links between conservation areas, the plans and projects referred to in paragraph 1 shall include measures and actions to protect landscape features which, on the basis of their linear and continuous structure or a liaison function, are important for the migration, dispersal and genetic exchange of populations and animal and plant species.’

12 Under Article 35 of the ZBR:

'The plant, animal and fungal species of the wild flora, fauna and fungi of the Republic of Bulgaria are protected in their natural environment through:

1. the conservation of their habitats in the national ecological network;

2. the placing of the species under a regulated protection or use regime;

3. the maintenance or restoration of habitat conditions in accordance with the ecological requirements of the species concerned;

4. the development and implementation of action plans for species facing different levels of endangerment;

5. the reintroduction of species which have disappeared from an area and reconstituting populations of rare and endangered species;

6. the monitoring and regulation of non-native species which have been, or may be, intentionally or accidentally introduced into the wild and threaten native species.'

13 Article 115 of the ZBR reads as follows:

'(1) The Minister for the Environment and Water:

1. implements State policy on the protection and maintenance of biodiversity;

…

4. sets up and manages the national ecological network;

…

6. coordinates the activities of other ministries, departments, municipalities, public organisations, scientific and university institutes in the field of conservation of biodiversity;

7. oversees the monitoring of the activities of owners or users of land, forest areas and bodies of water included in the national ecological network;

…

9. develops and implements mechanisms to encourage the activities of owners or users, non-governmental organisations, associations and others for the conservation, maintenance and restoration of biodiversity;

…'

14 Article 118(1) of the ZBR provides:

‘The Ministry of Agriculture, Food and Forestry, the Ministry of Regional Development and Public Works and the other national bodies and their subdivisions, as well as the municipalities, within their respective powers shall:

1. take actions to conserve biodiversity;

2. incorporate the conservation of biodiversity and the sustainable management of biological resources into all plans, projects, programmes, policies and strategies in the relevant sector, including, above all, biodiversity conservation activities, in accordance with the priorities established by the present law, the national strategy and the national plan for the conservation of biodiversity;

…’

15 Article 119(1) of the ZBR states:

‘The Ministry of the Environment and Water, the Ministry of Agriculture, Food and Forestry, municipalities and natural and legal persons – owners and users of forest areas, land and bodies of water in the national ecological network, shall ensure their management and protection in accordance with the provisions of the present law and other special laws.’

II. Pre-litigation procedure

16 By Decisions 2009/91, 2009/92 and 2009/93 and Implementing Decision 2013/23, the Commission established lists of sites of Community importance for the Alpine, Black Sea and Continental biogeographical regions. Those lists were updated by Commission Implementing Decision (EU) 2015/2375 of 26 November 2015 adopting a third update of the list of sites of Community importance for the Black Sea biogeographical region (OJ 2015 L 338, p. 938) and by Commission Implementing Decision (EU) 2018/43 of 12 December 2017 adopting the eleventh update of the list of sites of Community importance for the Continental biogeographical region (OJ 2018 L 15, p. 397).

17 The six-year period for designating those sites as special areas of conservation, in accordance with Article 4(4) of the Habitats Directive, expired on 12 December 2014 for the sites referred to in Decisions 2009/91, 2009/92 and 2009/93 and on 16 November 2018 for those referred to in Implementing Decision 2013/23.

18 By letter of 5 October 2016, the Commission requested the Republic of Bulgaria to notify it of the measures taken to designate sites of Community importance as special areas of conservation, in accordance with Article 4(4) of the Habitats Directive, and to adopt the necessary conservation measures, in accordance with Article 6(1) of that directive.

19 In the light of the reply of the Republic of Bulgaria of 14 December 2016, the Commission took the view that that Member State had failed to fulfil its obligations under those provisions and sent it a letter of formal notice on 25 January 2019.

20 In their reply to that letter of formal notice, dated 21 May 2019, the Bulgarian authorities presented in detail the new approach adopted for the management of areas protected under Natura 2000. In that regard, those authorities stated that a document was being drawn up to determine a methodology for the setting of conservation objectives for those areas.

21 On 18 May 2020, those authorities informed the Commission, inter alia, of the progress made in drawing up that document and designating special areas of conservation.

22 After examining that information provided by the Republic of Bulgaria, the Commission issued a reasoned opinion, pursuant to the first paragraph of Article 258 TFEU, which was received by that Member State on 2 July 2020, requesting it to take the measures necessary to comply with the Habitats Directive. In that reasoned opinion, the Commission complained that the Republic of Bulgaria had failed to fulfil its obligations under Article 4(4) and Article 6(1) of that directive:

– by failing to designate, within the prescribed period, 207 of the 229 sites of Community importance at issue as special areas of conservation;

– by failing systematically and persistently to set conservation objectives which are detailed and specific to the special areas of conservation at issue;

– by failing systematically and persistently to establish the necessary conservation measures corresponding to the ecological requirements of the natural habitat types referred to in Annex I to the Habitats Directive and the natural species referred to in Annex II to that directive; and

– by failing correctly to transpose Article 6(1) of the Habitats Directive into Bulgarian law.

23 The deadline for compliance with the reasoned opinion was 2 October 2020.

24 By letter of 29 September 2020, the Republic of Bulgaria replied to that reasoned opinion.

25 Taking the view, after analysing that reply from the Bulgarian authorities and the other available information, that the Republic of Bulgaria had not taken the measures necessary to comply with its obligations under Article 4(4) and Article 6(1) of the Habitats Directive, the Commission brought the present action on 8 February 2022.

III. Procedure before the Court

26 By decision of the President of the Court of 21 February 2023, the proceedings in the present case were stayed pending delivery of the judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)* (C-116/22, EU:C:2023:687).

27 By decision of the President of the Court of 27 September 2023, the proceedings were resumed in the present case.

28 By letter of 1 December 2023, the Court invited the Republic of Bulgaria and the Commission to rule on the effect, on the present case, of the judgments of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)* (C-444/21, EU:C:2023:524), and of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)* (C-116/22, EU:C:2023:687).

29 In response to that letter, the Commission stated, by letter of 15 December 2023, that, in its application, it had referred to the requirements that the conservation objectives be specific and precise in that they must, first, be specific to the special area of conservation concerned, second, cover all species and all habitat types of Community importance, third, clearly identify the different habitat types and species concerned, fourth, clearly designate the status to be achieved by the habitat type and species in the area at issue and, fifth, be quantifiable and measurable.

30 In the Commission's view, the judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)* (C-116/22, EU:C:2023:687), is irrelevant to the present case in so far as it does not provide any clarification regarding the requirements of specificity and precision of those conservation objectives.

31 As regards the requirement that the conservation objectives be quantifiable and measurable, the Commission stated that, in its application, it had claimed that the conservation objectives laid down by the Republic of Bulgaria in 11 orders for the designation of special areas of conservation adopted during the period from 2015 to 2019 and in 25 orders for the designation of such areas adopted in 2020, were not specific to the special areas of conservation concerned and were not sufficiently precise, since they were not quantifiable or measurable and since they did not meet other specificity requirements laid down by the Court.

32 The Commission added that, in support of the complaint alleging the Republic of Bulgaria's failure systematically and persistently to set conservation objectives and conservation measures, in breach of Article 4(4) and Article 6(1) of the Habitats Directive respectively, it had provided representative examples, given that the application covered all the conservation objectives and all the conservation measures which the Republic of Bulgaria had defined and adopted at the end of the period laid down in the reasoned opinion.

33 The Commission concluded that its interpretation of Article 6(1) of the Habitats Directive, to which it referred in the fourth complaint, was consistent with the judgments of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)* (C-444/21, EU:C:2023:524), and of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)* (C-116/22, EU:C:2023:687).

34 By letter of 18 December 2023, the Republic of Bulgaria contended that, as regards the designation of special areas of conservation, it was not in a position to compare the protection granted, (i) by the Bulgarian legislation to the sites of Community importance at issue and (ii) by the national legislation referred to in the judgments of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)* (C-444/21, EU:C:2023:524), and of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)* (C-116/22, EU:C:2023:687).

35 It stated, however, that the requirements laid down in Article 4(4) and Article 6 of the Habitats Directive had been de facto implemented, in accordance with Bulgarian legislation, for all the sites of Community importance at issue.

36 As regards the setting of conservation objectives, the Republic of Bulgaria stated that, unlike the defendants in the cases which gave rise to those judgments, it had argued during the written part of the procedure that, in its case, conservation objectives had been set within the time limits in respect of all the special areas of conservation at issue.

37 It stated that, in the light of the judgments of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)* (C-444/21, EU:C:2023:524), and of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)* (C-116/22, EU:C:2023:687), the Commission's approach to the way in which those conservation objectives were set is, in its view, too formal in so far as it does not take account of the diversity of species and habitats or the particular circumstances of each Member State.

38 As regards the designation of conservation measures, the Republic of Bulgaria stated that it had adopted specific measures, including active measures, covering specific groups of species and habitats, and submitted the relevant documents in that regard.

39 However, the Commission did not comment on those documents and stated in general terms that the practices of the Republic of Bulgaria do not comply with the Habitats Directive, without substantiating that claim with specific evidence.

IV. The action

A. The first complaint, alleging failure to designate special areas of conservation

1. Arguments of the parties

40 In its application, the Commission alleges that the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of the Habitats Directive by failing to designate, as special areas of conservation, 194 of the 229 sites of Community importance at issue, by 12 December 2014 for the sites referred to in Decisions 2009/91, 2009/92 and 2009/93, and before 16 November 2018 for those referred to in Implementing Decision 2013/23.

41 The Commission submits that the six-year period available to Member States to comply with the requirements of Article 4(4) of the Habitats Directive is sufficiently long for them to be able to adopt effective national measures to manage the Natura 2000 network and to determine the powers of the national and regional authorities in that regard.

42 Before the expiry of the period laid down in the reasoned opinion, namely 2 October 2020, the Republic of Bulgaria designated as special areas of conservation only 35 of the 229 sites of Community importance at issue. A further 150 sites were designated as special areas of conservation by orders published after that period, with the result that 44 of those sites have still not been designated as special areas of conservation.

43 In its defence, the Republic of Bulgaria contends that by 31 March 2021, the Minister for the Environment and Water adopted orders for the designation of all previously undesignated special areas of conservation, for which no adjustment of their geographic boundaries was required. The Republic of Bulgaria acknowledges, however, that orders for the designation of

special areas of conservation have not yet been adopted for 44 of the sites which are the subject of the present case, since the geographical boundaries of those sites need to be modified following the discovery of inaccuracies with regard to their conservation objectives.

44 The Republic of Bulgaria adds that the national legislation provides for appropriate preventive protection mechanisms for the period preceding the official publication of the orders for the designation of special areas of conservation. Accordingly, by way of example, the Republic of Bulgaria states that, in accordance with Article 8(1) of the ZBR, the documentation for each site proposed for designation as a special area of conservation is to contain the name, subject matter and conservation objectives for the area in question, the standard form containing data and evaluations, the cartographic material and the list of the coordinates of the geographic boundaries of the area concerned. In addition, the Republic of Bulgaria has produced data demonstrating that, in its view, the protection of sites of Community importance in Bulgaria is satisfactory.

45 In its reply, the Commission states, in particular, that the conservation of sites of Community importance before their designation as special areas of conservation does not relieve the Member State concerned of its obligation under Article 4(4) of that directive to make such a designation.

46 In its rejoinder, the Republic of Bulgaria acknowledges the delay in the official publication of the general administrative acts for the purpose of designating special areas of conservation, but submits that, in accordance with national legislation, implementation of the requirements laid down in Article 4(4) and Article 6 of the Habitats Directive was ensured in respect of all the sites of Community importance at issue, the object and conservation objectives of those sites being defined by the documentation provided for in Article 8(1) of the ZBR.

47 The Republic of Bulgaria contends that the administrative burden associated with the designation of special areas of conservation is greater for Member States such as the Republic of Bulgaria, which have a significant network of sites of Community importance on their national territory and a large number of protected species and natural habitats in those sites. Furthermore, biodiversity is better protected within those States, since they have complied more fully with their obligations under Article 4(1) of the Habitats Directive.

2. Findings of the Court

48 As a preliminary point, it should be recalled that Article 3(2) of the Habitats Directive requires the Member States to contribute to the creation of the Natura 2000 network in proportion to the representation, within their respective territories, of the natural habitat types listed in Annex I to that directive and the habitats of species listed in Annex II thereto, and to designate, to that effect, at the end of the procedure established by that directive and in accordance with Article 4 thereof, sites as special areas of conservation (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 26).

49 The procedure governing the designation of sites of Community importance as special areas of conservation, as provided for in Article 4 of the Habitats Directive, consists of four stages. Under paragraph 1 of that article, each Member State is to propose a list of sites indicating the natural habitat types and native species hosted by those sites, which it is to transmit to the Commission (first stage). Under paragraph 2 of that article, the Commission is to establish, in agreement with each Member State, a draft list of sites of Community importance drawn from the lists established by the Member States (second stage). On the basis of that draft list, the Commission is to adopt

the list of selected sites (third stage). Under paragraph 4 of that article, once a site of Community importance has been adopted, the Member State concerned is to designate it as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type or a species and for the coherence of Natura 2000 (fourth stage) (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 27 and the case-law cited).

50 The Republic of Bulgaria does not dispute that it did not formally designate all the sites of Community importance at issue as special areas of conservation at the end of the period laid down in the reasoned opinion, namely on 2 October 2020. It states, however, that although there is no such formal designation, the national legislation in force provides for appropriate preventive protection mechanisms for the period preceding the official publication of the orders for the designation of sites of Community importance as special areas of conservation.

51 It should be noted in that regard that a similar argument was put forward by several Member States in an action for failure to fulfil obligations culminating in a finding against those States, namely the Portuguese Republic (judgment of 5 September 2019, *Commission* v *Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraphs 31, 35 and 37), Ireland (judgment of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraphs 46 to 56), and the Federal Republic of Germany (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraphs 30 to 37).

52 In accordance with the Court's settled case-law, the provisions of a directive must be implemented with unquestionable binding force, and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 32 and the case-law cited).

53 The fact that the national legislation of a Member State grants protection to sites of Community importance does not release that State from its specific obligation, laid down in Article 4(4) of the Habitats Directive, formally to designate those sites as special areas of conservation (see, to that effect, judgments of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 51, and of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 33).

54 Such a designation is an indispensable stage in the system of protection of habitats and species under that directive (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 34 and the case-law cited).

55 In those circumstances, it must be held that, by failing to designate as special areas of conservation, as soon as possible and within the maximum period of six years referred to in Article 4(4) of the Habitats Directive, 194 of the 229 sites of Community importance at issue, the Republic of Bulgaria has failed to fulfil its obligations under that provision.

B. The second complaint, alleging failure to set conservation objectives which are detailed and specific to the special areas of conservation

1. Arguments of the parties

56 In its application, the Commission alleges that the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of the Habitats Directive by failing systematically and persistently to set conservation objectives which are sufficiently detailed and specific to each special area of conservation.

57 The Commission claims that the obligation to set, within the six-year period referred to in that provision, conservation objectives for each special area of conservation, which must be specific to each of those areas and to the various exhaustive, quantified and measurable habitat types and species, is based on the judgment of 17 December 2020, *Commission* v *Greece* (C-849/19, EU:C:2020:1047, paragraphs 46 to 52).

58 The Commission submits, in particular, that, during the period from 2015 to 2019, the Republic of Bulgaria adopted 11 orders for the designation of special areas of conservation, which set out identical conservation objectives for each area, worded in excessively general terms, contrary to the requirements arising from the judgment cited in the previous paragraph.

59 As regards the 25 orders for the designation of special areas of conservation adopted in 2020, they are worded in excessively general terms, merely providing for the conservation and maintenance of natural habitats and, where appropriate, improvement of the status of the habitats and/or species in question.

60 The Commission also responds to the argument put forward by the Republic of Bulgaria during the pre-litigation procedure that the conservation objectives for the sites of Community importance which have not been designated as special areas of conservation are laid down in orders for the designation of special protection areas – adopted in accordance with Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7), as amended by Directive 2013/17 ('the Birds Directive'), where the geographic boundaries of the special protection areas correspond to those of the sites of Community importance – or in the documentation relating to each site of Community importance published on the website of the Ministry of the Environment and Water.

61 In that regard, the Commission argues that the conservation objectives of bird habitats cannot be considered to be specific to species other than birds and to habitat types falling solely within the scope of the Habitats Directive and that, in any event, the conservation objectives set by the Republic of Bulgaria for special protection areas are worded in general terms and, therefore, do not meet the requirements that such objectives be specific and detailed.

62 The Commission claims that the document concerning the methodology for setting conservation objectives for protected areas under Natura 2000, which was being drawn up by the Bulgarian authorities at the pre-litigation stage of the proceedings, as mentioned in paragraph 20 above, is 'informative' and 'advisory' and does not set or revise specific conservation objectives for the sites of Community importance at issue, but merely gives guidance concerning the setting of future conservation objectives.

63 In its defence, the Republic of Bulgaria contends that the Habitats Directive does not require the conservation objectives for sites of Community importance to be specific and measurable.

64 In that regard, compliance with the general principle of legal certainty precludes the Commission from imposing on the Member States requirements going beyond those expressly, clearly and precisely laid down in the Habitats Directive.

65 According to the Republic of Bulgaria, the Court, in its judgment of 17 December 2020, *Commission* v *Greece* (C-849/19, EU:C:2020:1047), to which the Commission refers in its application, did not require the Member States to set out the conservation objectives in a quantifiable manner.

66 The Republic of Bulgaria contends that, contrary to the assertions made by the Commission, it did not maintain during the pre-litigation procedure that the objectives for the conservation of wild birds laid down for special protection areas were relevant to the sites of Community importance covered by the Habitats Directive. That was the case with regard to the conservation measures, not with regard to the conservation objectives.

67 Furthermore, in Bulgaria, the conservation objectives of sites of Community importance are laid down in the ZBR and, more specifically, in the documents referred to in Article 8(1) thereof, in the administrative acts and in the documents which are relevant in that regard. Bulgaria also sent the Commission the duly completed standard forms referred to in that provision, containing the quantitative and qualitative assessments specific to the habitats and species for each site of Community importance at issue.

68 In addition, the document concerning the method for setting conservation objectives for protected areas under Natura 2000, mentioned in paragraph 20 above, is currently published on the website of the Bulgarian information system relating to sites within the Natura 2000 network.

69 The Republic of Bulgaria adds that, from the date of receipt of the Commission's letter of formal notice, it adopted a number of orders for the designation of special areas of conservation meeting the requirements laid down by the Commission. Those orders lay down the conservation objectives specific to the special areas of conservation at issue and thus make them binding.

70 In order to comply with the requirement relied on by the Commission to set out those conservation objectives in detail, it is necessary to have data from systematic surveys covering a significant period of time and showing the evolution of the status of species and the main factors affecting them. However, gaps in scientific knowledge which accumulated in the period before 2007 cannot be filled in the short term.

71 In its reply, the Commission submits that the conservation objectives, which are worded in excessively general terms in the administrative practice of the Bulgarian authorities, do not comply with the requirements of the Court's case-law.

72 The Commission submits that the Republic of Bulgaria has not demonstrated, in its defence, that the conservation objectives set by the Republic of Bulgaria were sufficiently precise. That Member State merely referred to a number of acts reproduced in the annexes to its defence. In the Commission's view, it is not for the Commission or the Court to examine such annexes, since their content is not sufficiently described in the defence.

73 The Commission submits that the standard forms submitted by the Republic of Bulgaria, as referred to in paragraph 67 above, contain a description of the actual status of the special areas of conservation at issue without, however, specifying the status to be achieved by the species and habitat types in those areas. Therefore, in its view, those forms cannot compensate for the conservation objectives for those areas that a Member State is obliged to set.

74 As regards the lack of sufficient scientific knowledge which could not be compensated for in the short term, relied on by the Republic of Bulgaria, the Commission, citing the judgment of 12 November 2019, *Commission* v *Ireland (Derrybrien Wind Farm)* (C-261/18, EU:C:2019:955, paragraph 89), recalls that Member States cannot plead provisions, practices or situations prevailing in their domestic legal order to justify failure to observe obligations arising under EU law.

75 The Commission acknowledges that dynamic natural processes in the special areas of conservation at issue may sometimes require the conservation objectives and conservation measures for those areas to be adapted. However, it argues that Member States cannot avoid making such adjustments by merely defining very general conservation objectives.

76 In its rejoinder, the Republic of Bulgaria contends that the general objectives of the Natura 2000 network sites are already set out in Article 5 of the ZBR, which provides that special areas of conservation are intended to protect or restore the favourable status of the natural habitats which those areas host, and of species in their natural range.

77 As regards the conservation objectives specified in the orders for the designation of special areas of conservation, that Member State puts forward, by way of example, the objectives set out in the order for designation of the area 'BG0000119 "Trite bratiya"'.

78 The Republic of Bulgaria contends that the Commission's requirement that the conservation objectives be specific and detailed is excessive, in so far as the restoration of the status of natural habitats and species is a complex and dynamic process which requires considerable resources and continuous monitoring.

2. Findings of the Court

79 As a preliminary point, it should be noted that, although Article 4(4) of the Habitats Directive does not explicitly mention the obligation to set conservation objectives, that provision nevertheless requires the competent authorities of the Member State concerned, when designating the special area of conservation, to establish priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a habitat type. Establishing those priorities implies that those conservation objectives have been set in advance (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 105 and the case-law cited).

80 In order to be regarded as 'conservation objectives' for the purposes of the Habitats Directive, the objectives set must not be stated in a general manner, but must be specific and precise (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraphs 107 and 114 and the case-law cited).

81 The conservation objectives must, consequently, be established having regard to information based on a scientific examination of the situation of the species and their habitats on the site in question. Since, according to Article 4(1) of the Habitats Directive, in the procedure governing the designation of sites as special areas of conservation, Member States must propose sites on the basis of the criteria set out in Annex III to that directive and relevant scientific information, that information is also such as to ensure that the conservation objectives are specific and precise (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 115).

82 Furthermore, while the conservation objectives set by a Member State must allow for verification as to whether the conservation measures based on those objectives are appropriate for attaining the desired conservation status of the site in question, the fact remains that the need to formulate those objectives in quantitative and measurable terms must be examined in each specific case and cannot be considered to be a general obligation on the part of the Member States (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 116).

83 The quantitative and measurable approach to determining conservation objectives can prove ill-suited to some complex habitats and some conservation areas with a dynamic character, whose features vary considerably depending on external environmental factors or interact significantly with other habitats and areas of conservation (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 117).

84 Accordingly, it is, in principle, for the Commission to adduce evidence that, in each specific case, the Member State concerned is required to formulate the conservation objectives in quantitative and measurable terms in order to ensure the desired conservation status of the site in question (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 118).

85 Moreover, in view of its obligation to prove the alleged failure by a Member State to fulfil its obligations, the Commission cannot, under the guise of claiming that the Member State concerned has generally and persistently failed to fulfil its obligations under EU law, avoid complying with that obligation to prove the alleged failure on the basis of concrete evidence of the infringement of the specific provisions which it invokes, and rely on simple presumptions or schematic causations (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 112 and the case-law cited).

86 In the present case, it is true that the Commission has put forward specific examples of orders for the designation of special areas of conservation in which the conservation objectives of the habitats and species in question do not appear to be worded in a way which is sufficiently detailed and specific to the special areas of conservation at issue.

87 Having said that, first, those examples have been presented by the Commission solely by way of illustration of the general and structural practice of the Republic of Bulgaria, which is, according to that institution, contrary to Article 4(4) of the Habitats Directive.

88 In the form of order sought in its application, the Commission has not requested the Court to find that the Republic of Bulgaria has failed to fulfil its obligations under that provision on the ground that the conservation objectives have not been set in a detailed, specific, quantitative and measurable manner in respect of the habitats and species present on the sites specified in the orders referred to by that institution by way of illustration in the application.

89 Second, the present action concerns a large number of sites of Community importance situated in the Alpine biogeographical regions of the Black Sea and Continental Sea, where there is considerable species and habitat diversity.

90 In those circumstances, in accordance with the case-law of the Court, it was for the Commission to demonstrate that the examples which it submitted in support of its complaint seeking a declaration of a general and structural failure to fulfil obligations under the Habitats Directive are representative for all the sites of Community importance at issue (see, to that effect, judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 124 and the case-law cited).

91 In the present case, it must be held that, neither in the application nor in its reply, has the Commission demonstrated to the requisite legal standard, by means of sufficiently precise, clear and detailed arguments and data, that the examples of orders for the designation of special areas of conservation in which the conservation objectives of the habitats and species in question are not formulated in a quantitative and measurable manner, which it cited in order to illustrate the general and structural practice of the Republic of Bulgaria, are representative of all the special areas of conservation at issue.

92 Accordingly, the second complaint must be rejected.

C. The third complaint, alleging failure to establish the necessary conservation measures

1. Arguments of the parties

93 In its application, the Commission submits that the Republic of Bulgaria has failed systematically and persistently to fulfil its obligation under Article 6(1) of the Habitats Directive to establish necessary conservation measures corresponding to the ecological requirements of the natural habitat types referred to in Annex I to that directive and the species referred to in Annex II thereto present on the sites of Community importance at issue.

94 More specifically, the Commission argues that that situation is the consequence of the Republic of Bulgaria's failure to set conservation objectives which are detailed and specific to the sites of Community importance at issue. In that regard, as is apparent from the judgment of 17 December 2020, *Commission* v *Greece* (C-849/19, EU:C:2020:1047, paragraph 85), those conservation measures must be based on conservation objectives which are specific to the special area of conservation concerned.

95 During the pre-litigation procedure, the Republic of Bulgaria recognised that the legislative work to make binding the territorial management plans containing those conservation measures had been delayed.

96 As regards the conservation measures set out in the 11 orders for the designation of special areas of conservation adopted between 2015 and 2019, the Commission submits that those orders relate to only 11 of the 229 sites of Community importance which the Republic of Bulgaria is under an obligation to protect. In addition, for most of those sites, active measures focusing specifically on each of the different species and each of the different habitats with an unfavourable conservation status are needed to achieve the objectives set out therein. Active measures must be defined on the basis of conservation objectives which are detailed and specific to each site of Community importance at issue. Such objectives are not present in those orders.

97 As regards the protection measures adopted by the Republic of Bulgaria in respect of special protection areas, in accordance with the Birds Directive, the Commission acknowledges that certain measures established for bird species, in particular conservation measures, may also be of indirect relevance to protected species and habitats within sites of Community importance, in accordance with the Habitats Directive. However, that fact cannot release the Bulgarian authorities from their obligation to adopt the necessary conservation measures for all species and for all habitat types under the Habitats Directive that are protected within the sites of Community importance at issue.

98 The Commission submits that the various administrative and legislative acts and other strategic documents referred to by the Republic of Bulgaria during the administrative procedure, which, according to that Member State, include measures connected with the conservation, maintenance or restoration of the status of natural habitats and species in the sites of Community importance at issue, are too general and incomplete and do not constitute 'conservation measures' within the meaning of Article 6(1) of the Habitats Directive.

99 The Commission argues that the new orders for the designation of special areas of conservation, which were submitted by the Republic of Bulgaria in May 2020, also fail to meet the requirements of that provision. These orders, which merely contain recommendations, concern only the management of agricultural land and grassland and do not specify by whom, when and for what area they must be implemented.

100 In its defence, the Republic of Bulgaria contends that the conservation measures which it has adopted are complete, clear and precise, and that they have been effectively implemented, in accordance with the case-law of the Court. Those measures are defined on the basis of the ecological requirements of the species and natural habitat types concerned.

101 In a number of cases, where the geographic boundaries of the special protection areas laid down in the Birds Directive overlap with those of sites of Community importance covered by the Habitats Directive, the prohibitions and restrictions already in place with regard to special protection areas contribute to compliance with the conservation objectives of sites of Community importance.

102 In that regard, the Republic of Bulgaria provides a number of examples of conservation measures specific to certain special protection areas, in particular those laid down in the ZBR, in Bulgarian legislation on (i) hunting and the protection of game, (ii) land use planning on the Black Sea coast, (iii) fisheries and aquaculture, and (iv) forestry activities. In addition, by order issued on 23 February 2015, the Minister for Agriculture and Food put in place national standards for good agricultural and environmental conditions. They apply to both freshwater and coastal habitat types and to the species present there, as well as to a range of grassland and semi-grassland formations and species related to them.

103 The Republic of Bulgaria contends that the Commission has interpreted selectively a number of the measures referred to in the pre-litigation procedure, outside the overall context of the Bulgarian legislation and of all the various documents setting out the measures for the protection of special areas of conservation. The various regulatory and administrative acts and the planning, programming and strategic documents are also relevant in that regard. When considered as a whole for a particular area of conservation, those legal acts and documents apply to all uses of the area in question, both in terms of prohibitions and restrictions on activities and the active measures put in place in order to manage the areas concerned.

104 That Member State adds that the orders for designation of special areas of conservation refer to legal and administrative acts, to planning, programming and strategic documents laying down measures aimed at achieving the conservation objectives of the special areas of conservation at issue. The actions recommended by those orders could also be implemented as voluntary contractual measures, as is the case in other Member States in respect of the management of the Natura 2000 network.

105 In its reply, the Commission submits that, in the absence of clear arguments and specific references in the Republic of Bulgaria's defence, it is not in a position to ascertain whether the numerous annexes to that defence support that Member State's argument that its practices comply with the requirements laid down in Article 6(1) of the Habitats Directive.

106 According to the Commission, all the measures dispersed across legal and administrative acts and numerous strategic, planning and programming documents lack a connection to the special conservation areas at issue and their specific conservation objectives.

107 It submits, in that regard, that 'conservation measures', within the meaning of Article 6(1) of the Habitats Directive, must be established and implemented in the framework of those particular special areas of conservation and must be based on conservation objectives specific to each site (see, to that effect, judgments of 5 September 2019, *Commission* v *Portugal (Designation and protection of special areas of conservation)*, C-290/18, EU:C:2019:669, paragraph 52, and of 17 December 2020, *Commission* v *Greece*, C-849/19, EU:C:2020:1047, paragraph 85).

108 In its rejoinder, the Republic of Bulgaria states that the cases in which conservation measures lack a connection to the designation of a specific site are generally those in which those measures are introduced for all sites, or for all sites where a given natural habitat type or a given species is protected.

2. Findings of the Court

109 It should be noted that, as in the arguments put forward by the Commission in its second complaint, the Commission does not allege in its application, as regards the third complaint, that the Republic of Bulgaria has failed to adopt conservation measures for the sites of Community importance at issue, namely the specific sites covered by its first complaint, but merely alleges in the heads of claims in that application that that Member State has 'systematically and persistently' failed to fulfil its obligations under Article 6(1) of the Habitats Directive.

110 Furthermore, as in the second complaint, the Commission in the third complaint merely refers to certain examples of orders for the designation of special areas of conservation adopted by the Bulgarian authorities in order to illustrate a systematic and persistent failure by the Republic of Bulgaria to fulfil its obligations under that provision.

111 Consequently, it must be held that, in breach of the case-law cited in paragraph 90 above, the Commission has not adduced evidence that those examples are representative and did not refer to specific sites of Community importance or specific special areas of conservation.

112 It follows that the third complaint must be rejected.

D. The fourth complaint, alleging incorrect transposition into national law of Article 6(1) of the Habitats Directive

1. Arguments of the parties

113 In its application, the Commission complains that the Republic of Bulgaria has failed to fulfil its obligations under Article 6(1) of the Habitats Directive in so far as that the legislation of that Member State provides that the establishment of conservation measures is optional.

114 It is apparent from the judgment of 10 May 2007, *Commission* v *Austria* (C-508/04, EU:C:2007:274, paragraphs 76 and 87), that Member States are obliged to establish such measures.

115 The Commission argues, inter alia, that under Article 27 of the ZBR, 'management plans may be drawn up …' It is true that Articles 12 and 19 of the ZBR provide that it is possible, where there is a risk of deterioration to protected sites, to adopt prohibitions or restrictions on activities which are contrary to the conservation objectives of those sites. However, the obligation to adopt the necessary conservation measures under Article 6(1) of the Habitats Directive cannot be reduced to the prohibitions and restrictions to be adopted and must, in certain cases, include the adoption of active conservation measures.

116 Article 118 of the ZBR provides that actions to conserve biodiversity must comply with the priorities set out in that law, as part of the national strategy and in the national plan for the conservation of biodiversity. However, that article contains no reference to the conservation measures referred to in Article 29 of the ZBR.

117 In its defence, the Republic of Bulgaria does not dispute that, in accordance with Article 6(1) of the Habitats Directive, conservation measures must be adopted in all cases, since the expression 'if need be', which appears in that provision, refers only to management plans and cannot be understood as a general limitation of the obligation to adopt appropriate statutory, administrative or contractual measures.

118 However, citing the judgments of 14 February 2012, *Flachglas Torgau* (C-204/09, EU:C:2012:71, paragraphs 60 and 61), and of 24 October 2013, *Commission* v *Spain* (C-151/12, EU:C:2013:690, paragraphs 27 and 28), the Republic of Bulgaria contends that, in accordance with the third paragraph of Article 288 TFEU, when transposing a directive, the Member States have a broad discretion as to the choice of means and methods for ensuring that it is implemented. Thus, the transposition of a directive does not necessarily require legislative action in each Member State.

119 In that regard, the Republic of Bulgaria submits that Articles 12, 19, 27, 29, 30 and 118 of the ZBR transposed Article 6(1) of the Habitats Directive.

120 Article 12 of that law sets out the requirements with which orders for the designation of special areas of conservation must comply. Thus, conservation measures are in place once the special area of conservation in question has been designated.

121 Article 19 of that law provides for measures to protect sites of Community importance before they are designated as special areas of conservation. Prohibitions or restrictions could also be imposed prior to the designation of such an area if there is a risk of damage to the site concerned. Those prohibitions and restrictions constitute 'conservation measures' within the meaning of Article 6(1) of the Habitats Directive.

122 The Republic of Bulgaria adds that, in accordance with Article 27 of the ZBR, management plans may be drawn up for special areas of conservation and that Article 29 of that law lays down the measures to be included in the management plans.

123 As is clear from Article 30 of the ZBR, land use plans, regional forest development plans, forest plans and programmes, national and regional programmes drawn up pursuant to other laws are to comply with orders for the designation of special areas of conservation and the measures provided for in the management plans.

124 In accordance with Article 118(1)(2) of the ZBR, the conservation measures referred to in the Habitats Directive must be specified in all plans, projects, programmes, policies and strategies of the sector concerned.

125 The Bulgarian legislation thus provides not only for legal instruments ensuring the conservation of sites protected under Natura 2000, but also for express provisions requiring the competent authorities to apply those instruments in the cases provided for and in accordance with the criteria defined by the Habitats Directive.

126 As regards active conservation measures, the Republic of Bulgaria refers to Article 115(1)(9) of the ZBR, according to which the Minister for the Environment and Water must develop and implement mechanisms aimed at encouraging the activities of owners or users, non-governmental organisations, associations and others for the conservation, maintenance and restoration of biodiversity. In addition, that Member State provides examples of such measures, which have been adopted pursuant to Bulgarian legislation.

127 In its reply, the Commission argues that Articles 12 and 19 of the ZBR concern only certain types of conservation measures, namely prohibitions and restrictions, and not proactive conservation measures. Articles 27 and 29 of the ZBR provide only for the possibility of drawing up management plans and not for the compulsory introduction of conservation measures for all sites of Community importance. Article 30 and Article 118(1) of the ZBR introduce certain requirements for certain types of plans and programmes which do not implement the obligations imposed by Natura 2000, but those requirements do not include a complete set of conservation measures for all areas protected under Natura 2000.

128 Articles 115, 118 and 119(1) of the ZBR, to which the Republic of Bulgaria refers in its defence, determine the powers of the various entities with regard to biodiversity policy, but do not provide for the establishment or application of the necessary conservation measures in all special areas of conservation.

129 In its rejoinder, the Republic of Bulgaria contends that, in the Bulgarian legal system, the autonomy of the administrative authorities consists of choosing the most appropriate means to implement legal obligations.

130 The Republic of Bulgaria also relies on the case-law of the Court, in particular the judgment of 3 April 2014, *Cascina Tre Pini* (C-301/12, EU:C:2014:214, paragraphs 40 and 41), according to which a directive, while being binding on every Member State as to the result to be achieved, leaves to the national authorities the choice of form and methods.

131 In accordance with the provisions of the ZBR, the adoption of orders for the designation of special areas of conservation referred to in Article 12 of that law is not an option but an obligation for the competent administrative authorities in respect of all such areas. Those authorities are also required to state in their orders the subject matter and conservation objectives for the special area of conservation concerned, as well as the prohibitions or restrictions on activities which are contrary to those objectives.

132 In addition to land use plans, regional development plans for forest areas and plans and programmes for the forestry sector, Article 30(1) of the ZBR provides that all national and regional programmes drawn up pursuant to laws other than the ZBR are to comply with orders for the designation of special areas of conservation and any amendments thereto.

133 The Republic of Bulgaria adds that Article 35 of the ZBR provides for certain measures to be adopted for the conservation of species and specifically provides that plant, animal and fungal species of the wild flora, fauna and fungi are protected in their natural environment by, inter alia, conserving their habitats in the national ecological network, placing the species under a regulated protection or use regime, and maintaining or restoring habitat conditions in accordance with the ecological requirements of the species concerned.

134 Lastly, national water legislation provides for the mandatory implementation of measures to achieve the conservation objectives for sites of Community importance. As is apparent from that legislation, management plans for river basins must lay down measures enabling the conservation objectives for such sites to be achieved, on the basis of the analyses required by that legislation. Those measures are not limited to prohibitions or restrictions on activities.

2. Findings of the Court

135 Pursuant to Article 6(1) of the Habitats Directive, for every special area of conservation the Member States must establish the necessary conservation measures which correspond to the ecological requirements of the natural habitat types listed in Annex I to that directive and the species listed in Annex II present on the site concerned (see, to that effect, judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 143 and the case-law cited).

136 The conservation measures referred to in Article 6(1) of the Habitats Directive cannot, in principle, be limited to measures intended to avoid external man-caused impairment and disturbance and should include, if necessary, positive proactive measures to maintain the site or restore it to a state of conservation (judgment of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 150).

137 As regards the national legislative framework necessary to ensure the implementation of those obligations, it should be borne in mind that the provisions of the Habitats Directive must be implemented with unquestionable binding force, and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (judgment of 21 September 2023, *Commission* v *Germany (Protection of special areas of conservation)*, C-116/22, EU:C:2023:687, paragraph 32 and the case-law cited).

138 In the present case, the Republic of Bulgaria submitted, in its defence, a number of specific binding provisions providing that the Bulgarian authorities must establish conservation measures, in particular active conservation measures.

139 In its reply, the Commission maintained that those Bulgarian provisions do not impose an obligation to adopt the necessary conservation measures in all special areas of conservation.

140 In that regard, it must be stated that the Commission's line of argument is based on confusion between, on the one hand, the lack of an adequate legislative framework in a Member State making it possible, in accordance with the case-law cited in paragraph 137 above, to adopt appropriate conservation measures and, on the other hand, the failure to establish those measures for all special areas of conservation.

141 As regards the first of those aspects, it should be noted that, in the light of the evidence submitted by the Republic of Bulgaria, in particular the examples of national provisions imposing an obligation on the Bulgarian authorities to establish conservation measures, including proactive measures, the Commission has not demonstrated to the requisite legal standard that Bulgarian legislation does not make it possible to ensure that the obligations of the Republic of Bulgaria under Article 6(1) of the Habitats Directive have actually been fulfilled.

142 As regards the second of those aspects, it should be observed that it has already been the subject of the third complaint, in which the Commission does not allege that the Republic of Bulgaria failed to adopt conservation measures for the sites of Community importance at issue, that is to say the specific sites referred to in its first complaint.

143 Accordingly, the fourth complaint must be dismissed.

144 In the light of all the foregoing considerations, it must be held that the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of the Habitats Directive by failing to designate as special areas of conservation, as soon as possible and within six years at most, 194 of the 229 sites of Community importance at issue.

145 The action is dismissed as to the remainder.

Costs

146 Under Article 138(3) of the Rules of Procedure of the Court, where each party succeeds on some and fails on other heads, the parties are to bear their own costs.

147 In the present case, since the Commission and the Republic of Bulgaria have each been unsuccessful in certain claims, they shall each bear their own costs.

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

1. **Declares that the Republic of Bulgaria has failed to fulfil its obligations under Article 4(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2013/17/EU of 13 May 2013, by failing to designate as special areas of conservation, as soon as possible and within six years at most, 194 of the 229 sites of Community importance on the list established by Commission Decision 2009/91/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Alpine biogeographical region, by Commission Decision 2009/92/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, an initial list of sites of Community importance for the Black Sea biogeographical region, by Commission Decision 2009/93/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Continental biogeographical region, and by Commission Implementing Decision 2013/23/EU of 16 November 2012 adopting a sixth updated list of sites of Community importance for the Continental biogeographical region;**

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

3. **Orders the European Commission and the Republic of Bulgaria to bear their own costs.**

[Signatures]